MILITANT LIBERALISM AND ITS DISCONTENTS: ON THE DECOLONIAL ORIGINS OF ENDLESS WAR

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MILITANT LIBERALISM AND ITS DISCONTENTS:
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MILITANT LIBERALISM AND ITS DISCONTENTS tells a story about the reinvention of liberalism during the era of decolonization. The dissertation shows how a persistent pattern of militant liberalism came to structure the postwar international order—one where the United States engages in militant action to protect the liberal international order from irredeemable illiberal threats, precisely when its hegemonic influence reaches its limit. While anti-totalitarianism and the war on terror are defining episodes in the development of this pattern, the dissertation argues that it was only liberalism's encounter with decolonization that made the practice of militant liberalism ideologically coherent and enduring. After shattering the civilizational justifications of nineteenth century liberalism, decolonization provided militant liberals with a unique enemy, the Third World, upon which to distinguish and legitimate their own logic of violence, all while destroying alternative political possibilities arising out of the decolonial process.

The dissertation explores these themes through four political thinkers—Isaiah Berlin, Louis Henkin, Frantz Fanon, and Carl Schmitt—and narrates a story about the legitimation of militant liberalism and the eventual rise of its discontents. On the one hand, Berlin and Henkin spoke of Thirdworldism as uniquely threatening: the former arguing that Thirdworldist nationalism often morphed into romantic self-assertion, and the latter claiming that Thirdworldists exploited state sovereignty allowing international terrorism to proliferate unbound. In response to these images, Berlin cast liberal violence as universal, ethically responsible, and hence morally superior to nationalist-inspired violence, while Henkin sympathized with US attempts to interpretively modify

international law and drape itself under its authority as it hunted terrorists behind sovereign lines. On the other hand, Fanon and Schmitt, as critics of liberalism, challenged these pictures. The actors arising out of decolonization, they claimed, were neither driven by romantic self-assertion, nor were they meaningfully sovereign. Instead the authoritarian disasters and aggressive reactions of decolonization often stemmed from the interventions of militant liberalism and the aggravations of the liberal order itself. The prior accounts of decolonization disavowed liberalism's complicity in fomenting the conditions that allowed it discontents to proliferate: global terrorism as the diametric force perpetuating endless warfare.

Biographical Sketch

Aaron Gavin studies political theory, with a focus on the histories of liberalism, decolonization, and international law. While writing his dissertation, Aaron also completed a Juris Doctorate degree at NYU School of Law. Before Cornell, Aaron completed an undergraduate bachelor's degree at CUNY Brooklyn College in Brooklyn, NY. He was born and raised in Houston, TX.

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INTRODUCTION

TOWARDS A POLITICAL THEORY OF ENDLESS WAR

> [W]e are neither "warmongers" nor "appeasers," neither "hard" nor "soft." We are Americans, determined to defend the frontiers of freedom, by an honorable peace if peace is possible, but by arms if arms are used against us…
>
> — President John F. Kennedy

> We seek peace. We strive for peace. And sometimes peace must be defended…. If a war is forced upon us, we will fight in a just cause and by just means...
>
> — President George W. Bush

The Unexceptional 'War on Terror'

On June 4, 2009, President Obama declared that the United States would seek "a new beginning" with "Muslims around the world." This declaration pointed to a wide-range of concerns: how to encourage economic development and defend religious freedom; how to support women's rights and resolve the Palestinian-Israeli conflict. But sticking out among this assortment of issues was one moral stain that President Obama sought to uniquely move beyond: the Bush Administration and its war on terror. Although not quite coining a name for his own post-Bush international vision, President Obama asserted that the United States would return to its previous role of defending the liberal international order with its inherent emphasis on multilateralism and legal restraint. The United States, Obama claimed, would remain "respectful of the sovereignty of nations and the rule of law." It would learn from Bush's mistakes in conducting the war on terror, acknowledging that "military power alone [was] not going to solve the problems in Afghanistan and Pakistan" and how the failures of the Iraqi invasion emphasized "the need to use diplomacy and build international consensus to resolve [America's] problems." Of course, Obama maintained that there were still "violent extremists in Afghanistan and Pakistan determined to kill as many Americans [as] possibl[e]," and hence the United States could not simply disengage from its military projects *tout court*. But if force was still required, Obama asserted that "America is not

the crude stereotype of a self-interested empire." "Make no mistake," Obama proclaimed, "we do not want to keep our troops in Afghanistan," just as we "have made it clear to the Iraqi people that we pursue no bases, and make no claim on their territory or resources." Like all nations of the postwar order, "Iraq's sovereignty is its own."[1]

By the end of the Obama presidency, the aspirational promises of this new beginning had clearly fallen short. While reducing troops in Afghanistan and Iraq, the Administration kept thousands of troops in the former war zone, while sending back a similar number of troops to the latter area to face the new threat of ISIL. In addition, informal wars began to pop up across the globe expanding the war on terror in scope: targeted killings and drone strikes in Pakistan and Yemen and US-backed proxy battles in Somalia and Syria. Surely, Obama was correct in asserting that the point of maintaining troops in the Middle East or initiating these new offensives was not, like the empires of the past or even like some states in the present, to formally annex territory. In addition, the Obama Administration even made faithful attempts to bring the United States within the reasonable bounds of liberal legality when conducting its wars, especially when it came to torture, extraordinary rendition, and the use of military tribunals.[2] But it was not clear whether the latter attempt to humanize war was moving the country forward or whether it simply "sanitize[d] war," as one commentator put it, and in doing so, made it "more enduring."[3] It was not clear whether the former intention to support sovereign autonomy reflected the facts on the ground or whether it served as a moralizing talking-point that elided how the Obama era had failed to end what was becoming an "endless war"—a "forever war" on terror.

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[1] Barack Obama, "Text: Obama's Speech in Cairo," *The New York Times*, June 4, 2009, http://www.nytimes.com/2009/06/04/us/politics/04obama.text.html.
[2] David Cole, "Breaking Away," *New Republic*, December 8, 2010, https://newrepublic.com/article/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror.
[3] Samuel Moyn, "Toward a History of Clean and Endless War," *Just Security*, October 9, 2015, https://www.justsecurity.org/26697/sanitizing-war-endlessness.

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This dissertation traces how a unique pattern of militant liberalism arose during the era of decolonization, and in doing so, it sheds light on how the contemporary war on terror is simply one episode in a larger story about the global proliferation of endless warfare. To be sure, the present moment is hardly the first time that the United States has found itself bogged down in military quagmires unable to extricate itself from seemingly inescapable circles of violence. During decolonization, the United States sought to stem the tide and expansion of international communism and then the broader Thirdworldist movement, and it therefore engaged in numerous military interventions and covert actions to oppose such illiberal threats which supposedly challenged and endangered the liberal international order itself. In the following chapters, I engage with this pattern of militant liberalism from two vantage points: on the one hand, from the perspective of liberal theorists who formulated ideological defenses of militant liberalism during its encounter with decolonization and, on the other hand, from the appraisal of antiliberal critics who expressed concern over the expanding dominance of liberalism and its assault on the potential political alternatives arising out of the decolonial process. Together, these opposing perspectives narrate a uniform story about how the once open-ended character of the postcolonial order would become increasingly tightened and narrowed. What remained after liberalism confronted decolonization, I conclude, was the dominance of militant liberalism and the remnants of its discontents—a globalized form of terror that arose from the ashes of decolonization.

The dissertation is broken into two parts. The first half of the dissertation concerns itself with the political thought of postwar liberals who provided unique arguments for legitimizing the nascent rise of militant liberalism in the face of decolonization. These militant liberals not only embraced violent action as an unsavory necessity, but also defended such violence as intellectually

consistent with liberal norms and values (such as human dignity, international pluralism, and the rule of law). I deal with two liberal thinkers who approached this problem from two distinct vantage points: Isaiah Berlin, a political existentialist who argued that militant action was necessary for defending human dignity and international pluralism from romantic totalitarians, and Louis Henkin, a liberal legalist who sympathized with US attempts to modify international law to sanction unilateral violence against the international terrorists and rogue supporters who would hide behind the protections of sovereign borders. While each thinker started from liberal premises that cast militant action as problematic, both thinkers found themselves arguing that such action was permitted to uphold the deeper spirit of liberalism. Both portrayed the Third World as compromised by actors who were outside the realm of persuasion and sometimes even humanity—romantic totalitarians who threatened basic moral norms or self-interested parochialists who abused state sovereignty and threatened the stability of the international legal order. Both therefore surrendered to the idea that these actors sometimes needed to be confronted through violence, even if embracing this path with added moral provisos and proclamations of last result.

Building on theses insights, the second half the dissertation argues that, in contrast to the liberal depiction of the dangers arising out of decolonization, antiliberal critics expressed an inverse concern about the expansion of global liberalism and its nascent assault on the political projects arising out of the decolonial process. These alternative narratives showed that it was often the deleterious visions of decolonization exemplified by Berlin and Henkin—as both a process in which totalitarian forces of self-assertion thrived and a space where sovereign principles made humanitarian abuses possible—that allowed liberals to disavow the negative aspects of their own practices. These diagnosticians recognized that liberalism gained traction through violent assertion and hegemonic influence, and even in the latter case, they understood such informal "influence,"

whether through economy or law, as displaying a quite malevolent logic. Indeed, the political thought of the two diagnosticians that I deal with here—Frantz Fanon and Carl Schmitt—not only provide stories that respectively challenge the romantic and sovereign interpretations of decolonization, but on the contrary, they also explain how militant liberalism, and the liberal order that it was protecting, destroyed the political projects that each hoped would emerge from the decolonial process. While Fanon envisioned the emergence of decentralized institutions of popular rule and Schmitt conversely hoped for the creation of territorially-based and economically self-sufficient empires, both stories show how the expanding liberal order either coopted and pacified or confronted and destroyed these political configurations, all while blaming the repression and terror arising from the colonial process on the formerly colonized themselves.

Because each chapter of the dissertation reflects on one instance of how a politically engaged thinker legitimized or critiqued a broader political pattern that I have referred to as "militant liberalism," the rest of the introduction unpacks this term its own right. It therefore proceeds in three parts. First, I sketch the anti-totalitarian origins of militant liberalism: how, since the end of the world wars, the United States has acted as a hegemon who works through the procedures of the liberal order, but when this is deemed insufficient or impossible, it turns to militant action to combat dangerous illiberal forces, all in the name of protecting the liberal order. Second, I clarify why the decolonial encounter—and not simply anti-totalitarianism—is the proper context for understanding the triumph of this pattern of militant liberalism: decolonization shattered the old colonial liberalisms of the previous era, it forced liberals to invent complex ideological justifications for interventions into the Third World, and it gave birth to alternative political possibilities which were repressed on the path to liberal supremacy. Third, I conclude by outlining the chapters and clarifying why the narrative of the dissertation is told through individual

political thinkers. While each thinker embraced complex and nuanced philosophical and political positions, each thinker also demonstrated a narrowing of political possibility in the evolution of their political thinking; the external practice of militant liberalism often pulled their reflections in unintended directions and away from their more explicit ends. Not only are such *unexpected* turns best traced in a unitary body of political thought, but it is also only through tracing these *unexpected* turns that the persuasiveness of the conclusion comes into view. It is upon the destruction of the left-wing and right-wing alternatives to militant liberalism, I argue, that a coherent, even if unsavory, political option remained for those still interested in challenging imperial and hegemonic practices of external interference to regain a semblance of political autonomy in an increasingly liberalized world. The turn to global deterritorialized terror was an intelligible, even if unsatisfactory, political response by reactionary warriors seeking to tap into the disappearing spirit of sovereign freedom and combat an increasingly globalized and deterritorialized liberalism.

The Persistent Pattern of Militant Liberalism

Militant liberalism is not an ideology; it is an influential and persistent pattern of state practice that has shaped the international system throughout the postwar period. The defining language of *militant* liberalism signifies a political formation whose defenders have not shied away from relying on and embracing political violence and force—as opposed to treaty, law, or persuasion—to defend its underlying goals and values. This does not mean that militant liberalism arises to overcome all varieties of illiberalism. Rather, militant liberalism appears in practice only when its proponents find it is necessary to protect the liberal international order from certain illiberal threats that it cannot accommodate. Militant liberalism therefore only begins where hegemony ends: that is, the pattern appears when illiberal movements are no longer amenable to

hegemonic influence and thus require the persuasion of violent threat. So-called totalitarian communists and totalitarian nationalists—and, then, edging close towards the post-cold war era, deterritorialized terrorists and genocidal 'rogue' states—have been the main targets of this militant wrath, precisely because they are portrayed, whether accurately or exaggerated, as irredeemable threats that endanger the liberal order itself.

Of course, the history of liberalism has often been a history interlinked with violence, and the equation of militancy and liberalism might therefore seem somewhat redundant. Despite the fact that early liberal theorists often portrayed liberalism as overcoming anarchy and violence, scholars of the (early) modern period, for example, have noted how traditional social contract theorists often modeled their imaginary states of nature on the very real states of sovereign warfare.[4] This analogy is notable as more than mere scholarly interest. Liberal theorists explicitly refused to extend their arguments about the social contract to the supranational level and hence they only overcame violence and anarchy at the domestic level through sanctioning it at the external and international one.[5] Similarly, social liberals of the nineteenth century often engaged in international thinking with violent repercussions. As "liberal internationalists," many believed that the "twin engines of international law and international commerce… when combined and properly directed… could generate a transformation in international 'morality', ushering in a new, more harmonious age."[6] Yet this seemingly harmless idea of 'proper direction' often meant that non-European civilizations required directing. This was no accident. Liberty was only valued

[4]See David William Bates, *States of War: Enlightenment Origins of the Political* (Columbia University Press, 2012); Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 2001).
[5] Even Immanuel Kant, who imagined the possibility of perpetual peace, thought that men would only reach this state through learning the terrible lessons of warfare. See Immanuel Kant, "Perpetual Peace," in *Kant: Political Writings*, ed. H. S. Reiss, trans. H. B. Nisbet (Cambridge University Press, 1991).
[6] Duncan Bell, *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (Cambridge University Press, 2007).

within a social context—within a civilizational threshold—and Europeans states therefore found no problem denying liberty and self-rule to non-European peoples.[7] Surely, scholars have persuasively argued that liberal theory was, by no means, imperialistic by necessity or even in every iteration.[8] Yet whatever resistance liberal theory offered, it was with little effectivity or persuasiveness. In both the French and British contexts, nineteenth century liberalism was colonial in practice.

But to broadly link liberalism with violence does not capture the meaning of militant liberalism in its historical specificity. Indeed, whatever one thinks of past liberalisms, the proponents of liberal internationalism have staked out the claim that the present has transcended the wars and colonialisms of the past. Of course, these proponents do not mean to assert that international society is without sovereign states or external interference. Rather, they assert that the global order has shifted and transformed and, in doing so, shifted these concepts too. Since World War II, John Ikenberry tells us that "the United States engaged in the most ambitious and far-reaching liberal order building project the world had yet seen."[9] This project has been liberal in a minimal sense: it has transformed war-based relations between sovereigns to "open and rule-based relations among states."[10] The project has also been liberal in a more novel sense: it has supposedly avoided the imperial and colonial liberalisms of British and French rule and instead personified hegemonic aspirations. Imperial rule, as Robert Keohane has argued, implies "formal rule or military imposition."[11] Hegemony, in contrast, implies dominance through persuasion

[7] See Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (University of Chicago Press, 1999).
[8] See Sankar Muthu, *Enlightenment against Empire* (Princeton University Press, 2009); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton University Press, 2009).
[9] G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton University Press, 2012).
[10] Ikenberry, *Liberal Leviathan.*
[11] Robert O. Keohane, "The United States and the Postwar Order: Empire or Hegemony?," *Journal of Peace Research*, 28, 4 (1991).

within a 'world system' characterized by "both sovereignty and interdependence."[12] This aspiration to hegemony, after all, helps explain why the United States seeks to primarily influence through rule-making. Ever since the end of the world wars, as John Ruggie has claimed, the United States has found it necessary to move "beyond the dictates of balance-of-power politics" and hence it has decided to follow in the footsteps of Franklin Roosevelt himself instituting an internationalism of lawful influence and order.[13]

Yet for all its talk of novelty—of an "American Exceptionalism" in the international sphere—this picture of twentieth century liberalism is more self-centered than it is self-aware. By this, I do not mean to argue that the hegemonic liberalism of the present in precisely the same as the colonial liberalisms of the past. Instead, I mean to pose how such differences elicit an important question about conceptual linkage: what makes the hegemonic liberalism of the present liberal at all? If the old liberal empires were, for example, quite comfortable with colonization, why is the fact that the United States has sought to promote "human betterment through free trade… human rights and decolonization" exemplary of liberalism?[14] If the old European states were happy ordering their relations with each other through violence and force, why are open and orderly rules the crucial features of the brave new liberal world? And if, as the dissertation argues, the United States has consistently engaged in certain kinds of unilateral force despite its more general commitment to the United Nations and the *jus ad bellum* regime, why have some contemporary liberals been so adamant to assert that this violent half of the hegemonic equation is not *really* liberalism at all?

[12] Keohane, "The United States and the Postwar Order."
[13] John Gerard Ruggie, "American Exceptionalism, Exemptionalism and Global Governance," in *American Exceptionalism and Human Rights*, Michael Ignatieff, ed. (Princeton University Press, 2005).
[14] Ruggie, "American Exceptionalism, Exemptionalism and Global Governance."

If we are to understand liberalism as a political formation that can be located through looking at what self-professed liberals have said about it, then, an answer to these questions can be found in probing why twentieth century liberals, as Duncan Bell has noted, have spoken about liberalism in such expansive terms.[15] Despite multiple differences between, for example, presidentialism and parliamentarianism, between welfare economies and liberalized economies, between societies of right and those of the good, Bell argues that liberals of the early interwar period obliterated these differences creating a moniker, that was until then virtually unknown, called 'liberal democracy.' The best explanation of this development, Bell further asserts, is that the differences of these newly 'liberal' states looked negligible in the face of Nazi and Soviet totalitarianism. Liberal democracy could therefore be understood as all those attributes that were the inverse of this frightening enemy—a third wave of liberalism that was neither classical nor social but born "in the shadow of totalitarianism."[16]

A similar thesis can be put forth about the meaning of liberalism in its broader international dimensions: that liberalism expanded in the face of the Nazi and Soviet threats and embodied those values that were the antithesis of what supposedly defined these ideologies. While the French and British liberal internationalisms of the nineteenth century arguably had much in common, no one spoke of a unified European liberalism; and if some did indeed speak of a unified European civilization, this kind of talk quickly evaporated when 'liberal democracies' united under "American-led collective security" became the new dominant mode of international belonging.

[15] Duncan Bell, "What Is Liberalism?" *Political Theory*, 42, 6 (2014).
[16] Focusing on the US domestic context, David Ciepley argues that nineteenth century Progressivism, and its project of wielding state power to guide the economy and foster citizen virtue, was quickly disrupted with the rise of totalitarianism. American intellectuals equated totalitarianism with state direction and thought control and, in doing so, reformulated liberal values to oppose these dangers. Free enterprise, pluralist interest-group politics, judicial deference, and neutralist reinterpretations of civil rights: values that were never quite integral to American identity quickly became the staples of American liberalism. See David Ciepley, *Liberalism in the Shadow of Totalitarianism* (Cambridge, Mass: Harvard University Press, 2007).

This transformation initiated the mythos that the United States would never go it alone—that it would "lead from behind" instead of relying on brute violence and force.[17] The encounter with totalitarianism would also help clarify the values of the new international liberalism. While the war with the Nazi regime ensured that the ban on unlawful force made its way to the UN Charter, the Korean War became the staple example of totalitarian aggression proving that the United States would uphold the international rule of law;[18] human rights would take on the very particular connotation of civil and political rights during this era, while economic rights were simply viewed as the strategic tools of communist and socialist enemies;[19] decolonization was supported by an American foreign policy that was competing with communism in influence for the loyalty of the Third World, seeking to demonstrate that it was not quite like the formal French and British empires;[20] and the expansion of free trade and free markets, well, they were the obvious antithesis to centralized command economies that were 'unnatural' and destined to crumble under the imperatives of modernization.

Yet totalitarianism ended up being more than simply 'the other' against which liberal values were forged; it was also a phenomenon that threatened these values, and hence it needed to be confronted in a way that avoided their disintegration. In the domestic context, political thinkers quickly recognized that totalitarian movements threatened to unravel the institutions and protections of parliamentary democracy, often through seeking to exploit their procedures from within. In 1937, Karl Lowenstein famously published two articles in the *American Political*

[17] Ruggie, "American Exceptionalism, Exemptionalism and Global Governance."
[18] For an account of this transformation of American identity from a position of realism to one of liberal internationalism, see John Lewis Gaddis, *Strategies of Containment: A Critical Appraisal of American National Security Policy during the Cold War* (Oxford University Press, 2005).
[19] The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were split into two separate covenants during the 1950s expressing this ideological disagreement.
[20] See, e.g., Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times*, (Cambridge University Press, 2007).

Science Review foreshadowing the rise of militant democracy—the idea that liberal democracies could adopt illiberal means to protect themselves from totalitarian forces.[21] As Jan Werner Muller has explained, Lowenstein "argued that democracies were incapable of defending themselves against fascist movements if they continued to subscribe to 'democratic fundamentalism', 'legalistic blindness', and an 'exaggerated formalism of the rule of law'."[22] Instead, Lowenstein urged governments "to find repressive answers to antidemocratic forces, such as banning parties and militias" as well as "restrict[ing] the rights to assembly and free speech, deny[ing] individuals access to public office and even threaten the loss of citizenship."[23] In short, Lowenstein proclaimed, "fire should be fought with fire."[24]

While militant democracy would become one path of protecting liberal democracy at the domestic level, militant liberalism would become the main path of protecting the liberal order at the international one. For all the talk about the United States as a benevolent hegemon influencing the international sphere through rule-making, treaty, and persuasion, a quick glance of history makes it clear that the United States has also ruled quite formally through engaging in violent force and supporting violent forces. One could say that the idea of militant liberalism is an iteration of the idea of militant democracy imposed outward into the global arena: that the United States must rely on *prima facie* illiberal means to protect the liberal international order from illiberal threats.

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[21] Karl Loewenstein, "Militant Democracy and Fundamental Rights, I," *The American Political Science Review* 31, 3 (1937); Karl Loewenstein, "Militant Democracy and Fundamental Rights, II," *The American Political Science Review* 31, 4 (1937).

[22] Jan Werner Muller, "Militant Democracy" in *The Oxford Handbook of Comparative Constitutional Law*, eds. Michel Rosenfeld and Andras Sajo (Oxford University Press, 2013).

[23] Muller, "Militant Democracy."

[24] Lowenstein did not, however, have the last word on this topic. Muller has, for example, traced how the illiberalism of militant democracy would take took on an air of liberalism in its procedure: the exemplary case of militant democracy is found in a legal document, the German Constitution, not an extralegal space of executive prerogative power; in addition, the special powers that this document enumerated were to be exercised with due process as monitored by the German Courts. See Jan Werner Muller, "Militant Democracy" in *The Oxford Handbook of Comparative Constitutional Law*, eds. Michel Rosenfeld and Andras Sajo (Oxford University Press, 2013).

This role for the United States began to develop in response to German aggression in World War II, but was then refined as the United States faced an additional threat for almost half a century: the threat of international communism. It only took a few years after the end of World War II for President Truman to famously announce his doctrine: that it would become "the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures."[25] Shortly afterwards, Truman followed through on his promise to provide arms and military support to anti-communist forces in the Greek civil war, and ever since this moment, President after President followed his precedent.

It is now difficult to imagine alternatives to a coherent international order that move beyond an ideal where the United States is not only a global hegemon but also a global policeman. The contemporary increase in talk about the waning power of American authority only highlights the commonly held anxiety that whatever will arise after the weakening of the great power will not be an alternative order but rather disorder—a deeply unstable system of states competing for supremacy like the European sovereigns of yore. But at one point in time, militant liberalism was not the sole political formation competing for supremacy in the international system, and at another point in time, it was not an alternative that was on the table at all. If militant liberalism has refined itself through an engagement with numerous enemies during the post-war period—international communism, Thirdworldist nationalism, and now in our own time, international terrorists and their rogue supporters—one must still understand how these engagements led to its contemporary supremacy. To understand this historical development thus brings us to the next argument of the introduction: that proper contextualizing the eventual supremacy of militant liberalism requires

[25] President Harry S. Truman's Address before a Joint Session of Congress, March 12, 1947, accessed December 30, 2016, http://avalon.law.yale.edu/20th_century/trudoc.asp.

turning not only to the battle against totalitarianism but to the liberal encounter with the decolonial process.

From the Antitotalitarian Moment to the Decolonial Encounter

Decolonization initiated a new "problem-space" that still structures our current political moment. I borrow the concept of "problem-space" from David Scott to show how decolonization not only "demarcates a discursive context, a context of language," but also "a context of argument and, therefore, one of *intervention*." As Scott puts it,

> A problem-space… is an ensemble of questions and answers around which a horizon of identifiable stakes (conceptual as well as ideological-political stakes) hangs. That is to say, what defines this discursive context are not only the particular problems that get posed as problems as such (the problem of ''race,'' say), but the particular questions that seem worth asking and the kinds of answers that seem worth having. Notice, then, that a problem space is very much a context of dispute, a context of rival views, a context, if you like, of knowledge and power. But from within the terms of any given problem-space what is in dispute, what the argument is effectively about, is not itself being argued over.[26]

What were the contours of the problem-space that decolonization initiated? Unlike mere anticolonialism which was concerned with ending formal colonial rule, decolonization posed the broader question, to borrow Frantz Fanon's terminology, of "how to create the new man"—of what kind of social relations would develop after the fall of the old imperial order.[27] But while the irresistible march towards decolonization made it increasingly unlikely that the existence of a *postcolonial* order would "itself be[] argued over," this consolidation did not imply uniform answers or interventions about the specific nature of its character. In the midst of decolonization, as Gary Wilder has argued, "the contours of the postwar order were [still] not fixed, and [hence]

[26] David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*, 1 edition (Durham: Duke University Press Books, 2004), 4.
[27] Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2005), 240.

a range of solutions to the problem of colonial emancipation were imagined and pursued."[28] Ultimately, the appearance of this new problem-space and the maintenance of an open-ended landscape of intervention proved that the supremacy of militant liberalism only arose through (1) the displacement of the old colonial problem-space, (2) the solidification of novel ideologies that helped militant liberalism achieve supremacy, and (3) the destruction of alternative political possibilities that challenged this its dominance. While the substantive chapters of the dissertation only focus on the latter two sets of concerns, a contextual note about all three of these facets is important to understand the integral relation between decolonization and the eventual supremacy of militant liberalism.

First, the new postcolonial militant liberalism could only come about because decolonization thoroughly challenged the grounds of the old nineteenth and early twentieth century colonial liberalisms. As touched upon previously, the civilizing mission was the structuring ideology of these liberalisms exhibiting two basic premises: first, that the British or French empires, as the most notable examples, were forces of good spreading order, institutions, and freedom to unruly territories, and second, that they were burdened with this task because non-European peoples were unfit for self-rule or, following Mill's terminology, "backwards" and hence in need of external supervision.[29] Of course, the civilizing mission was not the exclusive ideology of the era nor did it remain unchallenged, static, and without the need for adaptation. But when historical conditions demanded an all-inclusive view of the role that formal empire played in world history and global politics, the idea of the civilizing mission could uniquely fulfill this role. Indeed, numerous factors and events eventually led to the straining of the material foundations of liberal

[28] Gary Wilder, *Freedom Time: Négritude, Decolonization, and the Future of the World* (Durham: Duke University Press Books, 2015), 1.
[29] See John Stuart Mill, On Liberty, ed. Elizabeth Rapaport (Indianapolis: Hackett Publishing Company, Inc., 1978).

empire as well as its claim to legitimacy, but it was only anticolonial nationalism which properly shattered the ideological premises of the civilizing mission by forcing imperialists to confront an unexpected interruption in their conception of world history and the persistence of collectivist modes of political belonging that they thought would be relegated to the dustbin of history.

If scholars of nineteenth century political thought have traditionally focused on the civilizing mission and its underlying triumphalist conception of historical progress to explain the nature of liberal imperialism during that era, two notable works of political theory— Karuna Mantena, in her *Alibis of Empire,* and Jeanne Morefield, in her *Empires without Imperialism*— have recently pointed to cracks in this ideological constellation painting pictures of liberal imperial ideology that supplement this traditional justification.[30] To be sure, the point of these narratives is not to displace the primacy of the civilizing mission and its importance for the nineteenth and early twentieth centuries. If anything, these thinkers provide a more nuanced account of liberalism— one where liberal empires moved back and forth between varying justifications of their imperial projects as the primary civilizing justification faced crisis. What Mantena and Morefield more importantly highlight is a pattern that would often precede such crises from the Victorian through the Edwardian eras: anticolonial nationalist revolt.[31] The narrative focus of these works help clarify

[30] Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (University of Chicago Press, 1999); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton University Press, 2009); Sankar Muthu, *Enlightenment against Empire* (Princeton University Press, 2009).

[31] Karuna Mantena argues that the Bengal Army Mutiny of 1857 was the origins of the British turn from its emphasis on historical progress to culturalist justifications of indirect rule. While the traditional civilizing mission of the Victorian period anticipated graciousness by the local populace for the spread of freedom via the colonial bureaucracy, the event of mass revolt often led British imperialists to doubt whether its colonial subjects were amenable to its mission, a pattern that similarly occurred in the French context. See generally, Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J: Princeton University Press, 2010. For the cultural turn in the French context, see See Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford University Press, 1997). Similarly, Jeanne Morefield argues that, in the Edwardian Period of the early twentieth century, British thinkers formulated novel justifications of empire as increasing skepticism about the civilizing mission and growing fear of the empire's collapse grew exponentially. While the desire to separate the British empire from the more racially charged version of German imperialism led British thinkers to disavow some of the more culturalist or racial arguments of the

that what separated the nineteenth and early twentieth centuries from the postwar period was that imperial ideologies could accommodate and explain away demands for collective freedom in the former era, while these ideologies were shattered by such demands in the latter.

Indeed, despite the continuing support for nineteenth century ideas up through the interwar period, the civilizing argument faced a paradigm shattering crisis as the second world war ended. No doubt, there are numerous reasons for the eventual decline of the British and French empires. The destruction of Great Britain and France wrought by World War II, the high cost and high debts that arose out of the war, and the decreasing will among the citizenry of the empires to engage in violent conflict in the colonies: these features weakened the material foundations of the imperial projects. In addition, while the Soviet Union supported decolonization as a necessary pathway to worldwide communist revolution, strong American opposition to the formal colonies developed after 1942 with President Franklin Roosevelt eventually coming to believe that the maintenance of the British and French empires was a likely source of a future world war.[32] But if not for the mass waves of anticolonial revolt that were beginning to span numerous continents and that would only intensify into the 1950s and 60s, it was not certain that Britain and France would cede their colonies. It was only once anticolonial nationalist revolt transformed into a worldwide phenomenon that it could no longer be accommodated within imperial frameworks instead shattering them.[33]

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previous era, the civilizing mission again found itself in crisis by "nationalists in India, Ireland, and Egypt [who] had begun to challenge imperial authority, often by forgoing conciliatory appeals to the British liberal conscience and demanding the kind of autonomy and self-governance that the 'civilizing mission' held out as only a remote possibility." See Jeanne Morefield, *Empires Without Imperialism: Anglo-American Decline and the Politics of Deflection* (Oxford: Oxford University Press, 2014), 9.

[32] In the 1942 election, Franklin Roosevelt's presidential challenger, Republican presidential candidate Wendell Willkie, made decolonization a primary electoral issue. Louis, *Imperialism at Bay,* 8, 9.

[33] In 1979, Isaiah Berlin, one of the core protagonists of the dissertation, perhaps put this point best when he claimed that nationalism in general, and anticolonial nationalism in particular, had shattered the old liberal ideologies of the nineteenth century. Berlin argued that "the thought of the nineteenth century, and the early twentieth, was [so] astonishingly Europocentric" that it could not properly account for the rise of the anticolonial movement. "When

Second, the fact that the new militant liberalism could not explicitly embrace colonial practices—and on the contrary based its "exceptionality" upon avoiding this form of rule—meant that the proponents of postwar liberalism, and primarily the United States itself, faced a unique dilemma in justifying and legitimizing the use of force around the globe. If the United States met the crisis of nineteenth century liberalism promoting an alternative strand of liberalism that might both move past the formal empires of the previous era and embody those values that opposed the totalizing characterizations of its Nazi and then Soviet enemies, the ideological justification of transgressing those same values, especially the ban on aggression and the inviolability of self-determination and state sovereignty, developed in relation to the Third World. At first glance, the importance of the Third World was simply contextual: that is, political and military interventions often occurred within its spatial areas as the United States, without much consternation, sought to fight the expansion of international communism. But as Third World states grew in import and influence, autonomously taking actions and positions that clashed with US interests, they began to pose novel challenges for legitimizing militant liberalism through challenging liberals and their sense of self.

These challenges were twofold. For one, the increasing autonomy of the Third World as a separate political force cast doubt on the often-repeated, even if suspect, claim that the United States was not involved in interventionist aggression but merely counter-interventions against communist aggression, further forcing the United States to more openly deal with how its transgressions of sovereignty had little to do with stemming this threat at all. In addition, while liberals became dissatisfied with how some Third World regimes turned towards repressive

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even the most imaginative and most radical political thinkers of these times spoke of the inhabitants of Africa or Asia," Berlin wrote, "there was, as a rule, something curiously remote and abstract about their ideas." The "notion that a mounting nationalism might develop in these continents was not seriously allowed for," and thus, when it did indeed exponentially develop, national liberations overwhelmed the capacity of the formal empires to manage them.

violence and then aggressive behavior, including supporting international terror, to further their political goals, these actions hardly mirrored the previous accounts of what motivated anti-communism: that the Soviet Union was a totalitarian force of mass ideological indoctrination. If anything, the United States was also involved in repression, terror, and violence, while the Third World often defended and refined key tenets of international law to better support self-determination and sovereignty. Together, these two shifts amounted to one uniform insight: while the Soviet enemy was so terrifying that Lowenstein's dictum of fighting fire with fire had an implicit form of legitimation, the Third World was not the same kind of enemy, and hence greater legitimation was required. The stories of Berlin and Henkin partially explain how liberals would legitimize violent action in this shifting context—how liberals would come to see the United States and its own violent actions as neither morally equivalent to Thirdworldist iterations nor transgressive of its legal developments.

Third and finally, the eventual dominance of militant liberalism was built on the destruction of alternative political possibilities. These possibilities related not to communism alone, but also to the prime political movement arising out decolonization: Thirdworldism. Indeed, Thirdworldism was an autonomous force and rarely the agent of some ephemeral communist movement. Ideologically, Thirdworldism certainly did not develop in a vacuum. As Robert Malley has pointed out, Thirdworldism was "an ideology *about* and… ideology *of* the Third World" with debates ensuing between Thirdworldists and European leftists, often initiated by vast migrations between the colonies and the metropole.[34] Even the term, "Third World," was formulated by a Frenchmen, Albert Sauvy, who, in seeking to capture the revolutionary potential of decolonization,

[34] Robert Malley, *The Call from Algeria: Third Worldism, Revolution, and the Turn to Islam* (Berkeley: University of California Press, 1996), 3.

alluded to Emmanuel Joseph Sieyès's revolutionary concept of the "Third Estate."[35] But if the creation of Thirdworldist ideology involved so-called 'Western' influences, its content often centered on the budding rise of the postcolonial nation that would throw off the shackles of its former master. Unlike traditional leftists who stressed stagiest theories of history, placed supreme import on economic forces, and sometimes even viewed capitalism as a temporary force of progress, Thirdworldists emphasized political voluntarism and cultural revolution, discovering new forces and agents, beyond the proletariat, that could initiate change for the better.[36] With its popular focus, the Third World ended up being not simply a "*place*," but also a "*project*"[37]—one that had no problem engaging with state institutions and international organizations to actualize the will of the people.[38]

With this context in mind, the chapters on Fanon and Schmitt are two examples of thinkers not only diagnosing the expansion and dominance of liberalism but also looking for alternatives to this dominance through the figure of 'the nation,' although ultimately without success. As we shall see, Fanon had a rather complex relationship to anticolonial nationalism and his political recommendations by no means neatly tracked Thirdworldist ideas of 'nation' and 'state,' while Schmitt's own reflections on anticolonial nationalism had more to do with his own parochial interests that any real existing political formation stemming from the Third World. But together, these two thinkers help make three important points: first, that the liberal diagnosis of decolonial

[35] See Alfred Sauvy, "Trois Mondes, Une Planète," *L'observateu*r, 14, No. 118 (1952).
[36] Malley, *The Call from Algeria,* 27-29.
[37] Vijay Prashad, *The Darker Nations: A People's History of the Third World* (The New Press, 2008), XV.
[38] Ending colonialism, imperialism and occupation was certainly a primary goal, but so were attempts to use the United Nations to stem the negative consequences of the cold war (i.e. through opposing nuclear proliferation and military intervention). While the project of creating a "new international economic order" might have underestimated the dilemmas posed by development and modernization, it, too, was taken up with the hope of creating a better world for the postcolonial masses. See generally, Prashad, *The Darker Nations*. For a sympathetic discussion of NIEO, see Michael Hudson, *Global Fracture: The New International Economic Order* (London: Pluto Press, 2005).

nationalism, as expressing romantic and sovereign drives, was misleading; second, that there was a real hope that decolonial nationalism might provide resources for delivering alternative political forms of belonging and organization; and third, that the destruction of these possibilities have led to darker alternatives that, in addition to the pattern of militant liberalism, aid in the expansion and preservation of endless war.

The Dissertation in Outline

Although drawing from and situating itself among numerous historical events and materials, the dissertation primarily relies on four twentieth century political and legal theorists— Isaiah Berlin, Louis Henkin, Frantz Fanon and Carl Schmitt— to tell a story about militant liberalism and its encounter with decolonization. There are certain advantages and benefits that are gained by focusing on individual political thinkers as opposed to narrating a broader intellectual history beyond the historical context sketched out above. The dissertation is partly concerned with how the postcolonial order would become increasingly tightened and narrowed— how militant liberalism would rise as the triumphant political formation of the postcolonial international order. Through internally inhabiting the perspectives of individual thinkers, the following chapters therefore carefully track how this narrowing of political possibility affected even those theorists who explicitly sought to resist such conclusions. While seeking to defend more aspirational versions of liberalism and its alternatives themselves, the dissertation tracks how these theorists and their ideals would be wielded to support conclusions that cut against their best intentions to the contrary.

In this respect, the dissertation relies on each thinker not to "stand-in" for liberal or anti-liberal ideologies in all their complexity and nuance; instead, it relies on them to serve as

exemplary instances of a common problem reoccurring within each political context despite the particularities of their own visions. As such, the dissertation's style of critical interpretation reflects a "diagnostic approach": it "proceed[s] by taking up exemplary theories…, listening for the metal-on-metal sound of a theory working against itself, looking for the surprising reversals that signify counterproductive or self-defeating courses of action, and using the leverage generated by these moments of contradiction to create space for a new approach."[39] Some of these thinkers would probably reject the following portrayals of their thinking as misrepresenting their explicit intentions, but my goal is not to capture each thinker's internal sense of self or to even cast their thought in its most aspirational light.[40] Instead, the goal of these readings is to track how such intentions—how "the one-sided proclamations of orthodoxy"— eventually "collapse… [when] their contradictions are allowed to develop 'naturally'"—that is, when their contradictions confront a broader social and historical context that turns and twists their explicit ideas in unintended directions.[41]

The dissertation is broken into four main chapters. Chapter 1 turns to the political thought of Isaiah Berlin to show how a self-proclaimed moderate embraced and then legitimated the nascent rise of militant liberalism. What first led Berlin to defend militant liberalism was his characterization of the dangers of Soviet or 'rationalist' totalitarianism—that it sought to

[39] Patchen Markell, *Bound by Recognition* (Princeton University Press, 2003), 10.
[40] This also does not mean that my interpretations are simply external impositions on to these thinkers. On the contrary, each thinker makes statements and arguments that provide glimpses into the fact that they recognize the limitations of their more aspirational goals once they confront their historical conditions.
[41] "Critical theory at its most abstract and general level ... begins as a formal 'negativity.' As a dissenting motif, it selects some tradition, ideological premise, or institutionalized orthodoxy for analysis. As immanent critique, it then 'enters its object,' so to speak, 'boring from within.' Provisionally accepting the methodological presuppositions, substantive premises, and truth-claims of orthodoxy as its own, immanent critique tests the postulates of orthodoxy by the latter's own standards of proof and accuracy. Upon 'entering' the theory, orthodoxy's premises and assertions are registered and certain strategic contradictions located. These contradictions are then developed according to their own logic, and at some point in this process of internal expansion, the one-sided proclamations of orthodoxy collapse as material instances and their contradictions are allowed to develop 'naturally.'" David Harvey, "Introduction," in *Sociological Perspectives,* Vol 33, No. 1 (1990), 5.

reengineer and brainwash its subjects, ideologically erasing the capacity for free will that provided humans with their unique status or dignity. In an extended dialogue with George Kennan, Berlin argued that the 'containment' of Soviet communism was not enough to destroy it, instead championing the existential assertion of the human will—that defining attribute of humanity that the Soviets sought to domesticate—as the best chance for defeating it. But during the initial formation of these ideas, Berlin's account of militant liberalism was incomplete. Because the Soviet enemy and its goals of mass indoctrination were so frightening, Berlin often stressed the need for action as an end itself—above and beyond any specific commitment to liberal values. It was only with the advent of a new political formation—anticolonial nationalism—that Berlin considered how militant action might be squared with more substantive liberal means and ends. While eventually uniting communism and anticolonialism under the master concept of positive freedom (i.e. self-mastery or self-assertion), the rise of anticolonialism led Berlin to stress the 'romantic' dangers of nationalist self-assertion—dangers which tapped into the spirit of the human will threatening to physically eliminate any movement that constrained its realm of action. Berlin worried that militant liberalism posed a similar risk, and he therefore sought to temper this risk through submitting it to certain moral limits. This logic and its justification were so powerful that, despite the internal inconsistencies plaguing them, they would continue to guide Berlin as an all-encompassing ideological vision into the early years of the age of terror.

Chapter 2 turns to the political thought of Louis Henkin to show how a self-proclaimed defender of the rule of law would come to embrace the strategy of modifying the *jus ad bellum*—the laws about the resort to force—to allow the United States to drape itself under the authority of international law when engaging in militant action. Like Berlin, Henkin first reflected on the status of militant liberalism in relation to the Soviet enemy, and like Berlin, Henkin initially found the

practices of US intervention rather unproblematic for liberalism's sense of self. While defending the integrity of the United Nations and its *jus ad bellum* regime against liberal internationalists who mourned its failure in the cold war context, Henkin also acknowledged that his argument only remained credible because cold war military interventions operated in an extra-legal space outside the scope of its authority. But with the rising power of the Third World bloc, Henkin's reflections began to shift. The International Court of Justice (ICJ) eventually tapped into Thirdworldist ideals of sovereignty and non-intervention to expand the scope of the *jus ad bellum* to ban interventionist warfare causing Henkin to become quite concerned that the rising danger of international terrorism, partly attributable to the very same ideals promoted by the Third World, would threaten the authority of the *jus ad bellum* regime. More particularly, Henkin worried that the United States would respond to international terrorism through interpretively modifying key *jus ad bellum* concepts (including 'self-defense' and 'armed attack'), while further developing new legal concepts (such as 'unwilling and unable'), to pursue its military goals without repudiating liberal ideals of legality and internationalism. Henkin continued to explicitly defend the United Nations and deride unilateral military force by the United States, but he also eventually displayed sympathy for the idea that interpretive modification might be the only reasonable means to combat terrorists hiding behind sovereign borders, thus allowing the United States to reconcile itself with the international rule of law.

While the first two chapters deal with the legitimation of militant liberalism, the following two chapters critique the negative pictures or visions of decolonization often underlying and motivating these projects. Chapter 3 turns to the corpus of Frantz Fanon to dispel the thesis that the romantic idea of revolutionary overcoming structured his political thought or even the anticolonial movement more broadly. Fanon did not embrace revolutionary violence out of a desire

for utopian overcoming, but as a shift made necessary by the colonial cooption of cultural politics that he championed as once liberatory. Precisely when national liberation was finally becoming likely, France embraced cultural pluralism to retain a semblance of sovereignty over Algeria and other French colonies. This proved to Fanon that decolonial history exhibited a negative dialectical structure: that is, decolonial struggle often failed to achieve a positive result as imperial practices adapted to its challenges. While acknowledging its dangers, Fanon both defended revolutionary violence as the only force that could instill an autonomous national identity within the colonized and banish colonialism, while also attributing the worst of such contingencies to the aggravations of colonial and imperial meddling. Indeed, this negative dialectic continued to structure Fanon's thinking into the postcolonial period, leading him to disown his prior nationalist position once neocolonial arrangements again coopted liberation. Although nationalist identity was integral to ending colonial rule, Fanon argued that it eventually allowed dictators to engage in repression in the name of modernization, while more dangerously allowing the national bourgeoisie to liberalize their economies and throw their societies into deep internal conflicts. The particularities of this story show that there was no romantic or revolutionary logic tying together the abuses of the anticolonial and postcolonial periods. On the contrary, postcolonial nationalists failed to embody the revolutionary spirit when they continued to defend nationalist politics, collaborating with imperialists to the detriment of their societies.

Chapter 4 similarly turns to the political thought of Carl Schmitt to dispel the idea that the inviolability of state sovereignty, in any historically meaningful sense, is what drove the anticolonial movement or its abuses. Relying on the figure of partisan—or the irregular warrior—Schmitt narrated a story where the global rise of liberal internationalism and international communism inversely corresponded to the destruction of state sovereignty. Tracing the spirit of

partisan warfare back to the Spanish guerillas of the nineteenth century who fought off Napoleon, Schmitt argued that there were two types of partisan warfare: defensive and aggressive. While liberalism and communism embodied the Napoleonic spirit embracing interventionist practices of supporting partisan warfare to spread their universalist ideologies, the Spanish guerillas embodied a telluric—or land-based—orientation only seeking to defend their homeland from foreign invasion. While the victory of the Spanish guerillas over Napoleon led to the restoration of the European system of state sovereignty—a territorial system of centralized authority that overcame partisan warfare—Schmitt argued that the proliferation of partisan warfare in the twentieth century signaled the death of this old system. In response to this death, Schmitt claimed that telluric partisans should not attempt to achieve sovereignty but something different: a territorially-based and economically self-sufficient empire. While arguing that such a hope could not be found in the liberal West—because liberal legality had become so powerful that partisan attempts to overturn the liberal order would not succeed—Schmitt hoped that Mao Tse-Tsung, with his nationalist interpretation of Marxism, might reverse the universalist orientation of communism. While Maoism did not embrace imperialism in practice, the Schmittian search for such a figure signaled an important lesson: telluric partisans, if they wanted to achieve sovereign freedom and territorial autonomy, could not act defensively but rather needed to go on the offensive to aggressively fight the onslaught of global liberalism.

As the conclusion notes, contemporary global terrorism can be viewed as embodying this Schmittian ethos: both Al-Qaeda-style terrorism and the increasing aggression of ISIL are best understood as attempts to recover territorial autonomy and sovereign freedom through offensively taking the battle against liberalism to its own shores. This path is only coherent or compelling in a world where the United States operates globally to defend the liberal order and destroy the

irredeemable illiberal movements threatening it. This path is only coherent, in other words, when defensive actions are no longer viewed as sufficient for combatting a deterritorialized and expanding liberalism. To be sure, if the terrorist reactions to militant liberalism have contributed to the inescapable circle of forever war, this was neither necessary or inevitable. It was built on the destruction of an alternative conception of collective freedom—one where the Third World sought self-determination through solidarity and economic autonomy—and which was slowly broken apart by the expansion of militant liberalism and economic liberalization across the globe.

CHAPTER 1

TWO CONCEPTS OF DIGNITY: ISAIAH BERLIN AND THE LEGITIMATION OF MILITANT LIBERALISM

"Evil resides in the very gaze
which perceives Evil all around itself"
— George Wilhelm Hegel

Isaiah Berlin: Moderate or Militant?

It was February 1917, shortly after Grigori Rasputin's murder, when the seven-year-old Isaiah Berlin went for a stroll with his governess through the streets of Petrograd. Although revolutionary fervor still engulfed the city, a rare moment of calm descended upon the streets making it safe enough for such an expedition. The stroll first revealed that Berlin, even at such a young age, gravitated towards the life of the mind. Berlin stopped next to a man selling books on the sidewalk and bent down to examine a Russian translation of Jules Verne. But what could have been a mere prelude to a rich life of intellectual study quickly turned into the singular event that Berlin would continuously recollect as shaping his political dispositions. As he looked up from the ground, Berlin witnessed a mob of people violently grasping a man and carrying him off into the distance. He would later learn that this individual was a municipal policeman that remained loyal to the old regime and was therefore most likely carried off to his death.[42]

This event would forever stitch into the mind of the young Berlin the dangers of revolutionary violence and the importance of adopting a liberal ethos of moderation. Throughout his life, Berlin thus remained politically committed to opposing all sorts of radicalisms, whether it was critiquing the terrorist actions of the right-wing Irgun or the anticolonial violence of the Algerian FLN.[43] His so-called moderate disposition would also manifest itself beyond

[42] Michael Ignatieff, *Isaiah Berlin: A Life* (Metropolitan Books, 1998), 24.
[43] Ignatieff, *Isaiah Berlin: A Life*, 234.

contemporary instantiations of guerilla warfare. Berlin climbed into the annals of history taking sides with various liberal heroes who refused to travel down the dark alleys of terroristic violence. He chose Alexander Herzen and Ivan Turgenev over Mikhail Bakunin and Georges Sorel. From these figures, Berlin derived a core set of liberal sensibilities, including a preference for toleration, a respect for human decency and the general maxim to avoid the suffering of the here and now, instead of hoping for a utopia that would never arrive. This would place Berlin, as Michael Walzer has pointed out, squarely within a nascent and novel understanding of liberalism no longer oriented around lofty ideals of justice but around avoiding the *summum malum*—a liberalism of fear that sought to avoid human suffering.[44] This fear buttressed his two key philosophical ideas, both of which were theoretically antithetical to the utopianism of revolution. Berlin's defense of negative liberty, the idea that there should be a space where men were free of coercion and interference, precluded by definition revolutionary attempts to violently violate such spaces and remake the world anew; Berlin's promotion of value pluralism, the idea that values were both inherently in conflict and incommensurable with one another, humanely required, even if it did not logically necessitate, that men refrain from using violence to decide once and for all which values were supreme—to refrain from seeking an End to History—and instead learn to tolerate different ideals within and among different cultural worlds.

Perhaps this should make it even more surprising that Berlin often avidly defended some of the Cold War military interventions by the United States.[45] As Christopher Hitchens has for

[44] See Michael Walzer, "Are there Limits to Liberalism?" http://www.nybooks.com/articles/archives/1995/oct/19/are-there-limits-to-liberalism.

[45] Sometimes Berlin's support was also luke-warm. After the Kennedy Administration sponsored the failed invasion of Cuba, now known as the 'Bay of Pigs,'[45] Berlin refused to sign a letter condemning the intervention claiming that Fidel Castro "may not be a communist" in its Soviet sense but "he care[d] as little for civil liberties as Lenin or Trotsky."[45] See Cuba Letters, Papers of Sir Isaiah Berlin, Bodleian Library, Oxford University; Ignatieff, *Isaiah Berlin: A Life*, 231.

example documented,[46] Berlin's connections and influences with the more militant wing of the American foreign policy establishment contradicted his inherited reputation as a mere moderate. During the Vietnam War, Berlin was part of a squad of individuals fervently supporting the American intervention—which included the two main architects escalating the war, McGeorge ("Mac") and William Bundy, the conservative journalist Joseph Alsop and the former U.S. ambassador to the Soviet Union Charles ("Chip") Bohlen. Of Berlin, McGeorge wrote that although he personally believed in "the domino theory" (i.e. that if one country would become communist, all neighboring countries would follow), he wished he had the "wonderful self-confidence of Isaiah" in knowing it necessary and legitimate to expand the Vietnam War past its borders. As the war raged on and public opinion began to turn, Berlin stuck to his guns writing to Alsop that he saw developing a "thin red line, formed by you and Mac and me, and Chip Bohlen—four old blimps, the last defenders of a dry, and disagreeably pessimistic, tough and hopelessly outmoded position."[47]

It would be simple enough if "pessimism" was the activating agent of Berlin's position, but it appeared that being "tough" was often the more important ingredient. Earlier in 1958, Berlin was approached by his Oxford Colleagues to join the Campaign for Nuclear Disarmament. While his contemporaries were reflecting on how the bomb transformed the nature of political violence to far outstrip any instrumental purpose collapsing the relationship between means and ends, Berlin took this request as an opportunity to reaffirm the importance of militancy for the Anglo-American alliance. [48] Berlin refused to support unilateral disarmament—not like some of his more pragmatic colleagues who thought unilateralism to be collective suicide. Instead, he more straightforwardly

[46] Christopher Hitchens, "Moderation or Death," *London Review of Books*, http://www.lrb.co.uk/v20/n23/christopher-hitchens/moderation-or-death.
[47] Christopher Hitchens, "Moderation or Death," *London Review of Books*.
[48] See, e.g., Hannah Arendt, "Introduction," *On Revolution* (Penguin Press, 2006).

argued that the bomb was necessary for a proper defense of liberal values. "Unless there is some point at which you are prepared to fight against whatever odds, and whatever the threat may be, not merely to yourself, but to anybody," Berlin wrote to his colleague Phillip Toynbee about opposing disarmament, "all principles become flexible, all codes melt, and all ends in themselves for which we live disappear."[49] The bomb was necessary not simply to achieve certain strategic interests or because coordinating disarmament was too difficult, but instead because it provided a foundation for human value *as such*. This archetypal critic of revolutionary violence was certainly no pacifist, but it would be a mistake to assume that his opposition to pacifism solely lay in some sense of realism.[50] Instead, it lay in a deeper philosophical appreciation of that fact that only militant action could guarantee liberal values in a cold war of ideas.

How, then, to square Berlin's defense of militancy with his critique of utopian thinking—his trust in the large-scale violence of liberal states with a liberalism of fear that sought to avoid such Prometheusian overreach? What I hope to argue in the following pages is that there is, in fact, *no* contradiction to square: that although Berlin sought to construct a liberalism that avoided the risks of totalitarianism, his characterization of totalitarianism demanded a reworking of liberalism into a creed of militancy in order to defeat it. This reworking of liberalism rested on Berlin's assertion that "the most powerful defense of liberal values [was] to be found in thinkers who were hostile to the Enlightenment and liberalism"[51]—that the foundation for twentieth century liberalism was to be found in the archenemy of the Enlightenment: European romanticism.[52] Of

[49] Berlin, "Letter to Phillip Toynbee, January 24, 1958," in *Enlightening: Letters 1946 – 1960* (Vintage Digital, 2012), 608.
[50] Berlin distinguished two forms of realism, arguing that his version had little to do with authorizing extreme violence. See, e.g., Isaiah Berlin, "Realism in Politics" in *The Power of Ideas* (Princeton University Press, 1998).
[51] John Gray, *Isaiah Berlin: An Interpretation of His Thought* (HarperCollins, 1996), 25. Also see, Steven Lukes, "The Singular and the Plural: On the Distinctive Liberalism of Isaiah Berlin," *Social Research*, 61 (1994).
[52] Berlin focused on the tradition of romanticism, although his position could also be captured by the language of "political existentialism." As Berlin claimed, "One of the movements which [Romanticism] led to in the present is

course, Berlin argued that this novel liberalism should only take from the good of romanticism while avoiding its bad. Although the romantic movement expressed a "passionate" and "half mad doctrine" about the triumph of the "human will," Berlin believed that its insights about human creativity and plurality would lead to "the necessity of tolerating others, the necessity of preserving an imperfect equilibrium in human affairs."[53] But whether Berlin could escape from the dark side of the romantic tradition is doubtful. Berlin consistently relied on the romantic concept of the heroic human will to ground a unique concept of 'human dignity'—one that not simply asserted the *worth* of the individual, but one that provided individuals with a unique *status* that made them recognizable as human beings in the first place. This second concept of dignity clarified how the horror of totalitarianism rested in its destruction of unique human capacities, with the consequent demand that men rely on these capacities, especially the power of the human will and its propensity towards heroic action, to defend humanity against a novel and inhuman threat.

The story about the rise of this militant liberalism proceeds in two main parts. The first section shows how Berlin's initial characterization of the dangers of Soviet totalitarianism—that it sought to reengineer and brainwash its subjects, ideologically erasing the capacity for free will that provided humans with their unique status or dignity—led him demand militant action against the Soviet Union to defeat it. In an extended dialogue with George Kennan, Berlin argued that the 'containment' of Soviet communism was not enough to destroy it, and he therefore argued for militant action as an alternative to Kennan's more defensive posture—an alternative that simultaneously became popular among members of the American foreign policy establishment with the advent of the Korean War. During the initial formation of these ideas, however, Berlin's

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the so-called existentialist movement in France… for existentialism seems to me the truest heir of Romanticism." Isaiah Berlin, *The Roots of Romanticism,* (Princeton University Press, 2001) 160.

[53] "The result of romanticism," Berlin thus wrote, "is liberalism, toleration, decency and the appreciation of the imperfections of life." See Berlin, *The Roots of Romanticism,* 170.

account of militant liberalism was incomplete. Because the Soviet enemy and its goals of mass indoctrination were so frightening, Berlin often stressed the need for action as an end itself—above and beyond any specific commitment to liberal values and instead as proof that humanity could assert its will in the face of a dehumanizing enemy. It was only with the advent of a new political formation—Thirdworldist nationalism—that Berlin began thinking about how militant action might be squared with more substantive liberal means and ends.

The second section argues that it was with the increasing prominence of such nationalism that Berlin finally legitimated his concept of militant liberalism. In contrast to Soviet totalitarianism, the rise of anticolonialism led Berlin to formulate an idea of nationalist totalitarianism—one which tapped into the spirit of human dignity and the human will, while simultaneously threatening to physically eliminate any movement that constrained its realm of action. Berlin worried that militant liberalism posed a similar risk, and he therefore sought to temper this risk through submitting militant liberalism to certain moral limits. Unlike nationalist self-assertion, Berlin argued that militant liberalism should and often did operate within the bounds of universal values and with an ethical code of conduct. To defend against the possible illiberalism of "the untrammeled will," Berlin therefore did not embrace pacifism or deflect attention from the reality of liberal violence; he rather embraced it quite openly, arguing that militant liberalism was morally distinct from the particularistic and limitless violence of its enemies. This logic and its justification were so powerful that, despite the internal inconsistencies plaguing them, they would continue to guide Berlin into early years of the age of terror.

The Cold War Origins of Militant Liberalism

There is a strange irony at the origin of the Cold War that mirrored Berlin and his own

disjointed stance between a professed moderation and a practical support of military intervention. Despite the initial attempt of some policy makers to explicitly disavow military power and covert violence as the core tactics for defeating Communism, the subsequent strategies that were developed and deployed against the Soviet Union and its allies became colored by the militant spirit of the age embodying a connotation radically different than the original intention. George Kennan, in particular, developed his most famous idea of "containment" precisely to ensure that violent action was only one option among many avenues when dealing with the Soviet threat. Kennan recommended restoring a balance of power through investing in Europe's economic development via the Marshall Plan as well as rehabilitating and making allies out of Germany and Japan, exploiting internal tensions in the communist movement through supporting Titoism and various other forms of nationalist communism abroad, and finally attempting to modify Soviet behavior through rewarding retreats from aggressive expansion.[54] The use of force could, of course, be an important factor in achieving these goals. Kennan, as his critical commentators note, might even be considered one of the founding fathers of "roll back."[55] Nevertheless, Kennan still believed that flexing force as an 'end in itself' would often prove disadvantageous, especially if understood as a quick fix for what would otherwise be a "long-term, patient," even if "firm and vigilant," strategy.[56]

Yet despite these extensive qualifications, "containment" would soon come to mean, as Walter Lippmann for example read into the infamous MR. X article,[57] the requirement to defend

[54] Gaddis, "Strategies of Containment," 35-49.
[55] See, e.g., Mark Kramer, "George F. Kennan and the Cold War: Perspectives on John Gaddis's Biography," *Journal of Cold War Studies* (Fall 2013).
[56] George Kennan, "The Sources of Soviet Conduct," *Foreign Affairs* (July, 1947), https://www.foreignaffairs.com/articles/russian-federation/1947-07-01/sources-soviet-conduct.
[57] See, e.g., Walter Lippmann, *The Cold War: A Study in U.S. Foreign Policy since 1945* (Harper Press, 1973).

"the freedom-loving peoples of the world,"[58] even if this demanded "the military encirclement of the Soviet Union" itself.[59] The concept would become so abused and butchered that Kennan commenting almost thirty years later, after numerous failed US interventions and military expeditions in the developing world, stated that he wished he had never come up with the idea in the first place.[60]

The causes of US militarization against the Soviet threat are no doubt complex, but whatever their sources, this would not quite explain how the idea of "containment" not only became so easily manipulated in this period, but upon being drained from its intended limitations, also became so easily reset—how "containment" would come to mean supporting an aggressive policy of violence and force against the communist enemy. This explanation could be found in how the ideological characterization of the Soviet Union called for unbridled militant action as the necessary ingredient to defeating it. This was because the unique characterization of what was so evil about communism—that it sought to reengineer and brainwash its subjects, ideologically erasing the capacity for free will that provided humans with their unique status or dignity—implied that communist ideals might succeed at taking hold. The existence of free will both implied that humans were malleable and that history was indeterminate, that in contrast to Kennan's predictions communism would not inevitably collapse on itself. The only way to defeat totalitarianism, Berlin therefore posited, was to recognize a further truth derived from the fact of human freedom: that only through exercising the human will and taking militant action could one defend the existence of human dignity and plurality that were without any foundation absent such action.

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[58] President Harry S. Truman's Address before a Joint Session of Congress, March 12, 1947 (Truman Doctrine), http://avalon.law.yale.edu/20th_century/trudoc.asp.
[59] John Lewis Gaddis, *George F. Kennan: An American Life* (Penguin Press, 2011), 273, 74.
[60] See generally, Gaddis, *George F. Kennan: An American Life* (describing Kennan's increasing doubt over the idea of "containment").

US Internationalism vs. Soviet Totalitarianism

Although arguments for militant action against the Soviets were hashed out within the American foreign policy establishment itself, it was in the dialogue between George Kennan and Isaiah Berlin in the early years of the Cold War where one could find such arguments achieve their philosophical specificity. This dialogue rested on one common belief: that only the United States could lead the fight against Soviet totalitarianism. No doubt, Kennan subscribed to this truism, but that Berlin would become a poster child formulating a philosophical defense of the new American liberal internationalism might strike one as quite odd. Berlin often described his identity as threefold: a mixture of British, Russian, and Jewish influences.[61] These self-described influences were, however, only meant to capture theoretical inspiration, not to limit Berlin's politics to mere parochial concerns. On the contrary, Berlin sought to find concrete actors that embodied the best of each of these strands in the present. When Berlin first arrived in the United States during World War II, he was rather skeptical of the American populace; he described them as "open vigorous 2x2=4 sort of people who want yes or no for an answer" and who lacked European "nuance."[62] But these feelings, especially in the face of the rising Soviet threat, subsided as he realized that this black and white attitude, if tempered and reworked, could be an asset.

In a 1949 radio lecture entitled, "On the Anglo-America Predicament," Berlin argued that the future of England should lie neither with Europe nor Empire, but with America.[63] Berlin expanded on the reasoning behind this insight in an essay on Winston Churchill written in the same year: although Churchill's passionate yet traditionalist politics served England well during the war,

[61] See Isaiah Berlin, "The Three Strands in My Life," *Jewish Quarterly*, 27 (1979).
[62] Ignatieff, *Isaiah Berlin: A Life*, 99.
[63] Berlin, "The Anglo-American Predicament," *Listener*, 42 (1949).

Berlin argued that Churchill and Roosevelt realized that it was only "from the unity of their differences" that they could hope "for a regeneration of the Western world." What Churchill brought to the table was the unique capacity to mobilize his society to militancy, while still maintaining limits that ensured Britain remained a free and pluralistic society. But the linguistic vehicle that Churchill relied on was too narrowly formulated "in an historical guise as part of the pageant of [British] tradition." In contrast, "Mr. Roosevelt [stood] out principally… by his apparently complete freedom from fear of the future," by a vision that "transcend[ed], despite the parochialism of its means of expression, the barriers of nationality and race and differences of outlook, in a big, sweeping, single view." [64] This grand vision, even if it were necessary to temper it with the provincial sensitivity of the British ethos, would insure that "nothing would be too formidable or crushing to… the building of which he, Mr. Roosevelt, and his allies and devoted subordinates would throw themselves with unheard-of energy and gusto": the creation of the postwar liberal international order. [65] This new order and the leading role America inhabited in creating it held special significance for Berlin and not simply because Berlin, along with Chip Bohlen, worked on the UN Charter during its drafting stages.[66] The story of its development was decisive for determining the direction of world history: it was a story about the possible triumph of human decency in the postwar era as well as the Archimedean point from which to judge the looming threat of totalitarianism.

It was a story, in short, about "Political Ideas in the Twentieth Century"—an article of that name which Berlin penned for *Foreign Affairs* in 1950. The United States, Berlin argued, brought

[64] Berlin, "Mr. Churchill," *The Atlantic* (1949), http://www.theatlantic.com/magazine/archive/1949/09/mr-churchill/303546/.
[65] Berlin, "Mr. Churchill," *The Atlantic* (1949), http://www.theatlantic.com/magazine/archive/1949/09/mr-churchill/303546/.
[66] Ignatieff, *Isaiah Berlin: A Life*, pgs. 133, 34 (describing how Berlin worked with Chip Bohlen on translating the Russian version of the UN Charter to insure its accuracy).

forth the best political ideas of the nineteenth century into the twentieth. The nineteenth century, despite the revolutions and conflicts that engulfed Europe, represented for Berlin a historical maturation from previous eras. Nineteenth century thinkers, just like their eighteenth-century counterparts, asked great philosophical questions about politics— about how to live the good life, about what political order was best, etc.—while also presuming that these questions could be rationally solved. But unlike their counterparts, these thinkers experienced the disaster of the French Revolution and thus realized that, in order to achieve progress, "education, rationalist propaganda, even legislation, were perhaps not always, or everywhere, quite enough."[67] According to Berlin, the traditional Burkean critique of abstract Enlightenment reason proved itself triumphant[68]—so much so, that conservatives, liberals, radicals and socialists now all understood the importance of "cultural factors" in differently shaping societal development and hence the important truth that social action had "to be fitted to take account of historical needs which made men and their institutions less easy to mould."[69] What resulted from this world was both the tempering of utopian visions as well as the productive clash between the political creeds of Europe; there was an early recognition, in other words, of the persistent fact of value-pluralism. Institutionally, this productive clash of values provided Europe with its greatest achievements: the welfare state, parliamentary democracy, and the desire to protect cultural self-determination through creating international institutions, such as the League of Nations.[70] These achievements, however, faltered in Europe during and after the world wars and when looking for the present

[67] Berlin, "Political Ideas in the Twentieth Century," in *Liberty: Incorporating Four Essays on Liberty*, ed. Henry Hardy (Oxford, 2002), 60.
[68] See Louis Hartz, *The Necessity of Choice: Nineteenth Century Political Thought* (Transaction Publishers, 2015) (documenting the nineteenth century preoccupation with the destruction of "the social" or "cultural" realm).
[69] Berlin, "Political Ideas in the Twentieth Century," 60.
[70] Berlin believed that the welfare state was a pluralistic compromise between liberty and equality, while parliamentary democracy was the best means for achieving such compromises. See Berlin, "Political Ideas in the Twentieth Century."

embodiment of this legacy, Berlin found its best representative "in the United States" where, through the New Deal and their leading role in creating the United Nations, "the nineteenth survive[d] more powerfully than anywhere else."[71]

But the nineteenth century was not simply the origin of political compromise and cultural respect; on the contrary, Berlin argued that the pluralistic environment that dominated this century would only remain as a sliver of influence in the twentieth, while a dangerous subterranean force pulsing beneath the relative calm of the nineteenth would come to dominate his present. Berlin pointed to a critical "irrationalist" tradition (Carlyle, Baudelaire, Schopenhauer, Nietzsche) that also developed during this time and in reaction to the respectable political creeds of Europe. This tradition asserted, against the Enlightenment faith, that reason could not solve the problems of man. "The [irrationalist thinkers] said or implied that rationalism in any form was a fallacy derived from a false analysis of the character of human beings, because the springs of human action lay in regions unthought of by the sober thinkers whose view enjoyed prestige among the serious public."[72] Irrationalism took the cultural critique of enlightenment reason to a radical extreme so that all that mattered were forces outside of human control.[73] But at least at this point of analysis, this did not necessarily imply that irrationalism was a serious threat to European stability. In fact, the irrationalists were often only viewed as "interesting misfits" and "fascinating casualties of the advance of history." For their reaction to take a dangerous turn, what was required was a "highly rationalistic system" that believed in the power of coordinated human activity.[74] What was

[71] "The New Deal… certainly the most constructive compromise between individual liberty and economic security which our own time has witnessed," Berlin wrote, "correspond[ed] more closely to the political and economic ideals of John Stuart Mill… than to left-wing thought in Europe in the 1930s," while "the controversy about international organizations, about the United Nations and its subsidiaries… [were] fully intelligible in terms of nineteenth century ideals, and therefore occupied far more attention... in America than in Europe." See Berlin, "Political Ideas in the Twentieth Century," 84.
[72] Berlin, "Political Ideas in the Twentieth Century," 65.
[73] This is what separated irrationalism from romanticism—that disappearance of the human will in external forces.
[74] Berlin, "Political Ideas in the Twentieth Century," 65.

required, Berlin argued, was a system that could thoroughly challenge the political beliefs of the nineteenth century, only successively fusing such a challenge with irrationalist premises about the motivations of man.

The dangerous man to accomplish this feat was the revolutionary and rationalistic partisan, Vladimir Lenin. In contrast to Karl Marx himself, whom Berlin viewed as an interesting and complicated figure,[75] Berlin found in Lenin the origin of a vulgar deterministic Marxism merged with nineteenth century irrationalism. The novelty of Lenin and the Bolsheviks, Berlin argued, was not simply in ridding communism of any idea of compromise and dictating the use of revolutionary force as integral to the movement, although Lenin no doubt accomplished just that. Instead, it was the reasoning behind the necessity of such violence. Like the irrationalists, Lenin believed that men were unruly and irrational—that unconscious drives and economic factors determined their ideas. But unlike the irrationalists, Lenin thought it possible to wield this insight, siphon it through a class analysis, and formulate a dangerous political program. The class structure inevitably determined the ideas of men; it both insured that the proletariat remained stupid and that the bourgeoisie were incapable of being reasoned with. What was therefore needed was a strong central party that used violence and coercion, both physical and ideological, to push history forward—to reprogram and reeducate the former group, while eliminating the latter. At the heart of Lenin's philosophy was a deep reaction against the idea that animated both eighteenth and nineteenth century philosophy (and the United States in the present): the idea that men had genuine questions and that discussion was an integral part of political life in exploring their answers. In viewing all moral and political questions as merely symptoms of some external economic structure, Lenin saw no need to answer such questions; he could simply do away with the questions

[75] See generally, Berlin, *Karl Marx* (Princeton University Press, 2013).

that did not fit into the historical pattern and *telos* of class struggle. The novelty of Lenin, in other words, was that violence was no longer simply a form of coercive persuasion that allowed men to force their answers to important political questions upon others. It became the tool that communists used to doctrinally reprogram people who asked any critical question about their "historical mission"—quite similarly, Berlin analogized, to how psychiatrists treated their patient: as sick victims with dire symptoms in need of a cure.

The implications of this picture of communism, with its totalitarian impulse to either reeducate or eliminate those who resisted, sounded quite dreary, but it took a more concrete appreciation of the political issues facing the United States to understand why this interpretation cast communism as such a dangerous threat to a super power on the other side of the globe. For one, there was the question of whether the Soviet Union, if it functioned according to this totalitarian logic, would substantively support, even if it already formally engaged in helping build, the United Nations and its primary goal of avoiding an additional world war. Berlin more explicitly touched on this question only a few months earlier giving a lecture at the Mount Holyoke College Institute on the United Nations. He responded to the question of the conference—"How Can "We the People" Achieve a Just Peace?"[76]—with an argument of skepticism that, he would later describe to George Kennan, was "somewhat Fascist Beast in character."[77]

Working out some of themes of his *Foreign Affairs* essay, Berlin argued that there was a stark juxtaposition between democracy and communism. Modern liberal democracy fused the "inalienable rights of individuals" with the belief in the power of deliberation and communication—the idea that "persuasion [could] be used to induce [men] to modify their present

[76] See Berlin, "How can 'We The People' Achieve a Just Peace?" Mount Holyoke College, Institute on the United Nations (1949).
[77] Berlin, "Letter to George Kennan, June 30, 1949," in *The Power of Ideas,* 274.

aims and recognize the value of… others." As such, it insured that "different ideals of life, not necessarily altogether reconcilable with each other, [were] equally valid and equally worthy."[78] In contrast, communism adopted a "theory of class struggle" which presumed there "were always at least two worlds, members of each of which [were] in principle incapable… of conceiving the world in sufficiently similar ways to make fruitful intercourse between them possible or desirable."[79] This theory, with its focus on the collective category of class, cared little for the rights of the individual, but it also implied, to answer the question of the conference, that peaceful compromise was impossible. In splitting humanity into two, communism did not adopt, as Berlin clarified elsewhere, the assimilative violence of the past where, for example, religious authorities would provide an alternative between conversion and death.[80] Even this form of violence presupposed some common humanity—i.e. a pagan could become a Christian—and hence, at some remote level, the possibility of mediation or compromise. Instead, the communists put forward a form of eliminative violence whose goal was quite simply the extermination of those who did not fit into the pattern of History. As such, Berlin wrote to Kennan, "a *modus vivendi* wasn't really possible between any democracy and 'them.'"[81]

This conclusion and its anti-diplomatic implications, no doubt, helped explain why Kennan particularly displayed such great enthusiasm for Berlin's initial lecture and his subsequent *Foreign Affairs* essay. Only three years earlier, Kennan wrote his now famous "Long Telegram" portending Berlin's bleak attitude and introducing a revolution in foreign policy thinking that would shape the rest of the cold war. Shortly after the end of World War II, the United States functioned with the

[78] Berlin, "Democracy, Communism and the Individual," in *The Power of Ideas,* 277.
[79] Berlin, "Democracy, Communism and the Individual," 278.
[80] See Berlin, "Marxist versus Non-Marxist Ideas in Soviet Policy," Papers of Sir Isaiah Berlin, Bodleian Library, Oxford University.
[81] Berlin, "Letter to George Kennan, June 30, 1949," in *The Power of Ideas,* 274.

basic premise that political resolution was possible with the Soviets. This first took the form of Roosevelt's integration strategy, which believed that calming Soviet insecurity through making them a key player in the new international order would stop their expansionist tendencies. It then took the form of Ambassador W. Averell Harriman's more aggressive *quid pro quo* strategy at the Yalta Conference, which still assumed that the Soviets operated as rational actors and that a settlement was possible through bargaining and mutual exchange over the key interests concerning each party.[82] But breaking with this tradition, Kennan argued that any compliance on the part of the Soviet Union with international institutions or diplomatic processes, especially their engagement in the United Nations,[83] was purely pragmatic and strategic because their internal legitimacy depended on the fiction of a constant external threat from abroad.[84]

The reasoning behind this insecurity, Kennan would further clarify in his "Mr. X" article, partly stemmed from long history of civil strife and foreign intervention in Russia, but it also had roots in Marxist ideology itself. Like Berlin, Kennan argued that the Soviets believed that "any opposition [to them could] flow, in theory, only from the hostile and incorrigible forces of dying capitalism" and that, as long as such opposition existed, "the establishment of dictatorial power [was] a necessity."[85] In the early years of their rule, the Communists targeted the local opposition at home. After nationalizing the local industry, expropriating private property holdings, and squashing most of the political opponents, the justification for a dictatorship began to wane. "This

[82] Gaddis, "Strategies of Containment," 19.
[83] George Kennan, "The Long Telegram."
https://www.trumanlibrary.org/whistlestop/study_collections/coldwar/documents/pdf/6-6.pdf.
[84] "We have here a political force," wrote Kennan, "committed fanatically to the belief… that it is desirable and necessary that the internal harmony of our society be disrupted, our traditional way of life be destroyed, the international authority of our state be broken, if Soviet power is to be secure." See Kennan, "The Long Telegram." Berlin never used the language of "fictitious threats," although his argument about how the communist emphasis on class irreconcilably split humanity into two supported the idea that the Soviets would invent an enemy whether or not it really existed. *Supra* note 37.
[85] Kennan, "The Sources of Soviet Conduct."

fact," Kennan concluded, "created one of the most basic of the compulsions which came to act upon the Soviet regime: since capitalism no longer existed in Russia and since it could not be admitted that there could be serious or widespread opposition to the Kremlin springing spontaneously from the liberated masses under its authority, it became necessary to justify the retention of the dictatorship by stressing the menace of capitalism abroad."[86]

"Containment"

The unlikely possibility of perpetual peace had no clear implication for what should replace US diplomatic strategy, nor did it imply an agreement between Berlin and Kennan on the pressing question of what should be done. In order to formulate a new strategy, in fact, Kennan provided a stark critique of "Political Ideas" in the spring of 1950, commenting in a letter to Berlin that his "conclusion was laconic and almost perfunctory."[87] Berlin's conclusion stressed that the threat to the United States was not communism alone but how the Leninist idea of eliminating questions, instead of answering them, had come to infect Western administrative democracy. "Today the very virtues of even the best-intentioned paternalistic State…" Berlin wrote, "have narrowed the area within which the individual may commit blunders, and curtailed his liberties in the interest of his welfare or sanity, his health, his security, his freedom from want and fear." Fearful that the pluralistic trace of the nineteenth century was dissipating, Berlin found a contemporary "situation in which the very possibility of opposed principles… [was] eliminated in favour of a simpler and better regulated life, a robust faith in an efficiently working order, untroubled by agonizing moral conflict."[88] Berlin's defenders often hold up this conclusion as demonstrating his unique ability to

[86] Kennan, "The Sources of Soviet Conduct."
[87] Kennan, Letter to Isaiah Berlin, April 26, 1950, Papers of Sir Isaiah Berlin, Bodleian Library, Oxford University.
[88] Berlin," Political Ideas in the Twentieth Century," 91.

avoid the dangers of Manichaeism and engage in "connected criticism" because it stressed that the totalitarian danger resided not with the Soviets alone.[89] The obverse, however, seemed to be true. If anything, it introduced the idea that the threat of communism was more dire than imagined: it was not simply external but had come to infect Western society internally.

Kennan was, however, "less afraid of 'planning' as an introduction to totalitarianism" and found this criticism neither laudatory nor dangerous but simply misguided. Kennan believed that as long as the United States stayed true to "natural" and anti-utopian goals—to "remain alive… as long as possible, and multiply our kind"—such an objective would provide any method of its realization with "restraints" sensitive to "our mortal weakness" and our "dignified… human personality."[90] The very solution that Berlin proposed in "Political Ideas" to fight Leninist philosophy and its infiltration of the West—a solution based on adopting an ethos sensitive to "less Messianic ardour, more enlightened skepticism, more toleration of idiosyncrasies"[91]—was from Kennan's point of view already guaranteed by the pragmatic substance of American political development and its refrain from utopian overreach. In any case, the fear that government planning might morph into totalitarianism merely led Berlin to answer the wrong question—about how to cultivate an ethos that could internally resist the spirit of totalitarianism—instead of engaging with the more fundamental question that his essay posed in the first place—about how to confront and stop the real external threat of Soviet totalitarianism.

Despite this limitation, Kennan still found in the pages of "Political Ideas" the key to grasping the weaknesses of communist ideology. What was more important than Berlin's account

[89] See, e.g., Michael Walzer, *The Company of Critics: Social Criticism and Political Commitment in The Twentieth Century* (Basic Books, 2002); Ignatieff, *Berlin: A Life*; George Crowder, *Isaiah Berlin: Liberty and Pluralism* (Cambridge University Press, 2004).
[90] Kennan, Letter to Berlin, April 26, 1950.
[91] Berlin, "Political Ideas in the Twentieth Century," 91.

of how the Soviets would inevitably struggle against the West was his description of how Lenin, and eventually Stalin, notoriously treated their own inhabitants as "sick" patients with delusional ideas that required a cure. Totalitarian power, directed internally, did not simply split humanity into proletariat and bourgeoisie, but also violated the proletariat's human core. "This thing that the totalitarians have done—this taking advantage of the helpless corner of man's psychic structure," Kennan wrote, "[wa]s [its] original sin." The totalitarian effort at ideological reeducation rested "on the recognition that man's nature is susceptible, under certain circumstances… to almost any amount of manipulation by other men."[92] But that it was only "*almost any*" amount of manipulation, and not "total" manipulation, was vital to understanding communism's limits.

The great weakness of the communist strategy was that it ignored the frontiers of nature. The party, who attempted to manipulate the masses, were "themselves men," and although they believed that they had "some superhuman platform... outside and above this world of malleable human frailty, a platform from which to intervene as outsiders in the world of human subconscious,"[93] they were clearly without such a vantage point. As mere men, the leaders of the party were susceptible to human weakness, mortality, and error and, out of these mistakes, cracks arose in the party line. Inevitably, more overt force—"the secret police"—was used to keep local inhabitants in line, but as Kennan himself claimed from witnessing the post-revolutionary generation in Russia, people no longer "believed" in the party ideology, even if they continued "to acquiesce." What "this portend[ed] for the future," Kennan predicted, was a glimmer of hope. "These men who have reared their power on the beshaming of the nature of other men and on the

[92] Kennan, Letter to Berlin, April 26, 1950.
[93] Kennan, Letter to Berlin, April 26, 1950.

destruction of their faculties for independent judgment and free will… [would find] that their power will eventually perish as the victims of its own extravagance."[94]

This reading of "Political Ideas" sounded almost religiously metaphysical, tapping into a traditional trope about evil and how it inevitably destroyed itself.[95] It could perhaps be brushed aside as such. But the explanation of Soviet weakness was not simply mystical. It was also sociological and Kennan, armed with such an interpretation, found in Berlin's work a trace of what he already argued justified a new strategy for the cold war era United States: his strategy of "containment." No doubt, Kennan had made his case for why diplomacy was futile in the face of the Soviet enemy, but in articulating the doctrine of "containment," he also sought to clarify, well before the Soviets created their first nuclear bomb, why traditional warfare made little sense. Unlike "the Nazis or Napoleon," Kennan believed that communism could not "be defeated or discouraged by one single victory."[96] This was due to the fact the Soviets were fighting an ideological war. "Like the Church," the Soviets were "dealing in ideological concepts which are of long-term validity." They understood that they had "no right to risk the existing achievement of the revolution for the sake of vain baubles of the future"—that they were "under no ideological compulsion to accomplish [their] purposes in hurry" and were thus required to retreat in the face of extreme violence and avoid total defeat.[97] In light and not in spite of this, Kennan believed that "containment" was the best hope for defeating communism because the very ideological vision that led to Soviet circumspection also provided it with internal cleavages.

[94] Kennan, Letter to Berlin, April 26, 1950.
[95] See, e.g, Mark Larrimore, "Introduction: Responding to Evils" in *The Problem of Evil: A Reader* (Wiley-Blackwell,2000); Terrence W. Tilley, *The Evils of Theodicy* (Georgetown University Press, 1991); Odo Marquad, *In Defense of the Accidental* (Oxford, 1991).
[96] Kennan, "The Sources of Soviet Conduct."
[97] Kennan, "The Sources of Soviet Conduct."

"The Soviet thesis," Kennan argued, "assume[d] Russian unity, discipline and patience over an infinite period," but this unity was built on a fictitious foundation. The disconnect between attempting ideological reeducation and its practical failure, further fed by the misguided economic policy of the Soviet Union, led to a "dispirited population working largely under the shadow of fear and compulsion… disillusioned, skeptical and no longer as accessible as they once were to the magical attraction which Soviet power still radiate[d] to its followers abroad." The failures of both Soviet political authority and economic development created difficulties for garnering mass acquiescence to the party line as best seen, for example, in Stalin's own transfer of power that "took 12 years to consolidate" and that "cost the lives of millions of people and shook the state to its foundations." Kennan believed that "a policy of firm containment," one that both limited Soviet expansion externally and helped thwart ideological expansion internally, might hold off the Soviets long enough to allow for the eruption of "spontaneity and collective action" on the part of the masses, "disrupt[ing] the unity and efficacy of the Party as a political instrument" and changing it "overnight from one of the strongest to one of the weakest and most pitiable of national societies."[98]

Dignity and Militancy

But would this spontaneous miracle ever arrive? Almost ten months after receiving his letter, Berlin responded to Kennan in kind, demonstrating that he deeply internalized his comments and criticisms, but had also come to answer the question about confronting the Soviets in his own distinct mode. While "Political Ideas" described the process and logic of totalitarian control, Berlin believed that Kennan, with his talk of how the Soviets destroyed "independent judgment and free

[98] Kennan, "The Sources of Soviet Conduct."

will," had articulated the core of what Berlin admitted he had "failed to say": a theoretical account of what precisely made totalitarian control so horrifying. Berlin "read [the letter] and re-read it" for it articulated "the fundamental moral issue on which everything turn[ed]"[99] and which was perhaps grasped by just one of Kennan's dazzling sentences: "When a man's ultimate dignity is destroyed, he is killed, of course, as a man."[100] This line not only sent Berlin into a deep reflection about the character of the human condition and how totalitarianism violated it, but also on the course towards speculating about the necessity of militant action beyond mere "containment."

Berlin believed that Kennan's letter tapped into something essential about totalitarianism: how it betrayed the primary principle that lay at the heart of Western civilization—that men treat other men as 'ends in themselves.' Although this principle could be found in the Kantian and religious traditions, Berlin noted that considering people as 'ends in themselves' required assuming not the ability for rational self-control or ascetic renunciation but rather a more foundational idea about one of the primary "categories and concepts" shaping the human condition: the capacity for people to make choices and set their own ends. "The mysterious phrase about men being 'ends in themselves,'" Berlin wrote, "seems to lie in this: every human being is assumed to possess the capacity to choose what to do, and what to be, however hemmed in by circumstances outside of their control."[101] Berlin, here, referred to an idea of 'basic freedom' which was just that: basic. It did not force one to adopt a 'positive' or 'negative' understanding of freedom, as Berlin would later distinguish in his famous essay. It did not seek to take sides in the great debates of political versus social freedom, republican versus liberal freedom, or any other of such heated argument. It quite simply served, Berlin later clarified, as the intuitive 'root' of any intelligible idea of liberty

[99] Berlin, Letter to George Kennan, February 13, 1951, Papers of Sir Isaiah Berlin, Bodleian Library, Oxford University.
[100] Kennan, Letter to Isaiah Berlin, April 26, 1950.
[101] Berlin, Letter to George Kennan, February 13, 1951.

in which 'freedom [was] reduced to its narrowest terms'—the existence of a 'free will' that could "choose between alternatives: it [could] not be less than that."[102]

What, however, was the value of this freedom? Picking up on Kennan's language, Berlin posed two possibilities about how the notion of dignity clarified its value. Berlin first pointed out that dignity often denoted the idea of human worthiness: since human beings were creatures capable of free choice, they were also worthy of moral respect. This idea, Berlin implied, was quite juridical. People make choices with the implication that, under most situations, they can make different choices; because of this capacity, society has historically held people responsible for their choices and has also developed a moral language that accounts for and weighs human behavior. "The entire cluster of [moral] ideas such as honesty, purity of motive, courage, sense of truth, sensibility, compassion, [and] justice," Berlin claimed—"all of this becomes meaningless unless we think of human beings as capable of pursuing ends for their own sake by deliberate acts of choice."[103] But the implications still went further: in holding people responsible for their choices, Berlin believed that political society had inevitably come to place value on the activity of free choice itself. In doing so, it alerted us to the special requirement of respecting other human beings and their capacity to make choices—"the attribution of dignity or honour to others which we must not insult or exploit."[104]

Yet Kennan, Berlin argued, could not have possibly referred to this idea of dignity when pointing to the root of communism's evil. After all, the story of individual human worth was one of historical maturation: the idea of respecting individuals *qua* individuals developed over time and, as such, countless regimes, especially in the pre-modern era, interfered with human freedom

[102] See Joshua Cherniss, *A Mind and its Time: The Development of Isaiah Berlin's Political Thought* (Oxford, 2013) (chapter 8 extensively discusses the concept of basic freedom).
[103] Berlin, Letter to George Kennan, February 13, 1951.
[104] Berlin, Letter to George Kennan, February 13, 1951.

and assaulted this form of human dignity. "Certainly we do not detest [totalitarianism]," Berlin therefore wrote, "merely because it denies liberty of action"—merely because it infringed on the free choices of men and disrespected them.[105] If this was its horror, there was nothing unique about totalitarianism. "[A]lthough that [horror was] bad enough, it is something which history has produced too often."[106]

Instead, Berlin argued that dignity also denoted the idea of a unique human status: since human beings were creatures capable of free choice, they proved themselves as distinctive creatures with a separate status from the rest of the natural world. Unlike the first concept of dignity which juridically marked out space for exercising freedom, the second concept of dignity was expressive of the very capacity for freedom itself. This deeper sense of freedom also alluded to how people made choices with the implication that, under most situations, they could make different choices. But because of this spontaneity, it stressed how humans, unlike other natural objects and living creatures, escaped the determination of natural laws and instead expressed their inner nature through choosing among plural paths of value—through engaging, as John Stuart Mill put it, in numerous "experiments in the art of living."[107] Here, Berlin was tapping into the romantic ideal which he was concurrently investigating in his "Political Ideas in the Romantic Age"—the primary idea that "values are not discovered but invented—created by men like works of art, of which it is senseless to ask where they were before they were conceived."[108] There also seemed to be a certain minimalism at work in this conception: unlike the moralistic implications of the first

[105] Berlin, Letter to George Kennan, February 13, 1951.
[106] Berlin, Letter to George Kennan, February 13, 1951.
[107] See Berlin, "John Stuart Mill and the Ends of Life," in *Liberty: Incorporating Four Essays on Liberty*, ed. Henry Hardy (Oxford, 2002).
[108] Berlin, *Political Ideas in the Romantic Age*, 12.

concept that judged humans among other humans, the second concept only sought to distinguish humans from nature, regardless of the content of the values created or paths chosen.

Yet despite this apparent minimalism, there was a different kind of moralism attached to it. The romantic virtues were those that best accentuated the human capacity to make choices and create value, especially when this very capacity seemed to be threatened. The romantic virtues were those that best accentuated the power of the human will when outside forces sought to break it. Interestingly enough, Berlin pointed to Dostoevsky's character Ivan Karamazov to elucidate these virtues to Kennan: when Ivan Karamazov, for example, refused the happiness of the entire world for the price of killing just one child, his actions were admirable not simply, as the Kantian interpretation would have us believe, because he treated the child as an end in himself, as a worthy moral being. Instead, Berlin claimed, his choice was admirable precisely because it was *his* choice. "We admire [freedom] always more than calculation," Berlin wrote to Kennan, for "even when we consider [an] ideal false and its consequences disastrous," we tend to "think such conduct deeply moving."[109] Karamazov heroically and authentically committed himself to his decision and stayed true to his will despite the pressure of some 'rational' imperative—the idea of the greater good—deriding his acts as 'irrational.'" As such, Karamazov embodied the best of the romantic virtues: the "admiration of heroism, integrity, strength of will, martyrdom, dedication to the vision within one, irrespective of its properties, veneration of those who battle against helpless odds, no matter for how strange or desperate a cause."[110]

It was Karamazov's example, Berlin further argued, that helped finally account for the uniqueness of the totalitarian horror: not that it interfered with free choice, but that it erased the very capacity for free choice causing men to no longer appear as human. Through exhibiting a

[109] Berlin, Letter to George Kennan, February 13, 1951.
[110] Berlin, *Political Ideas in the Romantic Age*, 13.

heroic authentic commitment and asserting his personality against a so-called higher rationality, Berlin believed that the example of Karamazov not only proved that men could escape the determinism of the natural world, but also the claims of those, like "Hegel and Marx," who applied the methods of natural science to human behavior and constructed a deterministic conception of history that forced men to conform to the compulsions of some hidden and higher rationality. The horror of totalitarianism was connected to how communism attempted to eliminate the unique human capacity for choice-making through imposing ideas of social necessity on its subjects: communist ideology seeped into the minds of men turning them into sheep that would blindly follow the dictates of the supposed "historical inevitability" of class struggle. The problem was not that these individuals knew of their domination but chose, out of fear, to acquiesce; rather they acquiesced without even knowing it. "What turns one inside out, and is indescribable," Berlin exclaimed, "is the spectacle of one set of persons who so tamper and 'get at' others that the others do their will without knowing what they are doing."[111] The inhabitants of the Soviet Union no longer recognized their capacity to resist the march of history, nor did they know how to reclaim their capacity to choose between plural values and shape their own lives. Without the desire to act freely—that is, without the existence of a will that could resist the totalizing movements that sought to instrumentalize them—the inhabitants of totalitarian regimes seemed to "los[e] their status as free human beings, indeed as human beings at all."[112]

[111] Berlin, Letter to George Kennan, February 13, 1951.

[112] Berlin, Letter to George Kennan, February 13, 1951. This notion of status is radically different from how contemporary theorists of dignity understand the concept. While status has been given both hierarchal and egalitarian interpretations, theorists of dignity tend to understand status-based dignity as a type of rank. For Berlin, however, the spatial connotations of rank do not quite capture the unique requirement of expressive action i.e. its existential sense. People do not engage in rational reflection to find some foundation that makes humans human, nor do they simply construct such a concept from principles already implicit in their political culture. Instead, they *prove* their humanity through heroic acts of self-assertion against the external forces of the social and natural world that seek to control them. Cf. Jeremy Waldron, *Dignity, Rank and Rights* (Oxford, 2012).

From this analysis, Berlin finally inferred that Kennan drew the wrong conclusions about how to confront the Soviets. If the main lesson of dignity was that humans could not be reduced to deterministic processes—that they were creative and malleable beings who, through their choices, created value and constituted themselves—then Kennan's policy of "containment" was misguided for assuming a logic or predictability to history. Kennan hoped that the "men who… undermine[d] the lives of other men [would] end by undermining themselves." He hoped that 'containment' was enough to defeat communism because the "whole evil system [was] doomed to collapse."[113] While Berlin agreed with Kennan that a system built on such extreme domination was extremely taxing to uphold, he also cautioned Kennan to "avoid being an inverted Marxist." If humans were defined by their capacity to escape predictable control, then there was no 'force' of history that would inevitably pull down Communism. Even some Marxists had appreciated this insight, as they somewhat contradictorily subscribed to the belief that the revolution "would have taken centuries if Lenin had not given history a sharp jolt." In reminding Kennan about the unique ability and perhaps inevitability for humans to evade the dictates of nature and historical reason, Berlin thus set up the decisive challenge to Kennan: just as communism required a Lenin, would liberal forces require their own? "Without the jolt, are moral forces alone sufficient to bury the Soviet grave-diggers?" To this question, Berlin responded simply: "I doubt it."[114]

Militancy in Action: NSC-68

What was this "jolt"? And was it really required? In the years shortly after responding to Kennan, Berlin was wary to describe what this "jolt" meant, although he continued to push forth

[113] Berlin, Letter to George Kennan, February 13, 1951.
[114] Berlin, Letter to George Kennan, February 13, 1951.

the idea, even in more sociological terms,[115] that the Soviet Union would not destroy itself with the necessary consequence this implied for forceful action. The belief in the necessity of such action derived from romantic sources. The romantic ideal of a free human will—and hence the unique status or dignity of human beings—not only provided the key to clarifying the distinctive evil of totalitarianism or the accompanying idea that it would not self-implode. It also provided the source of a solution. This notion of human dignity entailed a consequent affirmation of the romantic virtues which demanded that men heroically assert their wills against those who attempted to crush them and, of course, *a fortiori* against a movement which sought to erase human freedom altogether. Such militancy stayed true to the spirit of human dignity, but also, Berlin clarified, to the spirit of value-pluralism. The idea of value-pluralism, Berlin wrote towards the end of his life, only led to "toleration and liberal consequences" when there was "respect between systems of values which [were] not necessarily hostile to each other." There were, however, political systems that were so "damaging to the only form of life that" one could not "live or tolerate, for [one]self and others; in which case" one would "even — in extreme cases — have to go to war against [them]."[116]

War, however, did not imply traditional war—an option that Berlin explicitly derided as irrational in regard to the Soviets[117]—and other militant tactics might provide the necessary "jolt". The militarization of the cold war, after all, was defined by a varied selection of such strategies: in

[115] Both of Berlin's most famous philosophic and political essays of the mid-1950s continued to support the idea of human malleability and deride ideas of historical determinism. In a 1952 *Foreign Affairs* essay entitled "The Artificial Dialectic of Generalissimo Stalin," Berlin argued that Stalin expertly balanced the dangers of revolutionary excess and revolutionary stagnation against one another making it extremely unlikely that communism would dissolve from within. Similar, in a 1953 essay entitled "Historical Inevitably," Berlin provided a more serious philosophical foundation of human dignity arguing that whether determinism was true was beside the point because no one practically believed in it. The idea of "basic freedom" was so integral to human life—to living in the day-to-day world and interacting with other people—that denying it made the human experience unintelligible.
[116] Berlin, "My Intellectual Path," in *The Power of Ideas*, 15.
[117] Berlin thought the costs of such a war would be too grave. See Berlin, "Marxist versus Non-Marxist Ideas in Soviet Policy," Papers of Sir Isaiah Berlin, Bodleian Library, Oxford University.

addition to the manufacture of nuclear weapons and other arms for deterrence, militant action encompassed proxy wars, the funding of rebels, attempts at 'roll-back,' military interventions, and other non-traditional means—some of which Berlin would even explicitly embrace during the Vietnam War. But an extended focus over what Berlin meant by the "jolt" or why he left undeveloped lines of thought about the use of specific military tactics ignores what was clearly more worthy of note: that the thrust of Berlin's critique of "containment" found comfort among the policy makers in the Policy Planning Staff who actively pushed towards increased militarization after Kennan's departure. Even though they most likely never read Berlin's work and were not directly influenced by his ideas, the common spirit growing among government officials, including the Policy Planning Staff's new director Paul Nitze, mirrored Berlin's reaction against "containment" in the original iteration. [118]

NSC-68—the document that President Harry Truman commissioned during this period to articulate a comprehensive national security strategy against communism and that, as Ernest R. May describes, "provided the blueprint for the militarization of the Cold War from 1950 to the collapse of the Soviet Union at the beginning of the 1990s"— appeared quite eerie in this regard.[119] Its twin goals conformed neatly to those features that Berlin sought to protect from communism. The document articulated its "fundamental purpose" as assuring the "the integrity and vitality of our free society which is founded on the dignity and worth of the individual."[120] It also maintained that such a defense could not mimic the totalitarian logic of eliminating societies or classes deemed inconsistent with its narrow conception of historical development. "The prime reliance of the free society," it stated, "is on the strength and appeal of its idea, and it feels no compulsion sooner or

[118] Gaddis, "Strategies of Containment," 87, 88.
[119] Ernest R. May, ed. *American Cold War Strategy: Interpreting NSC-68* (St. Martin's, 1993), vii.
[120] "NSC 68: United States Objectives and Programs for National Security," 3. http://www.citizensource.com/History/20thCen/NSC68.PDF.

later to bring all societies into conformity with it"—it would feel no desire, in other words, to erase international diversity or pluralism.[121]

NSC-68, however, broke with Kennan on the question of how to protect human dignity and plurality and sided with Berlin. Perhaps, it was the victory of communism in China, or the Soviet development of the atomic bomb, or even the increasing buildup of Soviet arms,[122] but whatever the catalyst, NSC-68 found in increasing Soviet expansion not, as Kennan thought, the eventual breakdown of a "fictitious unity," but the triumph of the communist spirit, making it quite dangerous "to risk the future on the hazard that the Soviet Empire, because of overextension or other reasons, [would] spontaneously destroy itself from within."[123] The belief that communism, if properly contained, would eventually falter placed less pressure on Kennan to propose confronting the Soviets at every level of aggression—at each success of their ideas—because even if communism spread to peripheral areas of interest in the short term, the destruction of the regime over the long term would make such gains negligible. This explains why Kennan, for example, resisted military intervention into areas of the world that he thought were of negligible threat, such as his opposition to intervention during the Chinese Communist Revolution. In contrast, NSC-68 inferred from its assumption that the Soviet regime would not internally dissipate that the victory of communist ideas, even in the most remote of areas, had a dangerous effect on Western psychology and therefore demanded a response. NSC-68 not only posited, with rhetorical flourish,

[121] "NSC 68: United States Objectives and Programs for National Security," 4.
[122] Gaddis, "Strategies of Containment," 107.
[123] This was even more astonishing as NSC-68 also embraced a similar picture to Berlin on the uniqueness of the totalitarian horror. "Where the despot holds absolute power – the absolute power of the absolutely powerful will – all other wills must be subjugated in an act of willing submission, a degradation willed by the individual upon himself under the compulsion of a perverted faith. It is the first article of this faith that he finds and can only find the meaning of his existence in serving the ends of the system. The system becomes God, and submission to the will of God becomes submission to the will of the system." See "NSC 68: United States Objectives and Programs for National Security," 47.

that "a defeat of free institutions anywhere [was] a defeat everywhere,"[124] but initiated one of the most significant changes in the cold war: the turn towards military power as the primary tactic in fighting communism. NSC-68 argued that "without superior aggregate military strength, in being and readily mobilizable, a policy of 'containment'—which is in effect a policy of calculated and gradual coercion—[would be] no more than a policy of bluff."[125] Like Berlin, NSC-68 recognized that the only way to guarantee human dignity and international pluralism—to guarantee humane values in a war of ideas—was to stand up to the threat of totalitarianism with concrete forms of action at each juncture of aggression, to assert the national will and power of the United States when gradual coercion inevitably failed.

The Korean War, in this regard, was decisive for putting many of these suppositions into practice and therefore for also shifting US policy in the cold war towards fighting communism across the Third World. In authorizing the North Korean invasion of South Korea, Stalin confirmed the suspicions of NSC-68 that maintaining a balance of power, was not enough to 'deter' or 'contain' Soviet influence. The possibility of a proxy war allowed the Soviets to risk little through indirectly engaging the United States in an act of belligerence that, even if they lost, did not necessarily compromise their long-term mission of world revolution. More importantly, however, the response of the United States to the North Korean invasion proved how extensively ideas of militancy had spread throughout the foreign policy establishment. Before the North Korean invasion, almost no one considered the prevention of a communist South Korea as a core national interest, nor did they envision North Korean communism as posing a realistic material threat to the United States.[126] After the invasion, however, the thinking on this issue radically shifted. Even

[124] "NSC 68: United States Objectives and Programs for National Security," 5.
[125] "NSC 68: United States Objectives and Programs for National Security," 15.
[126] Gaddis, "Strategies of Containment," 106-15.

Kennan himself—who initially considered the North Korean communists in similar terms to the Chinese communists: a dangerous force, although one without any real material capabilities—would come to support the war. [127] At the heart of this shift was the belief that the United States needed to do something, needed to do anything. President Truman and Secretary of State Dulles gave several speeches demanding that the US stop the invasion, arguing that at stake was not simply material power but the discouragement of further communist expansion. If the United States did not take militant action and assert its national will, the Soviets would only become more confident and emboldened, further seeking to destroy the "free world" through spreading their ideology and perhaps even pushing the international community into a third world war. [128]

Of course, Berlin was not an architect of American foreign policy. But in his battle with Kennan, Berlin tapped into the spirit of militancy that had come to encompass the age. The Soviet Union and communist totalitarianism were imagined as such frightful forces that it almost went without saying that they needed to be opposed. The justification of militancy in the face of these threats simply rested in the brave new world that might exist if men did not stand up and assert themselves—a world when men were ideologically brainwashed. But despite the power of this frightful vision, it would soon become clear that it was not enough of a consolation to account for dangers and risks of militant action. The Korean war was the first war in a long series of interventions into the Third World. In bringing the battle against international communism to the spatial areas of decolonization, anti-communist crusaders would find themselves facing rather complex agents and forces that did not map neatly onto the image of the Soviets that first motivated

[127] Gaddis, "Strategies of Containment," 107.
[128] Dulles wrote, "To sit by while Korea is overrun by unprovoked armed attack would start [a] disastrous chain of events leading most probably to world war." Similarly, Truman claimed, ""If aggression were allowed to succeed in Korea, it would be an open invitation to new acts of aggression elsewhere… We cannot hope to maintain our own freedom if freedom elsewhere is wiped out." See Gaddis, "Strategies of Containment," 107.

the Cold War. It was only with this shift, then, that Berlin-the- philosopher could do what he did best: articulate substantive arguments and narratives that would legitimize liberal militancy against all varieties of totalitarianism.

The Legitimation of Militant Liberalism

The shift towards the Third World as the battleground where militant action might successfully stop the expansion of communist ideology and hence protect human dignity and plurality immediately struck the purview of Berlin, whose reflections became increasingly focused on this part of the world from the late 1950s onwards. Whereas the initial conception of "containment" was mostly concerned with undermining Soviet efficacy and power, Berlin expanded his line of vision seeking to discover other political forces that conformed to the dangers and novelty of the totalitarian threat. In one respect, Berlin's most famous work, "Two Concepts of Liberty," could be read as crafting the master concept to locate such actors: the notion of "positive liberty" or "self-mastery" was the universal mechanism that totalitarian regimes wielded to eliminate their enemies and doctrinally reprogram their subjects. In isolating this broader mechanism, Berlin shifted his focus towards the American preoccupation—lasting from the Korean War until the age of détente, although also afterwards in some respects—with combating not just Soviet communism but Thirdworldist or international communism.

Yet despite this shift, Berlin's reflections on the Third World remained rather nuanced. Unlike James Tully who, for example, argues that Berlin's "Two Concepts" was simply a defense of 'negative liberty' against the goals of the anticolonial movement to achieve self-determination, Berlin also had a rather encouraging relationship to the budding nationalist sentiments of the

developing world.[129] Influenced by his own precarious relationship to Zionism, Berlin found in the Third World the growth of nationalism that was not reducible to the totalitarian logic and which, on the contrary, allowed individuals who were previously colonized or oppressed to regain their sense of humanity—to regain their human dignity—in communities that provided a sense of recognition and that satiated their desire to belong.[130] Indeed, after publishing "Two Concepts," Berlin wrote several essays articulating how the features of romanticism he found most favorable, including its focus on human dignity and pluralism, found their realization in the nationalist ideal.[131]

What then were the implications of this somewhat contradictory movement that was sometimes noble and sometimes dangerous? The mixture of nationalist virtue and vice, Berlin soon discovered, uncovered an awful paradox that threatened his own militant stance sending him down the path of legitimating militant liberalism. With Soviet communism, mechanistic reason destroyed human dignity and plurality, while romantic action affirmed it. But with anticolonialism, romantic action both affirmed human dignity and plurality and then threatened to over extend itself, liquidating the choice-making powers of any individual or group who opposed the national will. In discovering this romantic form of totalitarianism oriented not around mechanistic rationality but 'the untrammeled human will,' Berlin therefore needed to ensure that his own militant liberalism was not an equally untrammeled force.[132] To accomplish this, Berlin made unique arguments about the universal norms and liberal orientations that separated liberal

[129] See James Tully, "'Two Concepts of Liberty' in Context'" in *Isaiah Berlin and the Politics of Freedom: 'Two Concepts of Liberty'50 Years Later*, eds. Bruce Baum and Robert Nichols (Routledge Press, 2012).
[130] For the role of Zionism, and Judaism more broadly, in Berlin's thought, see Arie M. Dubnov, *Isaiah Berlin: The Journey of a Jewish Liberal* (Palgrave Macmillan, 2013).
[131] These essays are discussed below.
[132] For an extensive treatment of the transformation of rational or mechanistic totalitarianism into a totalitarianism of the political will in contemporary French thought, see Kevin Duong, "Does Democracy End in Terror? Transformations of Antitotalitarianism in Postwar France," *Modern Intellectual History* (2015).

militancy from its totalitarian iterations. The goal was not to deflect attention from the existence of liberal violence, but on the contrary, to legitimate and moralize it as superior and unique.

Rationalism vs. Romanticism

Perhaps, Berlin never recognized the phenomenon of romantic totalitarianism because his initial characterization of totalitarianism had little, if anything, to do with nationalism (or even Nazi fascism for that matter) and instead—as he argued in *Political Ideas*—stemmed from a "highly rationalistic system."[133] It might come as a surprise, then, that "Two Concepts of Liberty," written in 1957 shortly after the Asian-African Conference of Bandung, broke with this line of thinking. The essay was a mixed and somewhat complicated attempt to distinguish the idea of liberty into two simple concepts—its negative and positive form. Perhaps, for this reason, scholars rarely stress the variety within the concept of positive liberty itself. But there was such variety: there were both rational and romantic conceptions of positive liberty—a significant fact that would eventually lead Berlin to reconsider his conception of human dignity altogether.

At first glance, *Two Concepts* initially stayed true to Berlin's original line of thinking describing the danger of positive liberty in terms of a "doctrine of liberation by reason."[134] "The 'positive' sense of the word 'liberty,'" Berlin clarified, "derive[d] from the [dangerous] wish on the part of the individual to be his own master."[135] Positive liberty entailed a belief in an 'alienated'

[133] Compare, for example, thinkers who started their analysis of totalitarianism with the study of Nazism and then only subsequently moved onto communism. See, e.g., Hannah Arendt, *On the Origin of Totalitarianism* (Harvest Book, 1951); Karl Popper, *The Open Society & Its Enemies* (Princeton, 1945). When tracing the role of nationalism in Soviet thought, Berlin argued that this influence was never integral to Marxist thinking and rather served as a tool of political convenience. The Soviets, especially Stalin, instrumentally tapped into the nationalist mindset to create political cohesion during times of disunity but, in moments of political stability, the reliance on nationalism would fall to the wayside. See Berlin, "Marxist versus Non-Marxist Ideas in Soviet Policy," Papers of Sir Isaiah Berlin, Bodleian Library, Oxford University.
[134] Berlin, "Two Concepts of Liberty," 188.
[135] Berlin, "Two Concepts of Liberty," 178.

self—the idea that the current self was 'unfree' and could only become 'free' through rationally mastering and submitting itself to an authoritative law or principle—bridging the gap between the real and ideal selves. This idea sometimes exhibited benign forms: in Kantian philosophy, for example, this task was envisioned as an individual moral task, where individuals could overcome their heteronomous emotional desires through autonomously conforming to the rational authority of the categorical imperative. Yet what was often morally benign also turned out to be politically dangerous. "Those who believed in freedom as rational self-direction were bound, sooner or later, to consider how this was to be applied not merely to man's inner life, but to his relations with other members of his society." In its collective form, the real self was conceived as something wider than the individual, as a 'social' whole of which the individual is an element or part. The idea of positive freedom, in this realm, allowed for men to speak in the name of other men, and when the latter disagreed with the former, it authorized those in power "to ignore the actual wishes of men or societies, to bully, oppress, torture them in the name, and on behalf, of their 'real' selves."[136] The notion of positive freedom theoretically twisted the meaning of freedom into a doctrine of pure obedience and added a novel dimension of darkness to the totalitarian threat. It allowed totalitarians, such as Lenin, to not only erase human freedom without their victims knowing it, but also to do so in the name of protecting that very freedom.

Despite this novelty, the genius of "Two Concepts," yet again, lay in how it creatively dispelled the idea that totalitarian regimes were evil simply because they collectively assaulted and disrespected the worth of the individual. The problem of positive freedom was not one of collectivism—that authority disrespected freedom—but one of perverse rationalism—that the distinction between freedom and authority was erased altogether. Over here, Berlin was tapping

[136] Berlin, "Two Concepts of Liberty," 191, 180.

into the argument he made in "Political Ideas" only a few year earlier: that totalitarianism originated not from "the avowed enemies of reason and individual freedom," but rather from "the radicals, rationalists, [and] progressives" who commit "a persecution not only of science, but by science or at least in its name."[137] The problem was, however, broader than scientific inquiry and was instead oriented around a constantly recurring theme of Berlin's corpus: what he called "the unquestioned dogmas... of the intellectual tradition in the West."[138] Like the great Western philosophers that were part of this tradition, the theorists of positive freedom assumed "that men [had] one true purpose," that "all rational beings must of necessity fit into a single universal, harmonious pattern" and "that all conflict, and consequently all tragedy, is due solely to the clash of reason with the irrational or the insufficiently rational."[139] Together these dogmas amounted to a defense of philosophical monism—the idea the man could rationally discover a single, all-encompassing answer to the question about how to best live—a proposition directly opposed to the idea of human dignity and plurality. The difference between value pluralism and perverse rationalism, Berlin analogized, amounted to the difference between the fox and hedgehog: "The fox knows many things, but the hedgehog knows one big thing."[140]

Yet for all of its talk about the dangers and perversions of rationalism, "Two Concepts" broke with this traditional account of totalitarianism arguing that the threat of positive freedom sometimes found expression beyond the rationalist iteration. Berlin admitted that positive freedom, "in the course of its evolution, wandered far from its rationalist moorings." "Two Concepts" pointed to totalitarian creeds which "abandon[ed] the concept of reason altogether" and viewed

[137] Berlin, "Political Ideas in the Twentieth Century," 89, 90.
[138] Berlin mentioned the threat of monism and its various dimensions in numerous essays. See, e.g., "Political Ideas in the Twentieth Century"; "European Unity and its Vicissitudes"; "The Apotheosis of the Romantic Will"; "Does Political Theory Still Exist?".
[139] Berlin, "Two Concepts of Liberty," 189, 195, 200.
[140] See Berlin, "The Hedgehog and the Fox" in *Russian Thinkers* (Penguin Press, 1994), 24.

"humanity [as] the raw material upon which [one could] impose [his] creative will." Berlin thought that such movements were less rationalist and more aesthetic. "I may conceive myself as an inspired artist, who moulds men into patterns in light of his unique vision, as painters combine colors or composers sounds," Berlin wrote, and "even though men suffer and die in the process, they are lifted by it to a height that they could have never have risen without my coercive—but creative—violation of their lives."[141] In their coercive violation, aesthetic political movements ensured that the individual would achieve positive freedom through identifying with a social authority that expressed an underlying vision of the collective will and that eliminated any element that impeded on its realization. The characterization of this aesthetic coercion sounded awfully reminiscent of European fascism and rightly so. Searching for its historical roots, Berlin found reverberations of this aesthetic politics in the twin rise of romanticism and nationalism on the European continent. But as an avid spectator of the politics of the day, Berlin also had a contemporary target in mind. The European history that Berlin would soon trace was directed towards understanding "the *nationalist*, Communist, authoritarian and totalitarian creeds of our day" which did not, in any simple sense, reflect a monistic rationality.[142]

It should come as no surprise, then, that Berlin dedicated a full section of "Two Concepts" to deciphering the nationalist movements of the Third World. What is more surprising is that his initial analysis cast anticolonial nationalism in a sympathetic light. Berlin found in anticolonialism a form of resistance towards "degradation" that escaped the neat categories of positive and negative liberty and that also conformed to his earlier thoughts about human dignity. In seeking independence from their colonial masters, the members of the anticolonial movement were not simply demanding "equality of legal rights… but a condition in which" they could feel like

[141] Berlin, "Two Concepts of Liberty," 191, 195, 197.
[142] Berlin, "Two Concepts of Liberty," 189.

"responsible agent[s], whose will [was] taken into consideration."[143] The problem with colonialism was that it "ignored, or patronized, or despised" the colonized and classed them as "member[s] of some featureless amalgam, a statistical unit without identifiable, specifically human features and purposes." The "great cry of recognition" that arose from the colonized peoples was exemplary of a "search for status": without being recognized as "independent source[s] of human activity," the colonized nations were not "quite fully human, and therefore not quite fully free." The self-determination of peoples, in this sense, could not solely be mistaken as an impulse towards positive freedom. While Soviet totalitarianism "exchanged the painful privilege of choosing— 'the burden of freedom'— for peace and comfort and relative mindlessness of an authoritarian or totalitarian structure," it was a "profound misunderstanding of the temper of [the] times to assume that this is what [made] nationalism or Marxism attractive to nations which [were] ruled by alien masters." Instead, what made these ideologies attractive was their ability to restore dignity. Although not quite the "demand for liberty in some third sense," they provided greater substance to the animating principle behind every interpretation of freedom: "the desire to be an independent agent."[144]

Yet anticolonial nationalism, despite its noble origin, still had reverberations with the dangers of positive freedom. "The wish to assert the 'personality' of my class, or group, or nation," although distinct from a desire for negative or positive liberty, ended up providing an easy answer to the question: "Who is to govern us?" By satisfying the desire for status through national identity, Berlin argued that anticolonial nationalists inevitably embraced the idea that only 'the nation' could rule itself. "This profound and universal craving for status" would consequently become "confounded by being identified with the notion of social self-direction, where the self to be

[143] Berlin, "Two Concepts of Liberty," 201.
[144] Berlin, "Two Concepts of Liberty," 203, 205, 208.

liberated [was] no longer the individual but the social whole."[145] In moving in this direction, the colonized would repeat the mistake of positive freedom and "make it possible for men, while submitting to the authority of oligarchs or dictators" who supposedly spoke for the nation, "to claim that this in some sense liberate[d] them." There were, of course, historical antecedents for this form of nationalism gone wrong. "The French revolution," wrote Berlin, "[was] like all great revolutions… an eruption of the desire for the 'positive' freedom of collective self-direction on the part of a large body… who felt liberated as a nation." Turning to Constant, Mill and Tocqueville and foreshadowing Hannah Arendt's own critique in *On Revolution,* Berlin argued that the French revolutionaries compromised their search for dignity through placing their power in an independent and unified source of authority. The rise of anticolonial revolutions in the Third World, Berlin implied with his retort to "all great revolutions," repeated the mistakes that haunted the First. Anticolonialism, like the French Revolution, embraced "the sovereignty of the people" and "the doctrine of absolute sovereignty" which, knowing no limit, dispensed with the "frontiers of freedom which nobody should [have] be[en] permitted to cross."[146]

The Romantic Paradox

How, then, to make sense of national movements that not only assaulted human dignity, but that both assaulted and captured the spirit of human dignity simultaneously? If this dilemma seemed rather abstract, Berlin continued to reflect on the nature of the French Revolution throughout his lifetime to better clarify the dangers of nationalism. Berlin's later writings explained that this grand European event was a mere prelude to the real historical antecedent—the birth of German Romanticism—that better grasped the double-edged nature of his current

[145] Berlin, "Two Concepts of Liberty," 206.
[146] Berlin, "Two Concepts of Liberty," 204, 208, 210.

nationalist foes. What turned out to be less important than the French Revolution was the reaction of its German spectators abroad. While the revolutionary actors thought they were engaging in an Enlightenment attempt to rationally remake the world anew, the spectators of the revolution simply witnessed men "who were able to dominate… and alter history in all kinds of ways" and who did so "deeply in earnest."[147] Together, they witnessed, in Immanuel Kant's own characterization, a break from 'the natural order of things.' On the one hand, the act of destroying the 'natural' monarchical order introduced a novel belief in the heroic power of the human will— the idea that "the only thing which makes man man," as Berlin referenced the philosopher Friedrich Schiller, "is the fact that he is able to rise above nature and mould her, crush her, subjugate her to his beautiful, unfettered, morally directed will."[148] On the other hand, the character of their actions—its deep earnestness—introduced a novel idea of authenticity. Whereas men traditionally admired only actions that respected the objective natural order or moral law, even those spectators who recoiled at the revolutionaries for overturning the 'natural' order still admired the intensity, integrity and conviction that they displayed. "What people [now] admired," Berlin wrote, "was wholeheartedness sincerity, purity of soul and the ability and readiness to dedicate yourself to your ideal, *no matter what it was.*"[149]

While this heroic and authentic will should, following his dialogue with Kennan, sound quite familiar, Berlin, now in the context of anticolonial struggle, sought to discover how such an insight was historically extended into the social realm. Berlin found the historical fusion of romanticism and nationalism in the thoughts of Johann Gottfried Herder. Like other romantics, Herder believed that humans were expressive—that is, human beings could not be reduced to

[147] Berlin, *The Roots of Romanticism,* 126, 13.
[148] Berlin, *The Roots of Romanticism,* 91.
[149] Berlin, *The Roots of Romanticism,*10.

scientific dissection but rather expressed their inner nature through creatively shaping their lives. Unlike his contemporaries, however, Herder asserted that such expression did not solely occur through individual choice because such choice could only be expressed through the medium of language. Language, in Herder's view, was more than utilitarian, also representing an unconscious bond between men. "If you ask who has made folk song, who had made folk dancing, who has made the German laws…" Berlin paraphrased Herder, "you cannot give an answer" and yet "our world, our German world, is constructed by other Germans, and that is why it smells and feels and look and sounds [as uniquely] as it does." What Herder's account amounted to was a defense of the "nation" as a creative yet unconscious force that, although laying "shrouded in the mist of impersonal antiquity," organically pulled its members together into an imagined community. This account not only corrected those fictionalized philosophical stories that ripped the individual from his context, but insightfully added that an integral part of the human experience was to "belong to some kind of group" that, "if taken out of it," would cause one to "feel alien and not at home." [150]

One might suppose that Herder's romantic nationalism was the origin of the unsavory national will, but it was not. Herder only articulated a conception of 'national consciousness,' not of 'national self-consciousness' where the collective will could act with intent. Such intention, Berlin argued, only developed when an external threat "wound[ed the] pride" of the national group and instilled "a sense of humiliation" in it,[151] further creating an "inflamed condition of national consciousness." In its first historical iteration, Berlin believed that this occurred "under the impact of the… Napoleonic invasions," where "cultural or spiritual autonomy for which Herder had originally pleaded, turned into embittered and aggressive nationalist assertion."[152]

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[150] Berlin, *The Roots of Romanticism,* 70.
[151] Berlin, "Nationalism: Past Neglect and Present Power," in *Against the Current*, 436.
[152] Berlin "The Bent Twig: On the Rise of Nationalism," in *The Crooked Timber of Humanity* (Princeton University Press, 2013), 261.

The fact that national consciousness turned into self-consciousness was not, however, simply a historical occurrence; it was also a philosophical contention. Berlin argued that the romantic philosopher Johann Gottlieb Fichte, in a number of militant speeches during the Napoleonic occupation, best captured this transformative process with one simple proposition: *volo ergo sum*—I will, therefore, I am. Fichte called upon his German brethren to see the Napoleonic invasion not as a disaster but as an opportunity to awaken as a common national people. In the context of humiliation and threat, the national will could no longer develop, as Herder proposed, organically and unconsciously. Instead, it demanded an awakening and a spring to action. Action, Fichte argued, was the determining feature of any form of self-consciousness—"the personality was to be learned only through effort, through trying, through hurling [it]self properly… in a moment of resistance or opposition."[153] This led to the further implication that, while under attack and in order to thrive, the national will needed to thrust itself forward—to become a "free untrammeled will" that would "attempt to blow up and explode the very notion of a stable structure of anything"—especially those structures that sought to discipline, destroy and inhibit its development.[154] Stillness meant death and hence the ultimate conclusion of Fichte's philosophy: "for a nation to be free means to be free of other nations, and if other nations obstruct it, it must make war."[155]

Of course, with a history of colonial domination and two contemporary superpowers vying for political influence across the globe, the national movements of the colonized world found themselves under continuous assault, humiliation and threat. It seemed unlikely that 'national consciousness' would remain, as it should, unconscious. "Nationalism," Berlin therefore wrote in

[153] Berlin, *The Roots of Romanticism,* 112.
[154] Berlin, *The Roots of Romanticism,* 136
[155] Berlin, *The Roots of Romanticism,* 105.

1964 during the height of the anticolonial call to arms, "[was] certainly the most powerful and perhaps most destructive factor of our time." [156] It was true that nationalism, despite the attempts of both liberals and Marxists to explain it away as a temporary stage in human development, tapped into a real human need.[157] When the colonized cried for national independence what they demanded was the "recognition of their dignity as human beings"—that is, "they [did] not wish to be reduced to human material, to being counters in a game played by others." But in the context of the cold war, the 'restrained national will' would easily become the 'untrammeled national will,' especially if nationalists unraveled and activated the ultimate insights of the romantics. Included among these insights was the proposition that, if the nation was "to realize its true nature, this entail[ed] the need to remove obstacles in its path." In the spirit of Fichte's philosophy, anticolonial nationalists would refuse any limits on their action, even forcing those who would soon become the new resistors "to yield, if need be by force."[158]Against such an enemy, there was "no overarching criterion or standard in terms of which the various values of… national groups [could] be ordered"—no ability to tell a specific nationalism to submit to a basic moral standard of toleration or respect—"for such a standard would be super-national and not itself immanent… to the national will."[159] The paramount task for mankind, then, would be "the creation of conditions in which national feeling [could] realize itself peacefully"—where national assertion would never arise in the first place. But, if this failed as it probably would, what was required, yet again, was a solution similar to the Leninist jolt— "the prevention of clashes between neighbors, if need by the use of international force."[160]

[156] Berlin, "A Note on Nationalism," in the *Power of Ideas*, 309.
[157] See Berlin, "Nationalism: Past Neglect and Present Power," 421-430.
[158] Berlin, "Nationalism: Past Neglect and Present Power," 433.
[159] Berlin, "Nationalism: Past Neglect and Present Power," 434.
[160] Berlin, "A Note on Nationalism," 310.

What, however, legitimated and distinguished this militant use of international force from the force of nationalist foes? The call to militant action against the Soviet threat had implicit legitimation. Through ideological reeducation, totalitarianism erased human dignity and plurality—erased the free will that granted humans their unique status as diverse beings—and hence a heroic call to militant action was merely a call to restore and defend those powers. There was no danger that militant action, even if it produced violence, would reproduce the unique horror of its enemies. Both its aim and logic were distinct: the protection of foundational human capacities that were ideologically threatened by rationalist totalitarianism. In contrast, the call to militant action against the national threat was a call against groups seeking to restore their human dignity and unique way of life. Of course, Berlin believed that these national movements took their cause too far. They turned resistance into aggression and transformed a defense of human dignity and cultural pluralism into its very erasure. But how would one insure that the militant action of liberal states against such totalitarian groups was not simply a repetition of this very problem? How would one know when militant liberalism went too far and, instead of defending human dignity, morphed into self-assertion, repression, and aggression eliminating those individuals and political movements that expressed human freedom in non-liberal and national terms?

Historical Humanity

The answer, perhaps, was as simple as the one often provided by contemporary militant liberals who have found themselves plagued by such paradoxes: that eliminating those who seek to eliminate others is morally distinct from the initial act of elimination—perhaps, best comparable to self-defense on behalf of another. Such maxims, however, often force individuals into a playing a vicious circular game of chicken and egg—and Berlin, as a serious philosopher, tried to take

such charges, well, rather more seriously than that. Instead, Berlin sought to draw a distinction between the legitimacy of different forms of violence: how the coercion of liberal states was distinct from the eliminative violence of totalitarian ones. Energized by his encounter with nationalism, Berlin attempted to provide a more comprehensive theoretical foundation for liberal internationalism and the militant defense of what was uniquely human. Unlike the initial encounter with Soviet communism, this required a critical interrogation of the foundations of romanticism: to separate out, once and for all, the vices and virtues of the movement and demonstrate that militant liberalism fell on the side of virtue, while nationalist assertion fell on the side of vice. It required, in other words, a broader account that explained why the national movements of the Third World, even if they tapped into the spirit of human dignity, were not the proponents or defenders of humanity.

The appearance of this dilemma led Berlin to shift his focus in analyzing the totalitarian threat. Whereas Berlin recoiled at the Soviet Party for erasing human dignity through ideological reeducation in the immediate postwar period, Berlin now in the late 1950s and onwards recoiled at the totalitarian drive for physically "eliminating" any individual considered irredeemable by the movement. Berlin surely recognized this eliminative aspect in his earlier account when, for example, he argued that a *modus vivendi* was impossible for Marxists who could never compromise with bourgeois forces.[161] Yet in his current attempt to unify both Soviet totalitarianism and nationalism under a common umbrella and because nationalist movements did not perpetuate the original Soviet sin, Berlin needed to make this vice the 'primary' vice of totalitarianism. Only two years after writing "Two Concepts," Berlin therefore completely dropped out of his analysis the previous focus on mechanistic reason or, more broadly, rational self-

[161] Supra note 39.

mastery—not only for his characterization of nationalism but even for Marxism itself. In an essay entitled "European Unity and it Vicissitudes," Berlin argued that the evil of totalitarianism lay solely in its impulse to eliminate individuals and political movements that were imagined as essentially incompatible with its precepts. In doing so, totalitarian groups embraced a radical separatism that denied a basic claim to human commonality or universality—a basic claim to a "universal human language" and hence a "universal human law or authority."[162] Nationalism straightforwardly sought such elimination. It subscribed to "the unique mission of the nation, as being intrinsically superior to the goals or the attributes of whatever is outside it," and hence relied on "war, between nations or individual, [as] the only solution" to assert its will. But even Soviet Marxism—"which, in theory, at least, [was] internationalist" and "founded on reason"—was, in practice, an irrationalist movement denying "that men, as such, have a common nature." Even Marxism—just as Berlin argued in "Political Ideas," but now with greater focus—stemmed from the irrationalist origins of the nineteenth century and hence, through its belief in the material determination of ideas, subscribed to the "division of mankind into two groups."[163]

If elimination and separatism were now the main horrors of totalitarianism, Berlin needed an account of what unified humanity into one. Frustratingly enough, Berlin never articulated the precise content or substance of this "universal human law" and instead thought it enough to point to the obvious historical fact that "something of a new recognition [was developing] in the West that there are certain universal values which can be called constitutive of human beings themselves."[164] This realization was reflected in the postwar creation of the United Nations and its "genuine progress towards an international order, based on recognition that we inhabit one

[162] Berlin, "European Unity and it Vicissitudes," in *The Crooked Timber of Humanity*, 188.
[163] Berlin, "European Unity and it Vicissitudes," 190.
[164] Berlin, "European Unity and it Vicissitudes," 214.

common world."[165] In this light, perhaps Berlin partly sought to refer to the Declaration of Human Rights—often understood as the decisive response to the Nazi crimes of World War II— to provide this trace of universality.[166] Berlin often praised "basic human rights" for serving as "a wall against oppressors,"[167] just as he chastised "the newly liberated Asian or African States" for choosing to "suffer deprivation of elementary human rights" in "authoritarian democracies" of their own making.[168] In the Berlinian spirit, contemporary philosophers have even relied on human rights as a starting point to list out the basic goods that constitute the definitive basket of universal values.[169] If Berlin thus sought to formulate a new liberalism for his present, then the Declaration of Human Rights, a Declaration that was the first of its kind, might have been a good place to start.

Yet there was a more pressing reason to assert the reality of universal values, however vague their substance. In articulating the idea of universality, Berlin sought to qualify his previous thinking about romanticism and human dignity: that, even if human status was defined by the radical freedom and malleability of men, this freedom of the will was not boundless but rather objectively limited to certain inviolable moral limits. After all, Berlin later described the Fichtean lineage of romanticism and the idea of an "untrammeled will" as part of the "most insane elements of this extremely valuable and important movement."[170] In "European Unity," in fact, Berlin took

[165] Berlin, "European Unity and it Vicissitudes," 218.
[166] Samuel Moyn has recently placed into question the idea that the initial Declaration was a direct response to the crimes of the Nazis. See Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010). Yet even if this notion is historically misleading, philosophers and scholars have continued to interpret the birth of human rights and human dignity in these terms. See, e.g., Jürgen Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights," *Metaphilosophy* 41 (2010).
[167] Isaiah Berlin, "Introduction" in *Liberty: Incorporating Four Essay on Liberty*, 38.
[168] Berlin, "Two Concepts of Liberty," 203, 04.
[169] See, e.g. Avishai Margalit, *The Decent Society* (Harvard University Press, 1998) (for a thinker working explicitly in the tradition of Berlin). Also see Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton 1996); Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Belknap Press, 2013).
[170] Berlin, *The Roots of Romanticism,* 136.

the language of insanity quite seriously using it as an exemplary analogy to describe the eliminative features of totalitarianism. As he wrote,

> If we meet someone who merely disagrees with us about the ends of life, who prefers happiness to self-sacrifice, or knowledge to friendship, we accept them as human beings.... But if we meet someone who cannot see why (take a famous example) he should not destroy the world in order to relieve a pain in his little finger, or someone who genuinely sees no harm in condemning innocent men, or betraying friends, or torturing children, then we find that we cannot argue with such people, not so much because we are horrified as because we think them in some way inhuman – we call them moral idiots [and] sometimes confine them in lunatic asylums. They are as much outside the frontiers of humanity as creatures who lack some of the minimum physical characteristics that constitute human beings.[171]

If the concept of human dignity implied a world of plural values, these values, in other words, still needed to be "within the limits of what we regard as being human."[172] Berlin therefore sought to defend a basket of universal values for the same reason he initially defended the human capacity for free choice: because it made humans appear as human. Unlike the original concept of human dignity that solely stemmed from basic freedom, however, these constitutive values were not features that men freely chose to adopt. Rather they were the presumptions of being human at all—objective categories that existed beyond the human will.

This presumption of objectivity, of course, immediately pushed Berlin into accusations of monism and absolutism. Berlin only recently finished arguing that rational totalitarianism stemmed from the classic mistake of the hedgehog who claimed to know the one true path that all rational men must follow in order to realize their better selves. It was this horrific belief that allowed the Soviets to reconstruct individuals in the name of History and that Berlin initially opposed in the name of human freedom and dignity. But now, in seeking to limit national assertion and the romantic will, it appeared as if Berlin was engaging in this very mistake. Through sanctioning international force when nationalist groups overstepped certain moral limits, Berlin

[171] Berlin, "European Unity and it Vicissitudes," 216.
[172] Berlin, "European Unity and it Vicissitudes," 216.

authorized liberal states to use violence, perhaps even invade Third World states, in the name of disciplining nationalist elements and forcing them to respect universal values. Berlin furthermore characterized such totalitarian movements as inhuman and hence the use of force rested on the restoration of something integral to humanity. In doing so, its legitimation mirrored the logic of rational self-mastery where the coercion of a collective authority was justified in the name of achieving a truer freedom for its subjects. Perhaps, as Leo Strauss has argued, "Berlin [thus could not] escape the necessity to which every thinking being is subject: to take a final stand, an absolute stand in accordance with what he regards as the nature of man or as the nature of the human condition or as the decisive truth and hence to assert the absolute validity of his fundamental convictions."[173] Perhaps, nationalism forced Berlin to embrace the rational monism that he once opposed. "Is it just in the nature of things," as Michael Walzer has asked, "that if you manage to slow down the running fox, he turns out, on close inspection, to be one more, slightly unconventional, hedgehog?"[174]

Aware that his critics would level charges of absolutism against him, Berlin tackled such criticisms as misguided. To play a circular game of definition, where the pluralist becomes a monist for simply outlining reasonable preconditions for the existence of pluralism, would require adopting a level of abstraction that Berlin thought unhelpful for an analysis of political ideas.[175] Instead, Berlin argued that his new conception of human dignity—that 'men choose among plural values but *only* within a universal framework'—was neither objective nor subjective but rather

[173] Leo Strauss, "Relativism," in *Relativism and the Study of Man*, eds. H. Schoeck and J.W. Wiggins, et al. (Princeton, 1961).
[174] See Michael Walzer, "Are there Limits to Liberalism?"
[175] Isaiah Berlin and Bernard Williams, "Pluralism and Liberalism: a Reply," *Political Studies* (1994) .

precariously historical. This universal framework, he wrote, reflected those beliefs that "have been accepted by the majority of men during, at any rate, most of recorded history."[176]

While the ascendants of the past, of course, never spoke of such values in terms of this kind of universality, Berlin thought this fact rather unproblematic. If it was not "wholly clear," as John Gray claims, "how the universal content of morality [was] to be known,"[177] it was rather clear that the people of the postwar era were forced into an awareness of its formal existence. "Because these rules were flouted" by totalitarian movements, Berlin argued that humanity was now only "forced to become conscious of them."[178] "The excess of totalitarianism" caused a "sense of horror" and "shock" in its spectators which proved to them that moral limits inevitably existed for human choice; otherwise men in the name of pluralism could simply choose to undo their common humanity.[179] Together, this common awareness amounted to a kind of "sense for reality"—a kind of "common sense" about the persistence of basic moral norms in the face of absurd or insane action. But it was also a historically situated "sense for reality": one that derived not from an abstract "Truth" beyond human experience——not the *a priori* Kantian truth of philosophical monism[180]—but instead from a kind of "truthfulness" to the present condition, as Bernard Williams put it, where humans gained historical awareness of their common capacities and limits and consequently chose to remain "truthful" to this learned experience.[181]

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[176] Berlin, "European Unity and it Vicissitudes," 216.
[177] John Gray, *Isaiah Berlin*, 100.
[178] Berlin, "European Unity and it Vicissitudes," 216.
[179] Berlin, "European Unity and it Vicissitudes," 215.
[180] "Kant supposed these categories to be discoverable a priori. We need not accept this; this was an unwarranted conclusion from the valid perception that there exist central features of our experience that are invariant and omnipresent, or at least much less variable than the vast variety of its empirical characteristics, and for that reason deserve to be distinguished by the name of categories." See Berlin, "Does Political Theory Still Exist?" in *Concepts and Categories* (Princeton University Press, 2013), 165.
[181] "What we understand [in value pluralism] is a truth about human nature as it has been revealed - revealed in the only way in which it could be revealed, historically. The truthfulness that is required is a truthfulness to that historical experience of human nature." See Bernard Williams, "Introduction" in Concepts and Categories, xx.

The Berlinian argument was thus not rationalist in its technical sense, but neither did its historicist thrust seem to avoid the totalitarian danger. It was not clear how the legitimation of international force in the name of historical awareness, instead of objective History, avoided the basic reality that nationalist movements would reject such meddling as infringing on their own independence and dignity. On the contrary, one could even find reverberations between the liberal and nationalist uses of force. Just as 'national consciousness' only turned 'self-consciousness' and militantly asserted itself with the rise of an external threat, "human consciousness" only became 'self-conscious' and militantly asserted itself with the rise of the totalitarian threat. Berlin, of course, asserted that militant liberalism, in contrast to nationalism, defended universal values instead of a particular subjective will. This distinction, however, still begged the question: if these universal values derived from a "common sense," what insured that this "common sense" actually reflected universal human values instead of particular ones? What insured that this supposed universality was not simply a particular point of view?

The ultimate problem with Berlin's historical appeal, as the critics of historicism often note, is that one can turn this methodology on itself: one can claim that the idea of a historically constituted universalism was itself the expression of a particular point of view in a particular historical moment.[182] After all, there is good reason to believe such a thesis when looking at Berlin from our present moment. As Duncan Bell and others scholars of twentieth century liberalism have argued,[183] postwar liberalism differentiated itself from its prewar iterations through capaciously adopting the values that totalitarianism was thought to reject: if totalitarianism infringed into every crevice of society and erased all freedom, liberalism stood for a rights-based society that limited

[182] See, e.g., Leo Strauss, *Natural Right and History* (University of Chicago Press, 1953).
[183] See Duncan Bell, "What Is Liberalism?" *Political Theory* (2014). Also see David Ciepley, *Liberalism in the Shadow of Totalitarianism* (Harvard University Press, 2007).

government interference and insured choice; if totalitarianism parasitically seized upon national movements forcing them into overdrive, liberalism restrained the nationalist spirit and disciplined it excesses; most importantly, if totalitarianism was despotically uniform and erased all difference, liberalism respected individual and cultural pluralism—it respected, in other words, value-pluralism. Leaving aside the judicial commitment to value neutrality that would soon become an obsession of deliberative democrats,[184] the Berlinian political corpus has so jarringly captured these various anti-totalitarian strands of liberalism that, when academic scholars debate whether there is tension between Berlin's liberalism and his pluralism,[185] they miss the broader historical point that the notion of 'value pluralism within universal limits' was part of the rise of this new anti-totalitarian liberalism.[186] "Berlin's robust common sense," as William Galston therefore argues, "drew him back from the ultimate implications of the romantic world view but at considerable cost to the coherence of his own."[187] This cost was the inability to distinguish his so-called universal position from mere particularism, thus marching the notion of "universal values" into the purview, even if not the dustbin, of history.

"A Revolutionary without Fanaticism"

Of course, this failure did not imply that what Berlin needed was a 'truly' universal account that could finally ground universal values and legitimize international force. This would, after all,

[184] See, e.g., John Rawls, *Political Liberalism* (Columbia, 1993).
[185] Compare, e.g., John Gray, who argues that there is no inherent connection between liberalism and pluralism, and George Crowder, who argues that there is this inherent connection. See John Gray, *Isaiah Berlin: An Interpretation of His Thought*; George Crowder, *Isaiah Berlin: Liberty and Pluralism.*
[186] Compare, for example, Walzer's claim about the strange status of value pluralism in light of the fact that the commitment to value pluralism seems to only ever find comfort among liberals: "I don't know anyone who believes in value pluralism who isn't a liberal, [if not in doctrine, at least] in sensibility as well as conviction." See Michael Walzer, "Are there Limits to Liberalism?".
[187] William A. Galston, "Ambivalent Fascination – Isaiah Berlin and Political Romanticism" in *Political Ideas in the Romantic Age*, xix.

send Berlin straight back into a revolving door of accusations leading from absolutism to relativism and back to absolutism once again. Perhaps, then, a proper account of universal values could not exist and thus neither could an account that sought to provide universal legitimation for acts of violence. Interestingly enough, Berlin often recognized this fact throughout his writings: he recognized that every action, not simply acts of violence, were plagued by a legitimation deficit and thus inherently involved some moral risk. This recognition, furthermore, provided a novel and distinct solution to the question of distinguishing, even if not simply legitimizing, militant liberalism. If liberal violence was not distinct from totalitarian violence for respecting the limits of universal values, perhaps liberal violence was distinct from totalitarian violence for their differing ethical characters. Perhaps, Berlin argued, militant liberals would recognize the moral risk of their actions, while totalitarians would simply obliterate this dilemma.

The conclusion of "Two Concepts of Liberty," in this regard, comprehensively laid out such a thesis. While famously ending his essay by promoting a respect for "pluralism [and] the good measure of negative liberty that it entail[ed]," Berlin also took the chance to preempt his critics who saw this proposal as merely reflecting a particular point of view— as merely reflecting, as Berlin put it, "the late fruit of our declining capitalist civilization."[188] In response to this complaint, Berlin did not ground the value of free choice and pluralism in a set of historically constituted universal values (as he later would in "European Unity"). Instead, he embraced the charges of his critics and turned them into an asset. "Indeed," Berlin argued, "the very desire for guarantees that our values are eternal and secure in some objective heaven is perhaps only a craving for the certainties of childhood or the absolute values of our primitive past."[189] The discovery of the romantic ideal of human freedom, after all, meant that any action or choice could be traced

[188] Berlin, "Two Concepts of Liberty," 216, 217.
[189] Berlin, "Two Concepts of Liberty," 217.

back to the human will. In contrast to the "moral and political immaturity" of those demanding objectivity, the mature actor recognized that one needed to "choose ends without claiming validity for them."[190] The mature actor recognized, as Berlin quoted Joseph Schumpeter, that "to realize the relative validity of one's convictions and yet stand for them unflinchingly [was] what distinguishe[d] a civilized man from a barbarian."[191]

Scholars and contemporaries of Berlin have often asked a straightforward question about these powerful yet mysterious words: if one's convictions are merely relative, why stand for them unflinchingly?[192] The answer, as Bernard Williams has argued, returns us right back to the idea of 'truthfulness. Since there are no objective reasons to stand for one's values, it should suffice to say that, when one does, he is simply remaining "truthful" to his own "historical experience."[193] Less often asked, however, is the exact reverse question: when standing for one's values unflinchingly, what difference does it make to recognize these convictions as relative? This question, even if rarely asked about Berlin, has often been posed to other philosophical thinkers. It has been asked of Kant's emphasis on the internal state of the moral actor as well as Weber's demand that the statesman take responsibility for his actions.[194] Together this concern always amount to a question about the value of focusing on the internal ethical state or orientation of the actor. After all, if two actors, with two distinct internal states of mind, act with similar results, what benefit, if at all, does one's internal state of mind provide?

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[190] Berlin, "Two Concepts of Liberty," 217.
[191] Berlin, "Two Concepts of Liberty," 217. See original, Joseph Schumpeter, *Capitalism, Socialism and Democracy* (London, 1943), 243.
[192] Aileen Kelly, "A Revolutionary without Fanaticism" in *The Legacy of Isaiah Berlin* eds. Ronald Dworkin, Mark Lila, and Robert Silvers (New York Review Books, 2001), 21.
[193] See Bernard Williams, "Introduction" in *Concepts and Categories*, xx.
[194] John McCormick, for example, has explained how both Carl Schmitt and Antonio Gramsci were skeptical of Weber's "Politics of Responsibility" for its failure to have any material effect on human action. See John McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge, 1997).

Berlin was, however, concerned about consequences, and he therefore argued that the internal ethical orientation of an actor had concrete effects on the results of his actions. If totalitarians committed extreme acts of violence in the name of either their objective (Marxist) or radically subjective (nationalist) ideals, perhaps doubting the legitimacy and stability of these ideals would no longer allow one to commit such horrific violence. At the heart of this argument was, again, a 'sense for reality'—or as Thomas Nagel puts is, "a kind of moral empiricism." This empiricism led Berlin to put faith in the "basic moral instincts" of men "about the unacceptability of cruelty and of the sacrifice of an innocent individual for a larger good." At the same time, it also led him to argue that "monist ideologies," and even radically subjective ideologies, "tend[ed] to provide too much leverage for overriding those immediate moral instincts."[195] While the dogmatic actor who did not doubt his convictions might therefore commit "holocausts for the sake of distant goals," the skeptical actor who did doubt his convictions would become aware that, when it came to violence, there was only "one thing" that one could be sure of: "the reality of the sacrifice, the dying and the dead."[196]

The difference between these two perspectives, Berlin ultimately argued, amounted to the difference between two intellectual guerilla warriors from the nineteenth century who initially had much to share. On one side, there was the national-Marxist hero, Georges Sorel, and on the other side, there was the liberal Russian hero, Alexander Herzen. Both of these nineteenth century theorists rejected the abstract and rationalist philosophies of the Marxists that preceded them. Sorel was a theorist of human creativity who revolted against the supposed determinism of History and who validated the spontaneous capacities of the free human will, while Herzen was a theorist of skeptical liberal roots who attacked left-wing doctrines professing collective sacrifice and who

[195] Thomas Nagel, "Discussion: Hedgehogs and Foxes" in *The Legacy of Isaiah Berlin*, 65, 66.
[196] Berlin "The Pursuit of the Ideal" in the *Crooked Timber of Humanity*, 17.

rejected philosophical monism for its assault on human individuality. Both were also revolutionaries who hardly adopted pacifist means. Sorel argued that "the weapon of the worker" should be "violence,"[197] while Herzen dedicated his life to "serv[ing] one idea, march[ing] under one banner – war against all imposed authority," a "little guerilla war" which entailed violence in the most literal sense.[198] But that both thinkers embraced violent tactics, Berlin argued, did not mean that they both had the same ethical orientation: while Sorel was a 'dogmatic revolutionary,' Herzen was a 'revolutionary without fanaticism.'

One the one hand, Sorel embraced violence to fight "the entire abominable world of calculation, profit and loss," although he did so without interrogating its effects. To achieve this elision, Sorel made a formal distinction between, what he called, "violence" and "force." While "force consist[ed] in control and repression by means and institutions which… promot[ed] the power of the possessing class," Sorel believed that "violence" was simply "the striking off of chains"—"not aggression, but resistance."[199] This, however, was an intellectual move that Berlin could not embrace. "How the use of violence [could] in practice be distinguished from the use of force," Berlin argued, "[was] never made clear." What, after all, was "violence"? "[Did] it mean occupation of factories, seizing of power, physical clash with police or other agents of the possessing class, the shedding of blood?"[200] Of course, Sorel realized that "to resist force by force was likely to result, as in the case of Jacobin revolution, in the replacing of one yoke by another, the substitution of new masters for old."[201] But instead of embracing this problem as constitutive of revolution, Sorel set up categorical distinctions that completely erased and defined the problem

[197] Berlin, "Georges Sorel," in *Against the Current*, 405.
[198] Berlin, "Herzen and Bakunin on Individual Liberty," in *Russian Thinkers*, 93.
[199] Berlin also put this quite simply: "Force imposes chains, violence breaks them; force, open or concealed, enslaves, violence, always open, makes free." Berlin, "Georges Sorel," 407.
[200] Berlin, "Georges Sorel," 407.
[201] Berlin, "Georges Sorel," 405.

out of existence. Sorel was part of a class of "dogmatic revolutionaries" who would "easily become oppressive tyrants" and who in contemporary terms included Thirdworldist nationalists like "Fanon and the Black Panthers."[202]

On the other hand, Herzen embraced violence to fight monarchical authority, although he did so without legitimating his actions in terms of a fanatical goal and without erasing the dilemmas accompanying its effects. In making war against all authority, Herzen resisted finding an authority to legitimate his war because he understood that violent acts could never find justification beyond the direct consequences of the acts themselves. Herzen proved, as Berlin argued towards the ends of his life, that "revolutions, wars, assassinations, extreme measures [would] in desperate situations be required," but even when necessary, there was "no guarantee, not even, at times, a high enough probability, that such acts [would] lead to improvement" and, on the contrary, "*certainty* about the effect of such measures invariably [led] to avoidable suffering of the innocent."[203] What ultimately made Herzen an exemplary liberal figure was that he was "a revolutionary without fanaticism, a man ready for violent change, never in the name of abstract principles, but only of actual misery and injustice, of concrete conditions so bad that men were morally not permitted—and knew that they were not permitted—to let them exist."[204] If men

[202] Berlin, "Georges Sorel," 406. Berlin argued that "Fanon and the Black Panthers," like Sorel, "believed that the insulted and the oppressed [could] find themselves and acquire self-identity and human dignity in acts of revolutionary violence." Berlin, "Georges Sorel," 417.
[203] Berlin, "The Pursuit of the Ideal," 18.
[204] Berlin, "A Revolutionary without Fanaticism," in *The Power of Ideas*, 12. Compare also Berlin's comments about Herzen's influence on Russian Populism and consequently Russian Populism's perspective on violence. ("*Russian populism*, whether sentimental or realistic, owes more to the ungrounded optimism with which Herzen comforted himself that to any other original source." Berlin, "A Revolutionary without Fanaticism," 19.) ("If violence was the only means to a given end, then there might be circumstances in which it was right to employ it; but this must be justified in each case by the intrinsic moral claim of the end—an increase in happiness, or solidarity, or justice, or peace, or some other universal human value that outweighs the evil of the means—never by the view that it was rational or necessary to march in step with history, ignoring one's scruples and dismissing one's own "subjective" moral principles… on the ground that history herself transformed all moral systems and retrospectively justified only those principles which survived and succeeded." See Berlin, "Russian Populism" in *Russian Thinkers*, 231).

decided to "take the risk of drastic action," they needed to temper such action with "common sense" about the likelihood of success and the dangers of their risks. One might even distill this wisdom in terms of one simple maxim: that, unlike dogmatic ideologues, liberal revolutionaries needed to conform to "the first public obligation": "to avoid extremes of suffering."[205]

Did this maxim, however, indeed limit violence and differentiate liberal violence from its totalitarian enemy? For one, there was the obvious problem of what was meant by suffering. The world was full of suffering, perhaps overloaded with suffering, and it would be difficult to organize the universe of suffering into an approachable hierarchy—nonetheless to derive from a maxim about "suffering" a guide about when violent action exceeded its costs and entailed too much suffering for the benefits. Furthermore, even if this maxim was merely an appeal to common sense and hence this concern about rational ordering was in some sense misguided, what did this maxim add beyond what the actor already intuitively knew? The maxim was meant to guide action in some way, so how exactly did it?

While his theory assumed that Herzian liberals achieved better consequences, these ambiguities showed that what Berlin was, in fact, doing with his theory was anything but ensuring such results. As a theorist and intellectual distant from the battlefield, Berlin categorized and distinguished different ideal types of violence; he served as a philosophical outsider peering at the actions of liberal militants and purifying their violence on the altar of realism and intentionality. How any of this spoke to the victims of violence, for example, was never interrogated. Why a victim would have preferred non-revolutionary violence to revolutionary violence—why such a victim would have cared that liberal violence, over all, achieved better consequences—was never broached. To the question how Berlin's maxim guided action, one could perhaps answer that it did

[205] Berlin, "The Pursuit of the Ideal," 18.

not guide action at all. Instead, it served the role, however unwittingly, of moralizing liberal violence as ethically superior to its illiberal enemies. The desire to avoid any legitimation was itself the legitimation.

Militant Liberalism in the War on Terror

Shortly after the fall of the Soviet Union, a number of political commentators mentioned that Berlin's peculiar brand of liberalism was the only ideology to survive the end of the cold war. In response, Berlin expressed utter perplexity.[206] In one sense, Berlin was certainly correct for his confusion: if we focus on the peculiar nuances of his account and its subversive implications for rejecting any final or neutral reconciliation of conflicting values, Berlin's political thought is as theoretically distant from the spirit of Rawlsian political philosophy, or the professed value neutrality of the American Supreme Court, as it is from the Marxist monist who was his initial target. But one can also read Berlin differently, perhaps as Berlin read political philosophers himself. One can read Berlin as a thinker who expressed the "center of gravity"[207] of his political culture which, even as this center remained internally pluralistic and variegated, defined the bounds of political possibility for liberal ideology itself. Perhaps, the contemporary and obsessive libertarian focus on negative liberty is not how Berlin understood negative liberty, nor is the dominant model of pluralist interest politics how Berlin spoke of pluralism. But the general terminology that he used as well as the gaps and inconsistencies that plagued his thought still help identify some of the major trends and dilemmas that defined his era. One such dilemma concerned how liberals were meant to respond to the rise of totalitarianism, whether communist or nationalist. If analyzing Berlin's interpretation of this problem is important at all, it should be because the

[206] Ignatieff, *Isaiah Berlin: A Life*, 277.
[207] Berlin, *The Roots of Romanticism,* 73.

patterns of argumentation and justifications of liberal militancy in the face of these threats still bear on the present.

Berlin passed away in 1997, and he never had a chance to comment on the situation that would soon plague the post-9/11 world. But shortly before his death, Berlin left a hopeful message for the 21st century: that "liberal democracy, despite everything, despite the greatest modern scourge of fanatical, fundamentalist nationalism, [was] spreading."[208] Of course, Third World nationalism, as a broad-based movement, had dissipated by this point under the weight of numerous stresses. But when mentioning fundamentalist nationalism, Berlin was probably referring to its dangerous spirit—the spirit of romantic totalitarianism, as he unpacked it many years before, that lay in its impulse to eliminate individuals and political movements that it imagined as essentially incompatible with its precepts.

In this regard, Berlin did not only express hope, but also two last odes to militancy against the rogue states and terroristic forces arsing in the post-communist period. First, after the initiation of the Gulf War, Berlin wrote a letter to his friend Arthur Schlesinger reiterating the importance of taking militant action against the Hussein regime and its romantic-style aggression. As Berlin wrote,

> As for the [so-called] dumb [Iraq] war, I must put my cards on the table – I am a hawk… Why am I a hawk? You may suspect pro-Israeli feelings. No doubt these may play a part, but I am prepared to defend myself on a higher ground. I believe that every aggressive dictator who shows savagery and is therefore an obvious menace to decent people can, if he begins to be a threat beyond his frontiers, be stopped, if need be by force.[209]

Second, Berlin wrote a letter to his friend Adam Garfinkle, the founding editor of the *American Interest*, expressing his "feeling" that "at present militant Islam [was] the greatest danger to free,

[208] Isaiah Berlin, "A Message to the 21st Century," *The New York Review of Books*, October 23, 2014, http://www.nybooks.com/articles/2014/10/23/message-21st-century/.
[209] Isaiah Berlin, *Affirming: Letters 1975-1997*, Reprint edition (Vintage Digital, 2017), 404.

democratic societies to be found anywhere." This "feeling" developed in response to an article that Garfinkle sent to Berlin—an article which sought to draw connections between Western-style liberal democracy and Islamic traditions, showing that the often-assumed gap between the two was not as great as it seemed.[210] "Of this attempt to throw bridges" and draw connections between Western and Islamic democratic values, Berlin wrote that it was "no doubt commendable." But more importantly, Berlin argued that "it seem[ed] to [him] to bear no relation to the existing situation in Islamic countries."[211] Of course, Berlin did not call for a global war on terror against Islam; after all, his newfound hope might have led him to believe that such a war was unnecessary. But Berlin did claim that Islam was a political force, like previous forces, with whom dialogue was irrelevant. Perhaps, then, the persistence of this theoretical architecture proved once and for all that Berlin did not simply formulate a theory of moral constraint but also an all-encompassing ideological vision that captured the center of gravity of postwar liberalism—one that justified its militancy as morally superior to the violence of its enemies and that provided justifications for the long-needed overthrow of the Iraqi regime and an intensification of the war on terror.[212]

[210] See John O. Voll and John L. Esposito, "Islam's Democratic Essence," *Middle East Quarterly*, September 1, 1994, http://www.meforum.org/151/islams-democratic-essence.
[211] Berlin, *Affirming: Letters 1975-1997*, Reprint edition (Vintage Digital, 2017), XX.
[212] See, e.g., Charlie Rose, *Debate on Iraq with Michael Ignatieff and Jonathan Schell*, https://charlierose.com/videos/15471.

CHAPTER 2

FROM ENDING WAR TO ENDLESS WAR: LOUIS HENKIN AND THE INTERPRETIVE MODIFICATION OF THE *JUS AD BELLUM*

"Peace will serve justice better than justice will serve peace."
—Judge Charles de Visscher

The UN Ban on Force: Faith or Failure?

"Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time," wrote Louis Henkin in 1968.[1] No doubt, this now (in)famous statement attests to the general idea that international law, as the title of Henkin's work put it, structures "How Nations Behave."[2] But when first imagining these words, Henkin also had a more primary thesis in mind. Despite the claims of detractors to the contrary, Henkin defended the idea that the United Nations, and its sacred attempt to rid the world of "the scourge of war," was indeed succeeding.[3] Henkin combatted realists, like George Kennan, who derided a "legalistic-moralistic approach to international problems."[4] He would also engage colleagues, like Thomas Franck, who claimed that the wars since World War II had marked the death of Article 2(4) and its ban on "the threat or use of force."[5] Against those who asserted that what mattered was not law but politics and policy—that the Korean War, the Soviet invasion of Hungary and Czechoslovakia, the US military actions against Cuba, the Dominican Republic, and Vietnam had all but repudiated the

[1] Louis Henkin, *How Nations Behave*, 1st edition (New York: Columbia University Press, 1968), 42.
[2] Henkin wrote this statement to refer to all kinds of non-exceptional compliance with international law that we normally take for granted. In focusing on dimensions of warfare, I do not mean to dispute this common interpretation of Henkin.
[3] Henkin, *How Nations Behave*, 1st edition, 131.
[4] Henkin, *How Nations Behave*, 1st edition, 5.
[5] *Compare* Thomas M. Franck, "Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States," *The American Journal of International Law* 64, no. 5 (1970) *and* Louis Henkin, "The Reports of the Death of Article 2(4) Are Greatly Exaggerated," *The American Journal of International Law* 65, 3 (1971). Article 2(4) reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." See UN Charter, Article 2(4), *available a*t http://www.un.org/en/sections/un-charter/chapter-i

peaceful intentions of the postwar consensus—Henkin argued that the United Nations was as strong as ever. No nation on earth had expressed that international law was merely "voluntary," and although there were occasional transgressions, international law deterred such actions and provided legal consequences.[6] These assertions were, of course, all the more radical as the Cold War and its violent consequences were proliferating across the globe. But this dire context only led Henkin to more tenaciously stick to his guns. "The technological revolution of the nuclear age; the ideological struggle that divided the world in the Cold War; the 'explosion' which in two decades virtually ended traditional colonialism": Henkin admitted that "in different ways, international law was [surely] threatened by all three [of these] major phenomena." But "none of these threats," he further asserted, "ha[d] materialized."[7]

There were, of course, numerous US international lawyers of equal stature to Louis Henkin, and just because he made aspirational moral arguments with a self-professed sense of realism, this did mean that his arguments were always authoritative or even correct. But Henkin did, perhaps, capture the most hopeful dimensions of the liberal internationalism that was being formulated and refined in the early years of his legal career and onwards. The formation of his political perspective was, no doubt, shaped by his early experiences in Sicily, Germany, France and Italy in 1941 after being drafted into the US Army to fight in World War II.[8] Of these moments, Henkin wrote to his mentor, the famous Judge Leonard Hand whom he clerked for only few years earlier, that the savageries of war were so infectious that even the US liberators fighting German aggression had a negative effect on those they were meant to liberate.[9] As he wrote,

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[6] Henkin, *How Nations Behave*, 1st edition, 85.
[7] Henkin, *How Nations Behave*, 1st edition, 95-6.
[8] William Grimes, "Louis Henkin, Leader in Field of Human Rights Law, Dies at 92," *The New York Times*, October 16, 2010, sec. U.S., https://www.nytimes.com/2010/10/17/us/17henkin.html.
[9] Clyde Haberman, "Remembering Louis Henkin, Human Rights Pioneer," *The New York Times*, October 18, 2010, sec. N.Y. / Region, https://www.nytimes.com/2010/10/19/nyregion/19nyc.html.

> I should know better by now than to make friendships that must be severed, yet everywhere I allow myself to become attached to people, everywhere parting becomes "all we need of hell." There's a young doctor here, an intelligent man, who's taken my hand and led me into the village bloodstream. There I found great sadness, because this particular place had the enemy too much and too long with them—and now I might say the same for us. There's not a family that hasn't lost a member to a shell, or to kidnaping by the enemy; their homes are destroyed, the economy does not exist. They stand in fear before the smallest and meanest of allied soldiers, must succumb to indignities brought on by poverty and fear of us. Ordinary suffering of unknown nature to anonymous human beings weighs on us like a dull inexplicable weight. But these people are known and alive to me, and I stand helplessly by while they struggle with starvation, with the latest AmGot [Allied Military Government for Occupied Territories] bungle, with an atrocity by some allied soldier, all items that point accusingly at my comparative ease and wealth and freedom from fear.[10]

With experiences like these, it should be no surprise that, after the end of the war, Henkin embarked on a legal career dedicated to protecting some of the most vulnerable peoples from the fears and results of arbitrary violence. After clerking for Justice Felix Frankfurter of the Supreme Court, Henkin joined the US State Department where he both served as a primary negotiator for the 1951 Geneva Convention on the Status of Refugees and as a member of the U.S. delegation to the 1954 Geneva Conference on Korea.[11] Beyond his initial public service, Henkin would also make a mark on civil society, government, and the law that operated at the high level of political ideas. Henkin was one of the first scholars to make human rights a core of his research agenda, even helping found Human Right First in 1978.[12] It is for this reason that Elisa Massimino, Human Rights First's president and chief executive officer at the time of Henkin's death, claimed that "it [was] no exaggeration to say that no American was more instrumental in the development of human rights law than Lou."[13] Indeed, one could even say that there was no legal scholar more influential for developing the legal bounds of liberal internationalism than Henkin, who wrote the Restatement on *Foreign Relations Law* which "according to Justice Ruth Bader Ginsburg in a

[10] Lori Fisler Damrosch, "Louis Henkin (1917-2010)," *The American Journal of International Law* 105, no. 2 (2011), 288.
[11] Grimes, "Louis Henkin, Leader in Field of Human Rights Law, Dies at 92."
[12] Grimes, "Louis Henkin, Leader in Field of Human Rights Law, Dies at 92."
[13] Grimes, "Louis Henkin, Leader in Field of Human Rights Law, Dies at 92."

tribute to Henkin in 2007… [was to be] cited by the U.S. Supreme Court in 18 opinions and by the courts of appeals in more than 250."[14]

But despite a brilliant career as liberal practitioner and scholar, there was still a subterranean thread of skepticism that caused Henkin to doubt whether the high aspirations of liberal legality, and especially its goal of banishing the scourge of war, were quite as realistic as he first imagined. Almost twelve years after initially publishing *How Nations Behave* in 1979, Henkin edited and republished his famous work and the tone of his argument slightly shifted.[15] He still asserted that nations mostly kept international law, but he also revised his work to account for "the competing agendas for new law" that were shaking up the status quo.[16] Out of the Cold War and colonial battles of the nuclear age, Henkin argued, arose the powerful international bloc of the Third World. The Third World politicized the United Nations both seeking to reconstruct international law in its provincial image and attempting to subvert its development around minimal universal interests of order and stability. Henkin was particularly concerned with how "the effort to control hijacking and other forms of terrorism by international agreements was seriously weakened by the refusal of some states to adhere to them."[17] While the Third World "often suspect[ed] terrorism," it also "support[ed] it for some purposes" and certainly would "not cooperate to suppress it," often allowing it to breed behind the protections of state sovereignty.[18] The true danger of this obstruction would only reveal itself when the United States aggressively reacted to terrorism with negative implications for the UN regime. Reagan's response to Libyan 'state-sponsored terrorism,' Bush's response to so-called Panamanian 'narcoterrorism,' and then

[14] Damrosch, "Louis Henkin (1917-2010)," 298.
[15] Louis Henkin, *How Nations Behave*, 2nd edition (New York: Columbia University Press, 1979).
[16] Henkin, *How Nations Behave*, 2nd edition, vii.
[17] Henkin, *How Nations Behave*, 2nd edition, xiv.
[18] Louis Henkin, *How Nations Behave*, 2nd edition, 191.

Bush II's general war on terror: Henkin increasingly worried that these actors radically assaulted Article 2(4) and the *jus ad bellum* more generally (i.e. the laws about the resort to force).[19] While deriding the unilateral actions of the United States and categorically opposing each unilateral act of war, Henkin would soon admit that his previous faith in the UN legal regime was no longer as resilient as before. "International law and… notably the United Nations," Henkin wrote in 2004, "are not perfect, perhaps not even adequate" to address the newest scourge of war, the "scourge of terrorism."[20]

How should one make sense of Henkin's evolution in thinking? Why did Henkin believe that serious threats, such as the Cold War and nuclear proliferation, did little to unravel the UN Charter and the *jus ad bellum* regime, while international terrorism stemming from the Third World, and the US response to it, threatened it at its core? This chapter engages with these questions, and in doing so, makes an argument about the importance of Henkin's evolution for understanding the historical development of militant liberalism from the cold war through the rise of the Thirdworldism and then onwards to the age of international terror. This chapter argues that the true novelty of the war on terror is not that its proponents have repudiated the liberal international order and its ban on aggression, but on the contrary, that they have modified the traditional meaning of the *jus ad bellum* to code their political goals in liberal legal terminology providing appeals to militant action with the sanction of the law. Indeed, it is only through appreciating the rise of the Third World as a powerful political force that one can explain how the best of liberals, like Louis Henkin, began to question whether traditional international law about the use of force should continue to remain authoritative. The story of Henkin's evolution therefore

[19] The *jus ad bellum* traditionally refers to the laws of the resort to force, while the *jus in bello* refers to those laws which limit conduct during battle.
[20] See Louis Henkin, "War and Terrorism: Law or Metaphor," *Santa Clara Law Review* 45 (2005), 817.

tracks a shift within the *jus ad bellum* regime itself—one where the promises and hopes that could be attached to the UN ban on force would become increasingly precarious as US internationalists modified the *jus ad bellum* to permit an endless war without determinant constraints.

The story of Henkin's evolution travels across two periods of his intellectual development. In his earlier work, Henkin defended Article 2(4) against liberal internationalists who mourned the failure of the United Nations to transcend national conflicts in the postwar period. Despite the failure of its institutional mechanisms, Henkin argued that the ban on force successfully gained the force of law. This argument, however, only remained credible because Henkin defined away problematic instances of Cold War military intervention as outside the scope of Article 2(4). Whether the authority of Article 2(4) was temporarily built on the possibility of the Cold War powers meeting their interests through interventionist war or whether it instituted a trend towards increasing legalization therefore remained quite ambiguous. In his later writings, however, Henkin expressed doubt about the existence of such a trend. Henkin noticed how the rising power of the Third World bloc introduced international terrorism into the global realm while simultaneously subverting the law that could adequately deal with it. The International Court of Justice (ICJ) eventually tapped into Thirdworldist ideals of state sovereignty and non-intervention and expanded the scope of Article 2(4) to ban interventionist warfare causing Henkin to become quite concerned that the rising danger of international terrorism, partly attributable to these ideals, would threaten the authority of the *jus ad bellum* regime. More particularly, Henkin worried that the United States would respond to international terrorism through interpretively modifying key *jus ad bellum* concepts (including 'self-defense' and 'armed attack'), while further developing new legal concepts (such as 'unwilling and unable'), to pursue its military goals without repudiating liberal ideals of legality and internationalism. While continuing to explicitly defend the "law of the

Charter" and deriding unliteral military force by the United States, Henkin eventually displayed sympathy for the idea that interpretive modification might be the only reasonable path for addressing terrorist threats in a deeply politicized context.

This paper proceeds as follows. The first two sections reconstruct these two stages of Henkin's evolution in thinking, while the last section concludes by drawing out the deeper implications of this story. A brief note about these implications is necessary to avoid any confusion about the goals of the chapter. Although reconstructing the arguments in favor of interpretive modification somewhat sympathetically, the point of my reading is not to normatively support this process or strategy. Instead, I seek to clarify the context and conditions that allowed this strategy to achieve persuasiveness, especially to someone like Henkin who defended a strict interpretation of Article 2(4). This paper therefore concludes by repudiating a common picture of the war on terror which asserts that the Bush moment was a novel break with American practice, while further rejecting the idea that technical legal arguments are enough to adequately restrain the international use of force. The history of Henkin's evolution stresses the need to engage with the political context that motivates interpretive modification in the first place. Without such engagement, the law becomes a fluid instrument that cannot constrain violence, transforming from a vehicle of ending war to one that permits an endless one.

Defending the UN Charter: The Realist Internationalism of Louis Henkin

If the creation of the United Nations instilled a radical faith and hope during the immediate postwar period, Louis Henkin soon expressed a restrained, although significant, defense of these sentiments in the years following its founding. In 1963, Henkin published an article entitled "The United Nations and its Supporters: A Self-Examination" which attempted to redeem the UN order

not only from its critics but also from its most ardent proponents.[21] To be sure, Henkin spoke about "the two different faces of the United Nations—the UN institutions and the law of the Charter."[22] It was primarily the latter feature, and particularly the Charter's prohibition on unilateral force, that Henkin sought to endorse. Of course, these two faces were somewhat interconnected. The UN Security Council supposedly served as the enforcement mechanism of Article 2(4). In addition, the UN deliberative forums were broader spaces where "Big power cooperation" and multilateral consensus could develop, initiating a substantive conception of world peace based on the "affirmative… requirement that members 'settle their international disputes by peaceful means.'"[23] Indeed, the "foes" of the United Nations quickly pointed to "the Cold War and world tension, to the spread of communism, to more or less patent international hostilities, and conclude[d] that the United Nations ha[d] failed."[24] But Henkin maintained that these critiques were misguided, and that the prohibition on the "use of force" could and should be distinguished from the supposed institutional failures of the United Nations. Of the former, Henkin not only asserted that it was succeeding, but that the outbursts of interventionist warfare did not even repudiate this achievement.

To tackle the arguments of his "foes," Henkin moved beyond what he argued was the unhelpful "domestic" opposition between liberals and conservatives and instead engaged with the more relevant international distinction between internationalists and unilateralists, idealists and realists.[25] While the latter group often seized upon the Cold War to assert that international law did not matter, it was the former group who received the major brunt of Henkin's criticism. The

[21] Louis Henkin, "The United Nations and Its Supporters: A Self-Examination," *Political Science Quarterly* 78, 4 (1963).
[22] Henkin, "The United Nations and Its Supporters: A Self-Examination," 524.
[23] Henkin, "The United Nations and Its Supporters: A Self-Examination," 507, 517. Also see, See UN Charter, Article 2(3), *available a*t http://www.un.org/en/sections/un-charter/chapter-vii/index.html.
[24] Henkin, "The United Nations and Its Supporters: A Self-Examination," 513.
[25] Henkin, "The United Nations and Its Supporters: A Self-Examination," 504.

internationalists, Henkin wrote, had become disenchanted with the United Nations because the organization had supposedly failed to live up to its "original dream." Internationalists were united by several beliefs: "to transform political questions into legal ones, to achieve additional accepted norms, and perhaps impartial adjudication," to support "the independence of nations, stability with peaceful change, foreign aid, and intelligent trade patterns."[26] Internationalists also believed that "the epitome, and [the] principle focus," of realizing these goals would be found in bolstering the United Nations. "With the birth of this institution," they claimed, "would come the end of national power and its politics."[27] Henkin, however, took issue with this last assertion. The failure of the United Nations to overcome national politics was not a problem with the institution itself. It was rather a problem with the imagination of its proponents—with those who "idealize[d] the United Nations as though it were an article of faith, instead of an essentially political institution."[28]

By claiming the UN as a political institution, Henkin did not mean to assert a strict delineation between politics and law.[29] Instead, he sought to persuade internationalists that, while "the law [was] essential, and the institution's primary purpose [was] to enforce that law," the institution was better thought of as "a political body" than either "a court of law invoked by an agency dedicated to law enforcement" or "a judicial body before which two or more parties may seek an impartial decision in the light of accepted norms or principles."[30] The United Nations was "an instrument of international politics and diplomacy," and as such, it was built upon the

[26] Henkin, "The United Nations and Its Supporters: A Self-Examination," 504.
[27] Henkin, "The United Nations and Its Supporters: A Self-Examination," 511.
[28] Henkin, "The United Nations and Its Supporters: A Self-Examination," 507.
[29] "When the Assembly seeks to maintain international peace and security, moreover, its recommendations are in support of legal obligations in the Charter and deserve and command the highest compliance and support. Nor do I insist that legal obligations are very different from political incentives. In international affairs, in particular, the violation of legal obligations may be more offensive to morality, but its consequences are also largely 'political'." See Henkin, "The United Nations and Its Supporters: A Self-Examination," 520.
[30] Henkin, "The United Nations and Its Supporters: A Self-Examination," 515.

sovereign state and the national interest.[31] The realist mistake was to assume that national interests were incompatible with wider interests in upholding institutions that could allowed states to better communicate and coordinate their activities.[32] But the internationalist mistake repeated the same error in reverse: because states still engaged in national conflict outside the bounds of the United Nations, internationalists imagined that this institution had not acquired an authoritative force at all.[33] In seeking to understand the original purpose of the United Nations as transcending the national unit, internationalists ceded ground to realists who then seized the mantle of the national interest and asserted that international law was irrelevant. The truth, however, was that there could be a realist internationalism—one that appreciated the political power of national units while further recognizing how this power could be wielded to support the integrity of international law.

The link between the national interest and international law would become a major theme of Henkin's writing, and through refining his theoretical ideas about this relationship, Henkin would become better posed to defend "the law of the Charter." This theoretical refinement would come in 1967 with the first edition of *How Nations Behave*.[34] Henkin forcefully recalled his disagreements with those critics who based "the failure of the original conception of the United Nations" on the fact that it had "not established an effective international police system" or "developed and maintained machinery for peaceful settlement of disputes."[35] But the "draftsmen

[31] "Little is as universally accepted in the international arena as notions of sovereign equality, territorial integrity, and independence," wrote Henkin. "Even "international communism" has not eliminated national boundaries and conceptions." See Henkin, "The United Nations and Its Supporters: A Self-Examination," 508.
[32] In this sense, Henkin anticipated the arguments of liberal institutionalists by many decades. Liberal institutionalists have engage with the realist paradigm of the national interest arguing that such interests can be harnessed towards cooperative activity that exceed the dictates of mere power politics. See, e.g., Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984).
[33] Some internationalists, for example, saw the creation of NATO as proving the persistence of realist rivalries outside the UN's authority. See Henkin, "The United Nations and Its Supporters: A Self-Examination," 512.
[34] The following quotes remain untouched in the revised second edition. I quote solely from the second edition, although this section focuses on the writings the preceded Henkin's shift in thinking.
[35] Henkin, *How Nations Behave*, 2nd edition, 138.

of the Charter," Henkin reiterated, "were not seeking merely to replace the 'balance of power' by 'collective security.'" Instead, they articulated an aspirational vision for international relations: "they were determined, according to the Preamble, to abolish the 'scourge of war.'"[36] In Henkin's view, "whether or not the UN organization succeeded in enforcing the law or establishing peace and justice" was somewhat irrelevant.[37] The purpose behind the law of the Charter was not to serve justice *per se*.[38] Instead, it was to maintain the "order… essential for international society," while banning "self-help" which was "fundamentally disorderly."[39]

Henkin argued that the failure of UN institutions had little effect on this aspirational yet minimalist vision. To assume that the law could only succeed with institutional enforcement gravely misunderstood how law garnered obedience in the first place. Mirroring legal positivists of his time, Henkin argued that formal behavioral observance, combined with an "extra-legal consequence" or sanction, was enough to establish law.[40] The fact that, "in international society, there is no one to compel nations to obey" was irrelevant. "[P]hysical coercion," Henkin claimed, was "not the sole or even principal force ensuring compliance."[41] This insight, in fact, was not even unique to the international realm. Domestic legal systems similarly required "social opprobrium and other extra-legal costs" to remain functional, often proving more decisive than institutional enforcement itself.[42] Even more so, the assumption that external sanctions, whether

[36] Henkin, *How Nations Behave*, 2nd edition, 138.
[37] Henkin, *How Nations Behave*, 2nd edition, 138.
[38] Henkin qualified his reference to Judge de Visscher that "'peace will serve justice better than justice will serve peace'" by claiming that "justice, perhaps, must not come too long after if peace is to endure." See Henkin, *How Nations Behave*, 2nd edition, 164.
[39] Henkin, *How Nations Behave*, 2nd edition, 164.
[40] Henkin starkly mirrored H.L.A. Hart's idea of primary rules—rules of conduct with non-centralized and informal sanctions for non-compliance—who was writing around the same time. See, e.g., H. L. A. Hart, *The Concept of Law* (Oxford University Press, 1961).
[41] Henkin, *How Nations Behave*, 2nd edition, 92.
[42] Henkin points to the American experiment with Prohibition as an example of the failure of enforcement without community support. See Henkin, *How Nations Behave*, 2nd edition, 93.

formal or informal, were the most important feature of law was also mistaken. The existence of an external consequence "merely emphasiz[ed] that law often coincide[d] so clearly with the interests of the society that its members react[ed] to antisocial behavior" in the negative.[43] Both domestic and international contexts required that individuals and nations express a general interest in obeying the law, and it therefore followed that the "realist" binary between national policy and international law, national interest and international idealism, was deeply incoherent.[44] "All law is an instrument of policy," Henkin wrote, just as all "law observance" depends "on the community's… interest in vindicating it."[45] If international society was unique, it was only unique because international legal observance depended "*more heavily*" on these informal extra-legal features, not because it was without interest-based compliance or consequence.[46]

When it came to the ban on force, Henkin adamantly sought to show that the national interest supported the broader communal interest in respecting this legal ideal. Henkin therefore argued that the rhetoric of states deeply mattered. "No nation considers international law as 'voluntary,'" Henkin wrote, and "like individuals, nations do not claim a right to disregard the law or their obligations."[47] But Henkin also acknowledged that rhetoric was not all that mattered, and he therefore tracked how such rhetoric mapped onto state compliance. The best proof of this was found in the relationship between the Cold War powers and the Third World. "There has been no

[43] Henkin, *How Nations Behave*, 2nd edition, 93.
[44] As Henkin wrote previously, "The internationalist, then, must not be trapped into accepting even the appearance of a dichotomy between 'U.S. interests' and 'UN interests.'" See Henkin, "The United Nations and Its Supporters: A Self-Examination," 509.
[45] Henkin, *How Nations Behave*, 2nd edition, 93.
[46] Henkin, *How Nations Behave*, 2nd edition, 93.
[47] Henkin, *How Nations Behave*, 2nd edition, 89. When invading Czechoslovakia, for example, Henkin argued that "the Soviet Union" had "not claimed the right to export Communism by conquest." Instead, they only expressed their belief that there was no decisive "adverse political consequence" for breaking the law in this instance. Similarly, the United States had worked actively to support Article 2(4), even when it hurt its more immediate interests. In opposing the military actions of its European and Israeli allies at Suez, for example, the United States gave proof to the statement that "nations feel obliged to respond to violations far beyond any substantive interest in doing so, just because there was a violation." See Henkin, *How Nations Behave*, 2nd edition, 151, 96.

war initiated by the strong against the weak, by nuclear powers against others whom they could annihilate without fear of significant retaliation," Henkin wrote.[48] On the contrary, "the competition between East and West for the friendship of other nations influence[d] both sides to abide by the law of the Charter… which the new nations [were only] eager to see observed."[49]

But what of violations of the law? Did they not prove that Article 2(4) was inept? Not only were the "violations of international law not common enough to destroy the sense of law, of obligation to comply, of the right to ask for compliance and to react to violation," but such violations, Henkin argued, merely served as an opportunity to witness how extra-legal sanctions worked with deep effect.[50] Moving beyond counterfactuals, Henkin supported this thesis historically and interpretively. Henkin argued that interstate wars had rarely turned into sustained wars. When the Arab states, for example, attacked Israel in 1948, their initial failure did not lead them to redouble their efforts. On the contrary, "the end came quickly."[51] Furthermore, the speedy return to peace disproved an additional realist thesis: that "when it costs too much to observe international law, nations [would simply] violate it."[52] Obviously, in some broader sense (i.e. nuclear war), this might be true. But in an empirical sense, the very opposite often proved to be the case. "Violations in 'small matters' sometimes occurred," but only because the actor thought it could get away without legal consequence. "The war in Korea," Henkin argued, "was probably the result of miscalculation: the Communists assumed the deed could be quickly done and [that] there would be no adequate and timely response."[53] This faulty perception, however, proved that

[48]In Henkin's view, the US Invasions of Cuba and Dominican Republic, the Soviet invasion of Hungary and Czechoslovakia, and the US War did not technically reach the threshold of "war." They were all interventions in one form or another. Henkin, *How Nations Behave*, 2nd edition, 148.
[49] Henkin, *How Nations Behave*, 2nd edition, 148.
[50] Henkin, *How Nations Behave*, 2nd edition, 98.
[51] Henkin, *How Nations Behave*, 2nd edition, 150.
[52] Henkin, *How Nations Behave*, 2nd edition, 97.
[53] Henkin, *How Nations Behave*, 2nd edition, 150.

costs indeed mattered—that the state only violated the law, just like the bank robber, with the assumption that it could escape.

But there was an additional argument that Henkin needed to make to support the success of Article 2(4) and, again, this brought his reflections back to the relationship between the Cold War powers and the Third World. If not quite conquering Third World territories like the colonizers before them, the Cold War powers often intervened militarily into these areas and even ended up breeding "subversion, revolution, insurrection, and civil war."[54] Indeed, skeptics pointed to these events to argue that "war ha[d] not been eliminated" by Article 2(4), but had simply "been channeled into more or less blatant intervention in internal wars and affairs."[55] To avoid this problem, Henkin argued that military interventions should be thought of "as political battles with little help from law." In his opinion, it served "little purpose to insist that Article 2(4)" should go "farther than many nations [would] tolerate," and it was therefore wise to leave "its authority clear and undisputed to cover at least cases of direct, overt aggression."[56] Whether this assertion maintained the integrity of Article 2(4) or whether it simply defined away its problematic instances remained quite ambiguous. Henkin therefore needed to provide a more systematic explanation that justified his faith in the "law of the Charter" despite its regulatory absences.

Henkin provided several arguments about why excluding military interventions from Article 2(4) should not be viewed skeptically. When external powers supported already existing governments against insurrection, Henkin argued that this was not an illegitimate use of force but

[54] Henkin, "Force, Intervention, And Neutrality in Contemporary International Law," *Proceedings of the American Society of International Law at Its Annual Meeting,* 57 (1963): 147–73, 154.
[55] Henkin, "The Reports of the Death of Article 2(4) Are Greatly Exaggerated," 546. The idea that Article 2(4) itself channeled intervention is deeply problematic and Henkin was right to repudiate it. After all, interventionist wars occurred before the creation of Article 2(4); Henkin cites the Spanish Civil War as an example. The more interesting, I argue, is not about channeling but about whether a state can meet its interests within the bounds of the law.
[56] Henkin, "Force, Intervention, And Neutrality in Contemporary International Law," 158.

an allied action based on sovereign consent. But even when external powers supported the rebellious actor in a civil war, there were good reasons to think that the UN Charter kept its integrity. First, legal scholars often turned to World War II to clarify the purpose of the UN regime and they therefore generally accepted that Article 2(4) was not oriented towards prohibiting rebellion but rather interstate war. Second, there was a customary rule against military intervention stemming back to the 1800s, but "if it was ever sound," it had probably not "recovered from the wounds it suffered in the Spanish Civil War" which battered the old anti-interventionist status quo.[57] Finally, Henkin claimed that military intervention was often limited to the external reality of already-existing civil wars. This was not to be equated with interstate wars which sanctioned unilateral appeals to force without any constraints beyond the will of the sovereigns themselves.

These inherent limits, however, were much narrower than what Henkin first asserted. While some scholars, for example, asserted that "it [was] just as much a violation for an outside power to use force subtly or covertly to subvert an existing government and impose a puppet government as it [was] to send its armies to conquer the victim," Henkin rejected such arguments as indecisive.[58] In limiting Article 2(4) to "undisputed… cases of direct, overt aggression," Henkin not only defended the permissibility of intervening into already existent wars under the *jus ad bellum*; he also defended the permissibility of manufacturing insurrection under this legal regime. Henkin, for example, remained ambivalent about the illegality of the failed US-manufactured rebellion at the Bay of Pigs. Henkin admitted that the United States might have broken with broader norms of non-intervention, but when it came to Article 2(4) itself, Henkin asserted that

[57] Henkin, *How Nations Behave*, 2nd edition, 306.
[58] Henkin, *How Nations Behave*, 2nd edition, 156.

the "United States… [could] connive with exiles at the Bay of Pigs" without technically transgressing it.[59]

But even capacious limits were still limits, and Henkin therefore claimed success. If "Article 2(4) signaled the effective end of conventional war though not of intervention," Henkin believed that this was "a substantial advance in international order."[60] The "involvement in the Bay of Pigs incident [still] underscored the limitations on action by the United States" government.[61] The United States "had promoted and supported action by Cubans in rebellion," but it could not "invade Cuba," nor could it aid the rebellion with "supporting air cover."[62] No doubt, Henkin recognized that military intervention still exhibited dangers despite its limitations. "The use of force [was] contagious," and even in the case of interventionist wars, it could "easily spill over a country's border and cause major conflagration."[63] But Henkin also claimed that the dangers that arose from intervention were, in no sense, comparable to the ravages of the world wars. Such dangers should not lead one to ignore what had been achieved: how nations had finally brought within "the realm of law those ultimate political tensions and interests that had long been deemed beyond control by law"[64]—"the cornerstone of any rule of law."[65] If they so desired, nations might therefore unite and build upon this initial step forward: to "develop or reassert rules and legal machinery against external subversion as [they have] against external attack."[66] Nations had

[59] Henkin, "The Reports of the Death of Article 2(4) Are Greatly Exaggerated," 547.
[60] Henkin, "The Reports of the Death of Article 2(4) Are Greatly Exaggerated," 547.
[61] Henkin, *How Nations Behave*, 2nd edition, 248.
[62] Henkin, "The Reports of the Death of Article 2(4) Are Greatly Exaggerated," 547.
[63] Henkin points to the Vietnam War as exemplifying the risk of contagion. See Henkin, *How Nations Behave*, 2nd edition, 162.
[64] Henkin, *How Nations Behave*, 2nd edition, 137.
[65] Henkin, "The United Nations and Its Supporters: A Self-Examination," 508. In banning a unilateral sovereign right, Henkin was likely referring to the rule of law in the sense of domesticating arbitrariness. The rule of law, as Jeremy Waldron notes, often gives "central place to a requirement that people in positions of authority should exercise their power within a constraining framework of public norms, rather than on the basis of their own preferences, their own ideology, or their own individual sense of right and wrong." See Jeremy Waldron, "The Concept and the Rule of Law," *Georgia Law Review* 43 (2008), 6.
[66] Henkin, "Force, Intervention, And Neutrality in Contemporary International Law," 159.

reconciled their interests with the law once before and Henkin saw no reason to doubt that they might achieve such reconciliation yet again.

From Politicizing the United Nations to Modifying the Law of the Charter

If exhibiting a hopefulness about the future, Henkin did not always find his predictions conforming to their intended spirit. In reconciling the national interest with international law and then anticipating the possible extension of Article 2(4) to interventionist wars, Henkin was right in a minimal sense. In 1986, the ICJ explicitly extended Article 2(4) to ban numerous strategies of interventionist warfare, and in this regard, Henkin was prophetic. But Henkin did not get to choose the messiah delivering this message, nor could he ensure that other nations would accept it. The ICJ decision was preceded by a political vanguard, the Third World bloc, which "reasserted the favorite norm of small powers—nonintervention in internal affairs—and had it enshrined in new declarations and treaties."[67] This was not to be uncritically applauded. The Thirdworldists promoted non-intervention to defend a broader vision of self-determination—one that created and obstructed the development of international law depending on what their provincial interests demanded. Henkin specifically pointed to how the Third World obstructed the development of international mechanisms to deal with international terrorism, even allowing terrorists to find sanctuary behind the impermeability of their sovereign borders. In doing so, the Third World not only politicized international law and assaulted its integrity, but also placed those states attempting to combat international terrorism in precarious situations.

In response to these developments, Henkin defended the law of the Charter, although not without displaying sympathy for the eventual reaction of the United States. Henkin would

[67] Henkin, *How Nations Behave*, 2nd edition, 198.

eventually admit that exceptions to the traditional *jus ad bellum* could be carved out when formal treaties and customary international law failed to account for international terrorism.[68] Indeed, the United States would respond to the Third World through embracing the strategy of interpretive modification that Henkin intellectually outlined. Henkin did not always agree with how the United States interpretively modified the law, and he often explicitly rejected such modifications in his writings. But in pointing to the broader intellectual battle between the United States and the Third World, Henkin narrated a story where the eventual rise of the Bush Administration's war on terror was one instance, in a long history of instances, where the United States would find it necessary to "adapt" the *jus ad bellum* to effectively deal with "the capabilities and objectives of today's adversaries."[69]

The Origins of Interpretive Modification

The origins of this shift extend back to 1970 when Henkin crafted a brief but compelling introductory note in which he expanded his previous insights about "the two faces of the United Nations" painting a grimmer view of UN institutions than before. While previously claiming that the law of the United Nations served as "the cornerstone of the rule of law" despite its institutional weakness, Henkin now argued that it was more apt to speak of "The United Nations and the *Rules* of Law."[70] In the international realm, he saw two competing interpretations of this ideal. "Both views claim the much-used, much-abused mantle of the 'rule of law,'" Henkin wrote, "but to the one it represents primarily respect for means and process, for 'neutral principles' and the rights of

[68] As this section demonstrates, Henkin embraced the "Entebbe Principle"—which allows states to transgress sovereignty to rescue hostages—as one such legitimate modification.
[69] See The National Security Strategy of the United States of America (September 2002), available at https://www.state.gov/documents/organization/63562.pdf.
[70] Louis Henkin, "The United Nations and the Rules of Law," *Harvard International Law Journal* 11 (1970).

the individual state; to the other, new and better ends, and stirrings of democracy in the international system."[71] Yet the undertone of this juxtaposition implied that one perspective abused the meaning of 'the rule of law' more than the other. While the language of process, principles, and rights more intuitively reflected the connotation of law, the language of democratic stirrings and novel ends more starkly reflected the connotation of revolution—the extra-legal overturning of one law for another. What was perhaps most "provocative" was that Henkin ended up blaming the arrival of the latter conception of the rule of law on UN institutions themselves.[72] In contrast to international idealists who hoped for effective institutions that could overcome national conflict, Henkin envisioned the increasing effectiveness of these institutions as complicit in the modification of international law and the broader politicization of the law-making process itself.

In mentioning process, principles, and rights, Henkin hardly intended to refer to formal UN procedures. On the contrary, Henkin had in mind traditional sources of international law—sovereign treaties and customary international law—which informally fused these concepts together. Sovereign treaties obviously featured these concepts: in tracing their authoritative source to sovereign consent, treaties provided a neutral and formal process to create agreements founded on the rights of states. Even custom, Henkin however clarified, also featured such concepts. Custom only attained the status of law when state practice was accompanied by *opinio juris*—that is, a subjective sense of obligation. In this respect, custom displayed a similar process to treaty-making, extending the idea of consent to the communal level and ensuring that state practice only achieved legal force if all accepted it. This "cardinal 'unanimity principle" ensured that "customary law, too, [could not] bind a sovereign state without its consent." It therefore protected state rights

[71] Henkin, "The United Nations and the Rules of Law," 430.
[72] This is how the editors of the volume described Henkin's argument. Henkin, "The United Nations and the Rules of Law," 436.

from majoritarian despotism and allowed states to opt out of unfavorable customary obligations, even if this often required the burdensome onus of persistent objection.[73]

With deep structural shifts in the international system, however, Henkin realized that the conditions which made traditional international law-making viable were starting to erode. When the positivist conception of international law first entered the scene, "the units of the international system were comparatively few, comparatively homogeneous, comparatively equal and equally sovereign."[74] But the outpouring of decolonization and the expansion of the UN universe caused "the units [to become] many, different, and equal only in principle, their sovereignty squeezed and diminished by increasing inequality and dependence."[75] The problems that arose from disaggregating formal sovereignty from the underlying conditions that made them effective were twofold. On the one hand, the vast number of states in the international universe made it progressively difficult to create new universal laws through the customary process or through multilateral treaties precisely because the world was compromised by so many varied interests. On the other hand, even existing international law found its legitimacy increasingly challenged. With its origins stemming from a few homogenous states, such international law was often cast as "the product of European civilization, intended primarily for the guidance of European powers… and reflecting their Christian, capitalistic, imperialistic interests."[76]

This latter problem, Henkin eventually admitted, is what led the Third World to challenge existing international law. To be sure, in the first edition of *How Nations Behave,* Henkin stressed that new nations mostly accepted international law. This was due to the concrete benefit such acceptance afforded: "acceptance into [international] society as an independent equal was the

[73] Henkin, "The United Nations and the Rules of Law," 429.
[74] Henkin, "The United Nations and the Rules of Law," 430.
[75] Henkin, "The United Nations and the Rules of Law," 430.
[76] Henkin, *How Nations Behave*, 2nd edition, 121.

proof and crown of their successful struggle."[77] But with the second edition of his work, Henkin added a new section dedicated to "the Third World" and became rather more skeptical of his previous claim of coherence. Henkin regarded these new nations not only as independent sovereigns but as a unified block with political goals that moved beyond international recognition. The Third World originated as a "rhetorical reaction to bipolarism" and denied "that mankind was and had to be identified or aligned with either the First World of the West or the Second World of Communism."[78] As a non-aligned alternative, the Third World sought to challenge and change the law that put it at an economic and political disadvantage. With an "ideology and rhetoric of justice and equality," these nations gained sympathy from the Cold War powers who, despite having different interests than them, did not want to alienate them into embracing the other camp.[79] "The counter of influence in the international system had [therefore] changed, and political weapons loom[ed] larger than in the past."[80] The novel political conditions of the international system made it possible for relatively weak powers to come together and challenge the old order.

One important weapon of the Third World was its brute numbers, and hence Henkin claimed that international majoritarianism became the preferred Thirdworldist method for challenging the law. With the rise of the Third World, the "'legislative business' [of] the General Assembly" expanded and "a political body that [had] dealt with legal questions in political ways" ended up "making law in the process."[81] Such law-making did not, however, derive its authority from "those accepted 'sources' of international law… sanctioned in article 38 of the Statute of the International Court of Justice" which included treaty and custom.[82] "Traditional international

[77] Henkin, *How Nations Behave*, 2nd edition, 122.
[78] Henkin, *How Nations Behave*, 2nd edition, 119.
[79] Henkin, *How Nations Behave*, 2nd edition, 121.
[80] Henkin, *How Nations Behave*, 2nd edition, 121.
[81] Henkin, "The United Nations and the Rules of Law," 429.
[82] Henkin does not mention the third source of law—general principles of law—which is all the more curious as it pushes back on his emphasis on consent.

lawyers… [therefore] tended to look at such 'legislation' with disdain, if not fear."[83] After all, the original text of the Charter only conceived of the General Assembly as procuring an "enumerated power to 'make recommendations' for law-making purposes" with the additional capacity to organize multilateral conferences towards this end.[84] Yet despite this procedural disconnect, no one "could doubt that the resolutions and practices of the General Assembly [had indeed] modified" the law.[85] Even if "in the Assembly law ha[d] bowed to politics," Henkin claimed that it was now the *de facto* reality.[86]

Much of Henkin's 1970 introductory note focused on the how the Third World attempted to make law about "the control of the seabed," although this somewhat eccentric issue also led him to reflect on how "the General Assembly [had] modified… the essential law of the Charter itself, the law against force."[87] Even though the United States and the Soviet Union defended provisions "that would forbid the emplacement on the seabed of weapons of mass destruction," the Third World objected to these drafts quite critically arguing that they "did not go far enough" towards achieving nuclear disarmament.[88] In response to these objections, Henkin acknowledged "the legitimate interest of all nations in controlling the armaments of the Super-powers [as] unquestionable."[89] But he also argued that "the influence of majorities to achieve some arms control and to tell the Super-powers what to do about their weapons might be somewhat greater if they were prepared to legislate to limit their own weapons."[90] The Third World might achieve more influence if it resisted the "tendency to legislate only for others" and demonstrated "respect

[83] Henkin, "The United Nations and the Rules of Law," 429.
[84] Henkin, "The United Nations and the Rules of Law," 429.
[85] Henkin, "The United Nations and the Rules of Law," 429-30.
[86] Henkin, "The United Nations and the Rules of Law," 430.
[87] Henkin, "The United Nations and the Rules of Law," 429-30, 432.
[88] Henkin, "The United Nations and the Rules of Law," 434.
[89] Henkin, "The United Nations and the Rules of Law," 434.
[90] Henkin, "The United Nations and the Rules of Law," 434.

for [legal] processes" and "'neutral principles.'"[91] It was, in this sense, that the Third World politicized the law: while the law was meant to rule everyone, the Third World claimed it was only meant to rule 'the strong.'

Henkin tracked several iterations of how the Third World wielded this logic of partiality,[92] although his broader writings tended to focus less on the active creation of partial law and more with its obstruction: how the Third World used its institutional power to avoid creating regulations that could account for the rise and growth of international terrorism. "While all governments recognized their own vulnerability to terrorism, and almost all [would] join in decrying it," Henkin worried that the "international law to deal with it effectively was slow in coming" because the political goals underlying terrorism often "evoke[d] some governmental support or condonation."[93] To be sure, Henkin believed that this support stemmed not from the First but only from the Third World.[94] The First World, or the "developed states," generally "sought law that would reinforce the system as they had known it and its values of stability and order"; they therefore sought "new universal agreements of cooperation against aerial high jacking and related forms of terrorism."[95] The Third World, however, "resist[ed] outlawing those who terrorize under the banner of 'self-determination,' 'people's liberation,' 'people's socialism,' or other slogans of new order."[96] While "an effective international law against high jacking would require agreement

[91] Henkin, "The United Nations and the Rules of Law," 431.
[92] Henkin, for example, argued that a handful of newly independent postcolonial states attempted to carve out an exception to Article 2(4) through legitimizing the external use of force to end British and French colonialism elsewhere. But once formal colonialism ended, this issue became somewhat anachronistic, and his writings therefore tended to focus on terrorism.
[93] Henkin, *How Nations Behave*, 2nd edition, 194-95.
[94] Henkin exhibited a deep blind spot about US support for terrorism, not once acknowledging the various instances of its complicity, which ranged from supporting the IRA, Cuban exiles, and Guatemalan death squads. For a more extended discussion of US support for terrorism, see George Alexander, *Western State Terrorism* (New York: Routledge, 1991).
[95] Henkin, *How Nations Behave*, 2nd edition, 194.
[96] Henkin, *How Nations Behave*, 2nd edition, 195.

by virtually all states to [stop] potential hijackers," Thirdworldist obstruction made this virtually impossible. "No Arab state, for example, ha[d] been prepared to adhere to agreements that would require it to extradite or punish a Palestinian hijacker."[97] On the contrary, "these and other terrorists ha[d] in fact been justified in their confidence that" the Third World would support them, ensuring that they could "find some country to harbor them."[98]

Henkin mentioned Palestinian terrorism as one example of legal failure, but it also served a broader purpose: it was the foundational moment when the enemies of the Third World began to carve out exceptions, however modest, to the *jus ad bellum* regime. At one point in his writings, Henkin assumed that it might be possible "to develop narrower agreements" to stop international terrorism. "The taking of hostages," Henkin hoped, might eventually acquire "sufficiently general opprobrium in world opinion that states [would] feel free to adhere to agreement outlawing it."[99] This prediction, however, was immediately qualified by what Henkin found to be the actual behavior of states in the international system: their utter refusal to support the international treaties that were put forth by the First World to address such problems.[100] Because explicit sovereign agreements and customary process would never find consensus in the conditions initiated by the Third World, it seemed that addressing international terrorism would require the interpretive modification of the law.

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[97] Henkin, *How Nations Behave*, 2nd edition, 195.
[98] Henkin, *How Nations Behave*, 2nd edition, 195.
[99] Louis Henkin, "Law and War after the Cold War," *Maryland Journal of International Law and Trade* 15 (1991), 151.
[100] While Germany pushed forth an International Convention Against the Taking of Hostages starting in 1976, it took until 1983 for the Treaty to come into effect—and with the ratification of only 22 states. The Convention caused great controversy as many Third World states did not want the convention to apply to national liberation movements. While several Third World nations are still not party to the convention, Israel is also not a party to the convention—quite ironic, as Henkin only justified the interpretive modification of the law when other states obstructed the formal law. See generally, Ben Saul, "International Convention against the Taking of Hostages," United Nations Audiovisual Library of International Law, *available at* Http://Legal.Un.Org/Avl/Ha/Icath/Icath.Html.

Throughout his writings, Henkin would continuously turn to the Entebbe raid against Palestinian terrorists in Uganda to assert that "the Israeli exploit may indeed have succeeded in establishing an exception to Article 2(4)": one where "a state may use limited force if necessary to rescue hostages and save their lives."[101] Of these events, Henkin claimed that the "hijacking of French plane to Uganda and the retention of its passengers as hostages … was not technically an armed attack by Uganda."[102] This created a situation "where France or any of the counties whose nationals were held there" were not permitted to enter Ugandan territory to save their nationals because the sole exception for the use of force under the UN Charter—"the inherent right of individual or collective self-defence if an armed attack occurs"—was irrelevant.[103] Despite the lack of explicit legal authority for their actions, "Israel could plausibly argue that… its raid at Entebbe was not a use of force against the political independence or territorial integrity of Uganda, or in any other way contrary to any purpose of the United Nations."[104] Thus even though Israel could not invoke its right of self-defense, Henkin believed that these circumstances demonstrated that there was a permitted and limited form of "humanitarian intervention" that escaped the authority of Article 2(4).

The reasoning that permitted this exception brought Henkin back to the question of how the national interest and international law were to interrelate. After all, Henkin had previously argued that Article 2(4) was a bright line rule against international force, and through physically

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[101] Henkin, "Law and War after the Cold War," 144.
[102] Henkin, "Law and War after the Cold War," 144.
[103] "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security…." See UN Charter, Article 2(4), *available a*t http://www.un.org/en/sections/un-charter/chapter-vii/index.html.
[104] Henkin, *How Nations Behave*, 2nd edition, 145. While Henkin thought the Israeli argument plausible, even the United States acknowledged that the action "involved a temporary breach of the territorial sovereignty of Uganda." See Kathleen Teltsch, "Rescue by Israel Acclaimed by U.S. at Debate in U.N.," *The New York Times*, July 13, 1976, https://www.nytimes.com/1976/07/13/archives/rescue-by-israel-acclaimed-by-us-at-debate-in-un-a-combination-of.html.

violating Ugandan territory, Israeli actions did not seem to fall under the interventionist strategies of subversion that were permitted. While continuing to assert that realists embraced too narrow a view of the national interest, Henkin finally admitted that, in light of the Israeli action, 'reality' could occasionally subvert what seemed like a bright line legal rule. "No view of international law, no interpretation of any norm or agreement," Henkin argued, "could concede that a nation may be legally required to do that which would lead to its destruction, or jeopardize its independence or security."[105] While international law had thus far developed to cohere with the national interest, there were "novel situation[s] in which an act not contemplated when a norm was established appears to fall within its prohibition."[106] In such circumstances, Henkin argued that two types of responses could generally arise. "If there is a prevailing view in international society that the act in question should be deemed a violation, governments, scholars, and courts [could] seize on any ambiguity in the law to conclude that it was in fact lawful."[107] But "even if there was no obvious ambiguity," Henkin argued, "exceptions might yet be carved out to avoid an absurd result."[108] This could "be said, for example, of the law as applied to Israel's raid at Entebbe": that Israel could not possibly qualify its fundamental duty towards its nationals by embracing an overly technical legal interpretation that allowed terrorists to unfairly take advantage of the ban on force.[109]

This "Entebbe principle" did not develop through the normal channels of customary international law making, and in accepting its validity, Henkin embraced the idea that formal law-making processes could sometimes be circumscribed. Henkin acknowledged that the First World could respond to Thirdworldist politicization and its *de facto* authority in the General Assembly

[105] Henkin, *How Nations Behave*, 2nd edition, 333.
[106] Henkin, *How Nations Behave*, 2nd edition, 333.
[107] Henkin, *How Nations Behave*, 2nd edition, 333.
[108] Henkin, *How Nations Behave*, 2nd edition, 333.
[109] Henkin, *How Nations Behave*, 2nd edition, 333.

through politicizing international law itself and asserting a *de facto* interpretive authority. This, of course, did not mean that Henkin now believed that international law no longer mattered. Throughout his life, Henkin would only explicitly embrace interpretive modification in the one circumstance of rescuing hostages, and he would continuously fight against additional attempts to create exceptions to Article 2(4) that went beyond this limited instance. But Henkin also pointed to a logic—"novel situations" and "absurd results"—that had become quite powerful once the flood gates of politicization had been opened. Even if he disagreed with the application of this logic in other circumstances, it was not quite clear whether further modifications could be resisted or stopped. This was especially the case as the wars on terror expanded in scope.

Interpretive Modification in the "Age of Terrorism"

In 1989, Henkin finally had an opportunity to systematically reflect on the repercussions posed by the Third World and its politicization of international law. Writing among the likes of Stanley Hoffmann and Jeane Kirkpatrick in edited volume published by the Council on Foreign Relations, Henkin sought to bring his previous analysis to bear on the military expeditions of the Reagan Administration in an essay entitled "The Use of Force: Law and U.S. Policy."[110] This reflection was especially pressing as the ICJ had recently repudiated US support for the Contra rebellion against the Sandinista government in Nicaragua, pushing back against "the Reagan doctrine" and its generous interpretation of the *jus ad bellum* regime.[111] Henkin tended to favor

[110] Louis Henkin, "Use of Force: Law and U.S. Policy," in *Right V. Might: International Law and the Use of Force* (Council on Foreign Relations, 1989).

[111] "The Reagan Doctrine, as we understand it, is above all concerned with the moral legitimacy of U.S. Support—including military support—for insurgencies under certain circumstances: where there are indigenous opponents to a government that is maintained by force, rather than popular consent; where such a government depends on arms supplied by the Soviet Union, the Soviet bloc, or other foreign sources; and where people are denied a choice regarding their affiliations and future." See Jean J. Kirkpatrick and Allan Gerson, "The Reagan Doctrine, Human Rights and International Law" in *Right V. Might: International Law and the Use of Force* (Council on Foreign Relations, 1989), 20-21.

the ICJ's arguments and continued to follow the path of strictly defending Article 2(4). But Henkin also stressed that the politicization of UN institutions made it virtually impossible to combat international terrorism. This latter assertion, in turn, led to a tension in his thinking: while seeking to defend the law of the Charter, Henkin's analysis implied that interpretive modification might inevitably occur as the only reasonable path to address the rise of non-traditional threats in the nascent "Age of Terrorism."[112]

In focusing not only on the Third World's inaction but the First World's response, Henkin expressed greater consternation about the politicization of international law than before. While still claiming that "'nonalignment'" provided "the Third World with substantial immunity from adverse community judgement" and allowed international terrorism to proliferate, Henkin now also worried that "terrorism ha[d] spread its own terrors and ha[d] occasionally evoked the use of force by states on the territory of other states."[113] To be sure, such resolute displays of force were not only used to rescue hostages but also to respond to the rising string of bombings by international terrorists. The United States sought to combat terrorists and their state-sponsors more broadly hoping to deter them from engaging in such actions. The most recent example of this was Reagan's "preemptive" bombing of Libya, "which it held responsible for acts of terrorism, one of which had led to the death of a number of U.S. servicemen."[114]

Even though its legitimacy "was widely rejected," Henkin expressed apprehension about the implications of the Libyan strike for the *jus ad bellum*.[115] Because the actors who inhabited

[112] Henkin, "War and Terrorism: Law or Metaphor," 827.
[113] Henkin, "Use of Force: Law and U.S. Policy," 51.
[114] Henkin, "Use of Force: Law and U.S. Policy," 54. See generally, Bernard Weinraub, "U.S. Jets Hit 'Terrorist Centers' in Libya; Reagan Warns of New Attacks If Needed," *The New York Times*, April 15, 1986, http://www.nytimes.com/1986/04/15/politics/15REAG.html.
[115] Henkin, "Use of Force: Law and U.S. Policy," 51.

UN institutions continued to display a lack of interest in reforming the law,[116] Henkin worried that their obstruction meant that other solutions were inevitably required—solutions that did not necessarily display positive implications for upholding the law of the Charter. After all, the international community did not reject the Libyan attack because of an inappropriate application of the law to the facts. Instead, it rejected how the United States had sought to interpretively modify the law. The Reagan Administration explicitly "interpreted the concept of armed attack to include certain terrorist activities," even though the traditional concept only included attacks by state actors. It also expanded the notion of self-defense to include "preemptive action," even though this interpretation of self-defense had been widely rejected by the majority of legal scholars and member states since the founding of the UN Charter.[117]

But traditional principles and majoritarian opposition were not decisive in a politicized world, and thus an important question remained: should interpretive modification of the *jus ad bellum* be pursued in this instance? In contrast to his previous support for the Entebbe principle, Henkin remained quite skeptical of embracing this path. Henkin was particularly worried that "extending the meaning of 'armed attack' and of 'self-defense'… would undermine the Charter and the international order established in the wake of world war."[118] In this respect, Henkin was paying ode to what he always thought was the purpose of Article 2(4): the maintenance of order and stability in the international system. In doing so, Henkin also separated his defense of the Entebbe principle from the current modifications of the Reagan Administration. The Entebbe principle was limited to "a right to liberate hostages if the territorial state cannot or will not do so,"

[116] After the Hostage Taking Convention, no major terrorist convention was ratified until the early 1990s. See "International Counter-Terrorism Legal Instruments," *UN Counter-Terrorism Committee*, http://www.un.org/en/sc/ctc/laws.html.
[117] Henkin, "Use of Force: Law and U.S. Policy," 46.
[118] Henkin, "Use of Force: Law and U.S. Policy," 60.

and it did not imply "a right to intervene by force to topple a government or occupy its territory even if that were necessary to terminate atrocities or to liberate detainees."[119] In contrast, Henkin had argued, as early as the 1960s, that the expansion of self-defense to include "preemptive" or "anticipatory" self-defense would render Article 2(4) *de facto* meaningless and threaten to unravel the whole UN regime.[120] If the one modification should be pursued and the other rejected, perhaps, this minimal requirement could function as its reconciling principle: the former avoided serving as a "pretext for abusive intervention," while the latter threatened stability and order at its core.[121]

There were, however, several problems with limiting interpretive modification to this minimal requirement. Henkin did not previously cast the Entebbe principle in terms of the requirements of order and stability, nor did he claim to accept this modification simply because it was inherently limited. On the one hand, Henkin spoke of 'novel situations' and 'absurd results' as motivating interpretive modification without any further qualification. On the other hand, the Entebbe principle did not even avoid serving as a pretext for aggression. In addition to commenting on Nicaragua and Libya, Henkin acknowledged that the Reagan Administration appealed to the Entebbe principle in justifying its invasion of Grenada to rescue several hundred US medical students who were caught up in the crisis initiated by a Stalinist group who executed Prime Minister Maurice Bishop and overthrew his government. With the disaster of the Iran Hostage crisis still fresh in the collective memory, domestic support for the invasion was wide-spread throughout the United States. But as Henkin also noted, these "alleged grounds [were] widely challenged as spurious or as not justifying the action."[122] Not only did some individuals doubt that

[119] Henkin, "Use of Force: Law and U.S. Policy," 42.
[120] Henkin first made these arguments in "Force, Intervention, and Neutrality in Contemporary International Law," although the argument is reiterated in *How Nations Behave*.
[121] See Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" *The American Journal of International Law* 93, 4 (1999), 826.
[122] Henkin, "Use of Force: Law and U.S. Policy," 53-4.

US nationals were truly in danger, but even had such danger existed, the invasion turned into more than a rescue operation.[123] The invasion was an *invasion*: the US military defeated the Stalinist coup and then returned Bishop's Governor General, Paul Scoon, to power.[124]

Henkin, and other international scholars, were also no longer the decisive authorities for articulating the principles and purposes of the *jus ad bellum*. The ICJ had, for the first time, clarified the underlying principles of this legal realm. Although this decision concerned the Reagan Administration's actions in Nicaragua—an issue that, strictly speaking, had little to do with international terrorism even if Reagan rhetorically spoke of the Sandinistas as terrorists—the Court reiterated a narrow rule that "force against another state that is not justified by a right of self-defense under Article 51 is in violation of Article 2(4)."[125] One might infer from this "authoritative construction of the law" that the Court favored stability and order, but this would be a mistake.[126] The Court argued that the purposes of the *jus ad bellum* concerned protecting sovereignty and self-determination, and in doing so, it compounded the desire of the Reagan Administration to ignore its legal judgment.

While this decision engaged with US mining of Nicaraguan harbors and US intervention in support of the Contras, it was primarily the latter issue that caused a revolution in the law. While Henkin previously argued that interventionist warfare was permitted under the *jus ad bellum*, the Court argued that "there is no 'general right for intervention, in support of an opposition within another state,'"[127] nor "a right of intervention by one state against another on the ground that the

[123] Congressman Louis Stokes, D-Ohio, claimed that "Not a single American child nor single American national was in any way placed in danger or placed in a hostage situation prior to the invasion.'" Ed Magnuson, "Getting Back to Normal," *Time Magazine*, November 21, 1983.
[124] Henkin, "Use of Force: Law and U.S. Policy," 53-4.
[125] Henkin, "Use of Force: Law and U.S. Policy," 48. Also see, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. U.S.) I.C.J. (1984) (Judgment of Nov. 26) ¶ 211 [hereinafter cited as *Judgment*].
[126] Louis Henkin, "Use of Force: Law and U.S. Policy," 47.
[127], "Use of Force: Law and U.S. Policy," 49. Also see, *Judgment* ¶ 209

latter has opted for some particular ideology or political system."[128] In making these claims, the Court had finally extended the *jus ad bellum* into a realm that Henkin had previously reserved for politics. Yet this was not the clear victory that Henkin always anticipated. In explaining its logic, the Court appealed to a principle that moved much past questions of stability and order. "To hold [that intervention was permitted]," the Court wrote, "would make nonsense of the fundamental principle of state sovereignty, on which the whole of international law rests, and the freedom of choice of the political, social, economic, and cultural system of the state."[129]

In making this point, however, the Reagan Administration claimed that the ICJ decision represented another chapter in a long history of Thirdworldist politicizations of UN institutions.[130] As Jeane Kirkpatrick— Reagan's Ambassador to the United Nations—claimed in the same edited volume as Henkin, "the authority of the International Court of Justice requires that the court be more than an expression of the will of the concurrent majorities of the Security Council and the General Assembly, by which its judges are elected." While the UN Charter, of course, paid ode to the idea of sovereignty, it also paid ode to other principles and purposes.[131] It was not clear whether this principle was *'the'* fundamental principle underlying the international system or whether it was even the principle that should structure the *jus ad bellum*. From the Reagan Administration's perspective, the exclusive focus of the Court only confirmed what it already believed to be the case: that the Court was mirroring the parochial preferences of the Third World.[132]

But the damage was done, and the attack on the ICJ's decision led to more dismal implications for the *jus ad bellum*. The Reagan Administration not only rejected the ICJ ruling; it

[128] Henkin, "Use of Force: Law and U.S. Policy," 49. Also see, *Judgment* ¶ 263
[129] Henkin, "Use of Force: Law and U.S. Policy," 49. Also see, *Judgment* ¶ 263.
[130] See Jeane J. Kirkpatrick and Allan Gerson, "The Reagan Doctrine, Human Rights and International Law" in *Right V. Might: International Law and the Use of Force* (Council on Foreign Relations, 1989), 34.
[131] UN Charter, Article 1, *available a*t http://www.un.org/en/sections/un-charter/chapter-i.
[132] The argument that the ICJ is biased continued until this day. See, e.g., Eric A. Posner and Miguel De Figueiredo, "Is the International Court of Justice Biased?," *The Journal of Legal Studies* 34, no. 2 (2005): 599–630.

also pulled out of its "compulsory jurisdiction."[133] In doing so, it finally explicitly repudiated the institutions that Henkin had long believed were unfairly influenced by the Third World and created a precedent which cast interpretive modification as quite reasonable, perhaps even necessary, considering the politicized context that the United States faced. Because the Court was supposedly biased and "no such change in the law—surely no formal change—[was] likely" to occur, Henkin predicted that it was only "over time, by actions and assertions, the United States could move and shape law informally to make it more permissive."[134]

Indeed, this prediction was confirmed in the same year that it was written. When the first Bush Administration invaded Panama to remove General Manual Noriega from power in 1989, Henkin rejected each legal argument that the Bush Administration put forth, even referring to the entire US action as "a gross violation of international law."[135] But Henkin, again, noticed that the Administration did not merely attempt to stretch the facts of the situation to fit the law and instead made claims about self-defense that were novel in nature. The Bush Administration sought to modify the law more expansively than Reagan had before it. In justifying the invasion of Panama, it claimed to exercise its right to self-defense while leaving out the conditional requirement of this provision: "the Bush Administration claimed that Article 51 permit[ed] the use of force in the exercise of the 'inherent right of self-defense' even if there ha[d] been no armed attack."[136] The Bush Administration did not, like Reagan, stretch the meaning of a legal term and "claim that any

[133] See, e.g., Martin Cleaver and Mark Tran, "US Dismisses World Court Ruling on Contras," *The Guardian*, June 28, 1986, https://www.theguardian.com/world/1986/jun/28/usa.marktran; Bernard Weinraub, "U.S. Plans to Quit the World Court in Political Cases," *The New York Times*, October 7, 1985. http://www.nytimes.com/1985/10/07/world/us-plans-to-quit-the-world-court-in-political-cases.html; Charlotte Saikowski, "Reagan Pulls US Away from World Court," *Christian Science Monitor*, October 8, 1985, http://www.csmonitor.com/1985/1008/acourt.html.
[134] Henkin, "Use of Force: Law and U.S. Policy," 59.
[135] Louis Henkin, "The Invasion of Panama under International Law: A Gross Violation," *Columbia Journal of Transnational Law* 29 (1991), 29.
[136] Henkin, "The Invasion of Panama under International Law: A Gross Violation," 304.

of the hostile acts by the Noriega regime, or all of them together, constituted an armed attack."[137] Instead, the Administration erased a legal terms completely when it "claimed that Article 51 permit[ed] the use of force in the exercise of the 'inherent right of self-defense' even if there ha[d] been no armed attack."[138]

While certainly ratcheting up the assault on the *jus ad bellum*, Henkin should not have been quite so shocked. After all, Henkin cited Abraham D. Sofaer—the Legal Advisor to the Department of State—who appealed to his own previous logic of 'novel situations' and 'absurd results' in arguing that the US should take an expansive legal position in fighting "state-sponsored terrorism."[139] Anti-terrorist discourse had become so powerful by this point that the Bush administration exuded confidence in simply wielding the label of "narcoterrorism" as a pretext for modifying the law.[140] Despite differences between narcoterrorism and international terrorism, Sofaer drew an explicit connection between the events of Libya and Panama. He argued that terror "ha[d] created new dangers for civilized peoples" and that "the responses of the United States in Libya and elsewhere ha[d] gained ever wider recognition as having been necessary and effective methods for defending Americans."[141] Of course, the international community had not granted

[137] Henkin, "The Invasion of Panama under International Law: A Gross Violation," 305-06.
[137] Henkin, "The Invasion of Panama under International Law: A Gross Violation," 304.
[138] Henkin, "The Invasion of Panama under International Law: A Gross Violation," 305-06.
[139] See Henkin, "The Invasion of Panama under International Law: A Gross Violation," 310. Also see, Abraham D. Sofaer, "The Legality of the United States Action in Panama," *Columbia Journal of Transnational Law* 29 (1991), 282.
[140] For a discussion of the how narcoterrorism simply became an expedient term to fight the cold war by other means, see Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 2006), 18-19. ("['Narco-terrorism'] revived the Moscow-orchestrated terrorism conspiracy theories of previous years while introducing the critical new dimension of narcotics trafficking. Thus 'narco-terrorism' was defined by one of the concept's foremost propagators as the "use of drug trafficking to advance the objectives of certain governments and terrorist organizations"—identified as the "Marxist-Leninist regimes" of the Soviet Union, Cuba, Bulgaria, and Nicaragua, among others. The emphasis on "narco-terrorism" as the latest manifestation of the communist plot to undermine Western society, however, had the unfortunate effect of diverting official attention away from a bona fide emerging trend.").
[141] See Henkin, "The Invasion of Panama under International Law: A Gross Violation," 310. Also see, Abraham D. Sofaer, "The Legality of the United States Action in Panama," 282.

such recognition, and in this respect, Sofaer was putting forth misleading information. But Soafer continued to support his argument in Henkin's terms: if the US could not deal with terrorism along the lines of Libya, this would only lead to an absurd result. "We must not permit the law to be manipulated to render the free world ineffective in dealing with those who have no regard for law," Sofaer wrote. "We must not allow law to be so exploited, but must insist on the continued development of legal rules that enable states to deal effectively with new forms of aggression."[142]

This was not the last that Henkin would hear of such arguments, but it became increasingly clear that the "continued development of legal rules" referred to interpretive modification, not formal law-making processes. Henkin went on to track the triumph of this current of thinking in three final reflections about the battering of the *jus ad bellum*. While these reflections were not all strictly about terrorism, none of them were arbitrary. Each reflection was structured by a pattern that Henkin had begun to track with the events in Nicaragua, Libya, Grenada, and Panama: the increasing rise of belligerent illiberal states who seemed to reject the liberal international order and the rule of law that underlined it.

First, Henkin, unlike many other commentators, remained quite skeptical that the end of the Cold War pointed to a new golden age of multilateralism. Henkin acknowledged that the First Gulf War, in achieving the support of the Security Council, might be viewed as representative of a trajectory where the United States would pursue "peace through law as the basis for the new international order."[143] But Henkin also saw problems with interpreting this event in isolation from the broader historical context in which it occurred. Henkin asserted that Saddam Hussein was emboldened to invade Kuwait precisely because the United States and its military actions had

[142] See Henkin, "The Invasion of Panama under International Law: A Gross Violation," 310. Also see, Abraham D. Sofaer, "The Legality of the United States Action in Panama," 282.
[143] Henkin, "Law and War after the Cold War," 165-66.

already weakened respect for the law. "Saddam Hussein… was not alone in saying to the United States *tu quoque*, to ask why the United States yes, Iraq no, Panama yes, Kuwait no."[144] The United States would need to do more than "mumble that Kuwait was different," if it wanted to ensure that "the invasion of Panama… would be seen as special, *sui generis*, a unique combination of circumstances setting no precedent, making no law applicable at another time, in other places, even in the Western Hemisphere."[145] This was especially important as the United States had more immediate national interests in the region. "The United States [would] have to persuade the world that in Iraq it fought for law rather than for oil."[146] It would have to persuade the world that, if the law conflicted with its immediate interests and it was unable to achieve multilateral support, then it would not engage in interpretive modification once again.

Second, Henkin tracked the rise of a broader *zeitgeist* that was pushing against the inviolability of the *jus ad bellum* in its traditional sense. One could, for example, see this in the debates surrounding NATO and its "humanitarian intervention" in Kosovo. While acknowledging that the intentions and substantive arguments in favor of permitting this form of intervention were quite different than those arguments seeking expansive forms of self-defense, Henkin clarified that those who supported the Kosovo intervention made the same *formal* arguments about the "absurd results" that a strict interpretation of the *jus ad bellum* entailed. "Human rights violations in Kosovo were horrendous," they claimed. "With rampant crimes reeking of genocide, NATO had to act."[147] This 'action,' of course, could not be achieved through the formal law. "There was general agreement" during the founding of the Charter that it "prohibit[ed] intervention by any

[144] Henkin, "The Invasion of Panama under International Law: A Gross Violation," 315.
[145] Henkin, "The Invasion of Panama under International Law: A Gross Violation," 315.
[146] Henkin, "Law and War after the Cold War," 166.
[147] Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" 826.

state for humanitarian purposes."[148] In addition, "NATO c[ould] not seek explicit authorization from the Security Council" because, "even after the Cold War, geography and politics rendered unanimity by the permanent members in support of military action (especially in the Balkans) highly unlikely."[149] To avoid humanitarian horrors, NATO therefore needed to modify the *jus ad bellum* "in practice if not in principle"—to either create a precedent where unilateral interventions could occur with the assumption that the Security Council would retroactively sanction them or to assert that the humanitarians norms underlying these actions were so powerful that they could override the formal law-making process. [150]

What was, perhaps, most surprising was that Henkin finally admitted that the interpretive modification of the law was unavoidable. Of course, a subtle shift had occurred in Henkin's thinking. Henkin no longer blamed the rise of interpretive modification on the actions and inactions of the General Assembly in wielding its law-making powers. Instead, Henkin turned towards a different body and power within the United Nations: the Security Council and its veto. While asserting that "Kosovo demonstrate[d] yet again a compelling need to address the deficiencies in the law and practice of the UN Charter" and that, in the meantime, "neither one state nor a collectivity of states should be encouraged to intervene on its own authority," Henkin also admitted "*that [the latter was] likely to happen*… unless the Security Council and the permanent

[148] Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" *The American Journal of International Law* 93, 4 (1999), 824. Henkin also pointed to how the ICJ decision explicitly rejected humanitarian intervention: "The 'use of force could not be the appropriate methods to monitor or ensure' respect for human rights." See Henkin, "Use of Force: Law and U.S. Policy," 48. Also see, *Judgment* ¶ 268. This is quite remarkable considering that it explicitly left open the question of anticipatory or preventative self-defense: "The court did not decide whether a target state (and its allies) may use force in anticipation of an armed attack." See Henkin, "Use of Force: Law and U.S. Policy," 49. Also see, *Judgment* ¶ 194.
[149] Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" 825.
[150] Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" 827.

members… [were] prepared to agree to adapt their procedures… [so] the veto would not be operative."[151]

But was demanding institutional change consistent with Henkin's previous arguments? To maintain this hope required ignoring how the national interest and international law were deeply interconnected. While the alteration of the veto required unanimous agreement by the international community, the very issue that initially motivated this change stemmed from the lack of unanimous agreement on using force to address human rights abuses. The solution to the problem—unanimity—was itself the problem—a lack of unanimity. In demanding that powerful non-'Western' forces give up the veto, Henkin therefore embraced the very idealist dream that he always challenged, imagining that the UN might transform into the post-political institution that it could never become. Henkin now even implied that UN enforcement mechanisms were integral to enforcing the law, at least in the case of human rights, and he therefore also suggested that the traditional *jus ad bellum* would suffer without institutional support—that the law of the Charter was no longer quite autonomous.

This historical trajectory finally brings us to Henkin's last reflection: the second Bush Administration and its war on terror. Henkin did not explicitly quote Bush's famous words that the United States should, "if necessary, exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country," nor did he explicitly refer to Bush's claim that the United States "must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries."[152] Yet Henkin, again, reiterated many of his previous arguments about embracing a strict interpretation of Article 2(4): that "the

[151] Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" 827.
[152] See The National Security Strategy of the United States of America (September 2002), available at https://www.state.gov/documents/organization/63562.pdf.

U.N. Charter" only permits "action in self-defense 'if an armed attack occurs'; that "measures of preventive, preemptive self-defense are not permitted under the U.N. Charter, however reasonable the fear"; and that it still remains ambiguous whether "the uses of force by 'terrorists'" are even "'armed attacks.'"[153] Indeed, Henkin even chastised the Bush Administration for using the language of 'war' in relation to 'terror' at all. "The Charter," Henkin claimed, "intended to abolish war as a legal concept" and "it would [therefore] contribute to clarity and understanding if we could do away with that 'W' word, eliminating it from contemporary legal discourse" altogether.[154]

What did Henkin, however, recommend as an alternative response to this so-called war? Again, Henkin qualified his critique by admitting that "the U.N. Security Council [was] hardly a perfect institution" and that it needed "to organize and prepare itself… to respon[d] to terrorism," perhaps even agreeing "to limit the uses, or the implications, of the 'veto.'"[155] By now, however, this plea was deeply empty. Not only had decades of demanding improvements to the United Nations failed to yield tangible results, but Henkin continued to acknowledge that the *jus ad bellum* imposed "absurd results" on those states fighting international terrorism. "What recourse does a neighboring state have against a state that either cannot, or will not, prevent its territory from harboring terrorists, or serves as a base for terrorist activities against it?" Henkin asked. "May the target state enter by force 'to attend to' would-be terrorists?"[156] Perhaps, the law was clear on this issue; perhaps, it was ambiguous. But in either case, it was clear that the Bush Administration posed this dilemma to support its strategy of modifying those rules that 'unfairly' restricted its range of action in fighting terror.[157] Because the United Nations was never meant to be the post-

[153] Louis Henkin, "War and Terrorism: Law or Metaphor," 825.
[154] Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" 824.
[155] Henkin, "War and Terrorism: Law or Metaphor," 826.
[156] Henkin, "War and Terrorism: Law or Metaphor," 825.
[157] Although the issue of using force when a state it "unwilling or unable" to stop terrorists within its territory is distinct from the issue of preventive self-defense, the Bush Administration argued that modifying the law to allow for preemptive action would create incentives that "den[ied] further sponsorship, support, and sanctuary to terrorists

political institution that idealists imagined, Henkin could only but express sympathy with this predicament. After all, the very alternative that he proposed—the reformation of the United Nations—was unrealistic within the terms and arguments that Henkin spent his life defending.

The Politics of Interpretive Modification

"If there is now an 'age of terrorism,'" wrote Henkin, "we do not know how long it will last, in what forms, or with what intensity."[158] In expressing these concerns, Henkin was surely worried about the integrity of the UN Charter. He was unsure whether Article 2(4) could adequately restrain the length and scope of the war on terror. He also worried about an additional aspect of the Charter—its commitment to human rights—that he only began focusing on in the 1970s and onwards. "The Age of Terrorism," as he put it, "cannot, [and] should not, be allowed to supersede the Age of Rights."[159] In both cases, Henkin's fears were deeply warranted. The Bush Administration claimed that "the United States of America [was] fighting a war against terrorists of global reach" and hence without clear spatial or temporal limits,[160] and it also "assert[ed] unprecedented executive power" to "justify a host of human rights violations, from disappearances to torture."[161]

The Obama Administration eventually took over the executive branch and clarified that the rise of a liberal Democrat to the position of Commander-in-Chief did not necessarily mean unbridled positive reforms for the scope and conduct of the war on terror. To be sure, the form and

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by convincing or compelling states to accept their sovereign responsibilities." See The National Security Strategy of the United States of America (September 2002), available at https://www.state.gov/documents/organization/63562.pdf.

[158] Henkin, "War and Terrorism: Law or Metaphor," 825.

[159] Henkin, "War and Terrorism: Law or Metaphor," 827.

[160] See The National Security Strategy of the United States of America (September 2002), available at https://www.state.gov/documents/organization/63562.pdf.

[161] David Cole, "A Larger War on Terror?," *The New York Review of Books*, December 4, 2008, http://www.nybooks.com/articles/2008/12/04/a-larger-war-on-terror.

intensity of Obama's war was somewhat circumscribed compared to his predecessor. The Obama Administration repudiated the Bush torture memos, closed the CIA's secret prisons, and attempted to bring the military commission process with the bounds of domestic and international law.[162] But the scope of the war only continued to expand under Obama's authority. The Administration kept troops in Afghanistan, despite promising to pull them out, and then expanded the drone wars in Yemen and Pakistan and its proxy-battles in Somalia. Even the intervention in Libya—justified in the name of humanitarianism—extended beyond this immediate goal and led to the overthrow of a regime long derided for supporting international terror. Surely, some of these goals were justified through Security Council Resolutions (i.e. the protection of civilians in Libya, although not regime change) and sometimes through sovereign consent (i.e. this was arguably the case in Yemen), and Obama therefore paid respect to traditional sources of international law. But while better than his predecessor in following such law, it was not clear whether Obama adequately defended limitations on using force.

Like Bush's National Security Strategy, the Obama Administration sought to interpretively modify the law to increase the range of US response to terror. "We are finding increasing recognition in the international community that a more flexible understanding of 'imminence' may be appropriate when dealing with terrorist groups,"[163] remarked John Brennan, the Assistant to the President for Homeland Security and Counterterrorism, in 2011. This remark was not merely accidental; it served as a precedent for how the Administration would make further legal arguments. Harold Koh, the Attorney-Advisor for the Office of Legal Counsel, soon developed a

[162] See David Cole, "Breaking Away," *New Republic*, December 8, 2010, https://newrepublic.com/article/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror.
[163] "Remarks of John O. Brennan, 'Strengthening Our Security by Adhering to Our Values and Laws,'" *Whitehouse.gov*, September 16, 2011, https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an.

theory of "elongated imminence" to support the flexibility of the Administration.[164] The concept of "elongated imminence" permissively sanctioned force as long as a "consistent pattern of [terrorist] activity" could be proven.[165] Koh "likened" elongated imminence to "battered spouse syndrome," as Daniel Klaidman argues. "If a husband demonstrated a consistent pattern of activity before beating his wife, it wasn't necessary to wait until the husband's hand was raised before the wife could act in self-defense."[166] Perhaps, there were some minimal limitations attached to this less restrictive standard of imminence. But the principle itself did not limit the use of force to the extent of the traditional standard.[167] If anything, this standard reinforced the triumph of an alternative historical trajectory than the one Henkin first imagined in the 1960s—a trajectory where the liberal goal of ending war was slowly replaced by a persuasive logic that modified the law to more easily conduct the global war on terror.

What does the story of Henkin's evolution teach us about this global war? For one, the story of Henkin shows the misleading nature of attributing blame for abuses of the *jus ad bellum* on neoconservatives alone. Despite appealing to formal law and legal principle to resist the modification of the *jus ad bellum*, even Henkin, the arch-defender of liberal legalism, undercut the persuasiveness of such appeals by expressing sympathy with the idea that there were cases and contexts where interpretive modification might be necessary. Even Henkin, the arch-defender of liberal legalism, went out of his way to highlight the specific 'absurdity' that arose when terrorists

[164] As Ryan Goodman notes, this standard did, however, also kick in jus in bello protections at an earlier stage. Seeing how the administration was primary focused on killing, not capturing, terrorists, it is not clear what practical effect this had. Ryan Goodman, "Imminence in jus in bello and imminence in jus ad bellum," Unpublished Work.
[165] Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (Mariner Books, 2012), pp. 219-220.
[166] Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (Mariner Books, 2012), pp. 219-220.
[167] The traditional notion of imminence allows for force only if the need is "instant, overwhelming, and leaving no choice of means, and no moment for deliberation." See Letter from Mr. Webster to Lord Ashburton, August 6, 1842, cited in Lori F.
Damrosch et al., *International Law: Cases and Materials* (2001), p. 923.

exploited the benefits of international law without fulfilling its obligations. This logic has remained quite powerful: it has influenced legal interpretation at the highest level of American power for decades. The Obama Administration did not adequately escape from the implications of this trajectory, nor was the Reagan Administration even its decisive origin. The origin stemmed from a bipartisan internationalist vision that cut across conservative and liberals lines—one which asserted that the politicization of international law by illiberal actors and regimes required modifying the law as the only way to defend liberal democracies from international terror.

This insight further demands that we reject the dominant story that has often been told about the war on terror: that it signified, as Jürgen Habermas has put it, "an unprecedented rupture with a [liberal] legal tradition that no previous American government had explicitly questioned."[168] Although often casting this sentiment in more tempered language, many liberal internationalists have similarly agreed with the Habermasian idea that the war on terror represented a stark "U-turn from an internationalist to an imperialist strategy."[169] In the early years after 9/11, the Princeton Professor John Ikenberry, for example, argued that "in the shadows of the Bush administration's war on terrorism, sweeping new ideas [were] circulating about U.S. grand strategy and the restructuring of today's unipolar world. They call[ed] for American unilateral and preemptive, even preventive, use of force, facilitated if possible by coalitions of the willing – but ultimately unconstrained by the rules and norms of the international community."[170] Similarly, Ivo Daalder, Obama's future Representative to NATO, and James Lindsay, the senior vice president of the Council of Foreign Relations, claimed that "the Bush revolution in foreign policy… rested on two beliefs. The first was that in a dangerous world the best—if not the only—way to ensure America's

[168] See Jürgen Habermas, "Does the Constitutionalization of International Law Still Have a Chance?" in *The Divided West* (Cambridge: Polity, 2006),182.
[169] Habermas, "Does the Constitutionalization of International Law Still Have a Chance?" 182.
[170] John Ikenberry, "America's Imperial Ambition," *Foreign Affairs*, September 1, 2002.

security was to shed the constraints imposed by friends, allies, and international institutions. The second belief was that an America unbound should use its strength to change the status quo in the world."[171] In pointing to how the Bush Administration's militant rhetoric was in deep tension with the liberal international order, many liberals captured the dominant belief that the Bush Administration rejected multilateralism and institutionalism in favor of unilateralism and extra-legality to fight terrorists and their state-sponsors.[172] As such, the Bush Administration posed an issue much beyond what Henkin ever imagined: while "idealists and realists [once] clashed over whether justice is even possible in relations between nations," the Administration posed "whether law remains an appropriate medium for realizing the declared goals of achieving peace and international security and promoting democracy and human rights throughout the world."[173]

This account can be challenged on various grounds. For one, the idea that the Bush Administration exclusively pursued a unilateral or extra-legal vision of power is somewhat of an exaggeration. The Bush Administration attempted to legally justify its invasion of Iraq—a turning point in the war on terror—through relying on previous Security Council Resolutions,[174] and it also sought to combat terrorism through the aid of UN institutions.[175] Yet while this contextual correction is warranted, even this criticism does sufficiently grasp what is wrong with the common

[171] Ivo H. Daalder and James M. Lindsay, "America Unbound: The Bush Revolution in Foreign Policy," *Brookings*, November 30, 2001, https://www.brookings.edu/articles/america-unbound-the-bush-revolution-in-foreign-policy.
[172] Habermas, "Does the Constitutionalization of International Law Still Have a Chance?" 182.
[173] Habermas, "Does the Constitutionalization of International Law Still Have a Chance?" 116.
[174] The legal arguments for the Iraq war were articulated in three main memos that were written before the invasion. See Jay S. Bybee, Memorandum, "Authority of the President Under Domestic and International Law to Use Military Force Against Iraq" (Oct. 23, 2002); John C. Yoo, Memorandum, "Effect of a Recent United Nations Security Council Resolution on the Authority of the President Under International Law to Use Military Force Against Iraq" (Nov. 8, 2002); John C. Yoo, Memorandum, "Whether False Statements or Omissions in Iraq's Weapons of Mass Destruction Declaration Would Constitute a 'Further Material Breach' Under U.N. Security Council Resolution 1441" (Dec. 7, 2002).
[175] The Bush Administration, for example, made it a staple of its policy to fight the financing of terrorism and supported SC Resolution 1373 to achieve this goal. See, e.g., Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism," *The American Journal of International Law* 97, 2 (2003): 333–41.

liberal narrative. Not only do many liberals often ignore examples of the Bush Administration working through the law, but they also mistakenly understand instances of its extra-legal rhetoric as pointing towards a vision of power beyond it. Such rhetoric, as Henkin showed, did not seek to replace the 'law' with 'power.' It rather attempted to modify the law without explicitly repudiating it, especially when formal-law making processes were deemed impractical.

The fact that many liberals miss this nuance—that the Bush Administration sought to modify the law, not supersede it—is quite important. In avoiding this insight, they do not try to discover its history; and in failing to discover its history, they sometimes, like Habermas, end up critiquing those who locate "the unilateralism of the Bush administration within a historical pattern of consistent imperialistic behavior" as "trivializ[ing] the importance of what is in fact an abrupt reversal in [American] policy."[176] But the inability to appreciate the history of US imperialism and its logic of militancy means that it is such liberals who trivialize what is a stark continuity in American practice throughout the postwar period. The United States would continuously turn to violence when it thought that non-violent strategies were ineffective: during the Cold War, the United States would meet its interest in opposing communism through embracing interventionist warfare which was legally permitted; with the rise of Thirdworldism, the United States would meet its interest in opposing international terrorism through interpretively modifying the law to avoid explicitly transgressing it. This pattern describes the consistent logic of militant liberalism—one which allows for more violent courses of action when consensus is deemed impossible and hegemonic influence finds its limit.

This historical context and correction therefore highlight a more fundamental point. If technical legal arguments or pragmatic proposals are not enough to adequately oppose the

[176] Habermas, "Does the Constitutionalization of International Law Still Have a Chance?" 181, 82.

interpretive modification of the *jus ad bellum*, it might be more fruitful to oppose this trajectory through engaging with the political ideas and contexts motivating such modification in the first place. After all, what is considered an 'absurd result' is by no means neutral or self-evident; this is a political choice that stems from a broader political vision that prioritizes certain goals and values over others. Henkin, of course, claimed that the Third World was parochial—that it sought to subvert the liberal legal order to realize its interpretation of non-intervention—while Berlin himself captured the frightening results of such subversions as stemming from a desire for positive freedom. But were these pictures accurate? Was the Third World indeed a force motivated by such desires? If they were not quite accurate, the calculus of absurdity might change, and hence it is such pictures of the Thirdworldism that the next chapters seek to interrogate and challenge.

CHAPTER 3

THE NEGATIVE DIALECTIC OF DECOLONIAL HISTORY: FRANTZ FANON AND THE TRAGIC DESTRUCTION OF UNIVERSAL SELF-DETERMINATION

> "As early as Plato, dialectics meant to achieve something positive by means of negation; the thought figure of the 'negation of the negation' later became the succinct term. [Negative Dialectics] seeks to free dialectics from such affirmative traits without reducing its determinacy."
> — Theodore Adorno

Frantz Fanon: A Life of Reinvention

Frantz Fanon lived a life of reinvention. During the early years of his life, Fanon was a proud patriot of the French nation. When his teacher, Joseph Henri, mentioned amid World War II that "[w]hen white men kill each other, it [was] a blessing for blacks," Fanon immediately expressed utter horror at such an anti-humanist sentiment and then went off to join the French Army to fight against German aggression.[1] But over the next decade, especially after moving to Algeria, Fanon stopped believing that he was a welcome part of the French nation. Fanon joined the National Liberation Front (FLN)—the vanguard party of the Revolution and the authoritative voice of the Algerian People—which ordered its militants to commit terrorist attacks in *Pied Noir* cafes and restaurants, while also reserving the brunt of its ferocity for liquidating external dissident parties and purging internal party members. While he did not always subjectively agree with each specific instance of violence, Fanon did write for the FLN's newspaper, *El Moudjihad*, justifying its more general militant stance, and he would become most famous for his essay, "On Violence," which spoke of the purifying qualities of revolutionary warfare.[2] But, yet again, Fanon would soon turn against his previous allies in the last few years of his life, dedicating his energy to writing a

[1] See David Macey, *Frantz Fanon: A Biography* (New York: Verso, 2012), 86.
[2] See Frantz Fanon, "On Violence," in *The Wretched of the Earth,* trans. Richard Philcox (New York: Grove Press, 2005).

formative essay, "On the Trials and Tribulation of National Consciousness."[3] Fanon critiqued Thirdworldists regimes for following in the footsteps of Western development, and he argued that they were better served by carving out their own economic paths and promoting local democratic rule.

This picture of Fanon as a multi-faceted thinker, who shifted his opinions and political persuasion as his contexts shifted too, has often been ignored. The image of Fanon that is often put forth has uniformly focused on the version of the man who not only defended revolutionary violence but longed for, as Bernard Yack has coined the term, "total revolution."[4] Following Yack, David Scott has, for example, argued that "anticolonialism has been [the] classic instance of the modern longing for total revolution."[5] In "Frantz Fanon's *Wretched of the Earth*," Scott writes, "colonialism is conceived largely as a totalizing structure of brutality, violence, objectification, racism and exclusion that anticolonial revolution was supposed to overcome."[6] Because of this stark picture of irreconcilable opposites, "anticolonial stories," like Fanon's, "have typically been emplotted in a distinctive narrative form, one with a distinctive story-potential: that of *Romance*."[7][8] As a romantic reflection on the relation between past, present and future, these stories "have tended to be narratives of overcoming… [and] they have depended upon a certain (utopian) horizon towards which the emancipationist history is imagined to be moving."[9]

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[3] Frantz Fanon, "On the Trials and Tribulations of National Consciousness," in *The Wretched of the Earth,* trans. Richard Philcox (New York: Grove Press, 2005).
[4] See Bernard Yack, *The Longing for Total Revolution: Philosophic Sources of Social Discontent from Rousseau to Marx and Nietzsche* (Berkeley: University of California Press, 1992).
[5] David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*, 1 edition (Durham: Duke University Press Books, 2004), 6.
[6] Scott, *Conscripts of Modernity*, 6.
[7] Scott, *Conscripts of Modernity*, 7.
[8] As Scott mentions elsewhere, "Perhaps the clearest—because most programmatic—statement of the narrative of *anticolonial* revolutionary romance is Frantz Fanon's *The Wretched of the Earth*." Stuart Hall, "[Interview with] David Scott," *BOMB Magazine*, http://bombmagazine.org/article/2711/david-scott.
[9] Scott, *Conscripts of Modernity*, 8.

Scott himself "do[es] not take this conceptual framework [of romance] to be a mistake," and he even expresses sympathy with it, arguing that it served an integral role in helping end colonial rule during the anticolonial moment. But such sympathy has not always been the primary response to this picture. The Fanon of total revolution was, perhaps, first popularized by Hannah Arendt who described Fanon as subscribing to "'the creative madness' present in violent action," in her own work "On Violence."[10] As the dissertation has already also shown, the Fanon of total revolution would also come to embody all that was horrible about Thirdworldism for thinkers as diverse as Isaiah Berlin and Jeane Kirkpatrick. The story of nationalist revolution, as Berlin argued in Chapter 1, was supposedly a story of romanticism unbound—one where Thirdworldists engaged in revolutionary violence without ethical restraint eliminating those movements and individuals that opposed the national will during the revolutionary era and onwards to the post-revolutionary period, all in the name of achieving positive freedom for "the people" or nation.

Indeed, other scholars have filled out this theoretical skeleton with more substantial factual meat, supposedly helping explain the dire results of the Algerian experiment within its terms.[11] Because the eight-year long war both polarized Algerian society and removed any dissent, scholars have argued that it was the revolutionary project and its utopian appeal to violence that allowed the FLN to solidify its rule as "one party" upon independence. In turn, the one-party system, without a balance of power or any space for plural viewpoints, also pushed Algeria into violent crisis after crisis whenever disagreement arose: first, shortly after the Revolution with General Boumedienne's military coup of Prime Minister Ben Bella and, more recently, with the civil war between the FLN and the Islamic Salvation Front (FIS). Perhaps, it is for instances like these that

[10] Hannah Arendt, *On Violence* (New York: Harcourt Brace Javanovich, 1970), 75.
[11] See, e.g., Bernard-Henri Levy, *Sartre: The Philosopher of the Twentieth Century*, (Cambridge, UK: Polity, 2003); Michael Walzer, "Albert Camus's Algerian War," *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century*, First Edition edition (New York: Basic Books, 1988).

Scott would later admit to Stuart Hall that if the anticolonial project and the goal of national sovereignty were not "wrong," they were, in some sense, "wrong-headed."[12] But if this is the case, what exactly are we appreciating about the Algerian Revolution when we look back and discover its "wrong-headed" romantic assumptions? Why express sympathy with the Algerian revolution as moment of collective freedom if its inability to move past its own longing for total revolution was partly at fault for bringing forth new forms of authoritarian domination?

This chapter argues against the romantic picture of Frantz Fanon by reading his corpus through, what I term, his negative dialectic of decolonial history. The concept of the negative dialectic embraces the traditional revolutionary idea that the struggle against forces of domination, instead of reconciliation or assimilation with them, is needed to move historical progress forward. But in contrast to the traditional Hegelian or Marxist idea where history displays a cunning of reason conscripting the unwitting actions of individuals and groups in service of actualizing universal freedom, the negative dialectic also acknowledges that the cunning of reason is a myth—that dialectical struggle, as Theodore Adorno has put it, does not necessarily "achieve something positive."[13] Far from being simply romantic, Fanon therefore subscribed to a tragic conception of history. This is rather ironic considering that the Scott himself juxtaposes the romantic and the tragic. As Scott writes,

> [T]ragedy sets before us the image of a man or woman obliged to act in a world in which values are unstable and ambiguous. And consequently, for tragedy the relation between past, present, and future is never a Romantic one in which history rides a triumphant and seamlessly progressive rhythm, but a broken series of

[12] "[Y]ou've asked me what went wrong with that project of radical national sovereignty. I should say, to begin with, that *Conscripts of Modernity* is not concerned with figuring out or contributing to the discussion of "what went wrong" (and I repeat this throughout the book). But okay, true, the disenchantment you detect stems from a sharp sense that the project didn't simply run out of steam, but was, in fundamental ways, *wrong-headed*. I think this is what you are (perhaps *have been* for a while) trying to get me to face up to, to admit. So yes." Stuart Hall, "[Interview with] David Scott," *BOMB Magazine*, http://bombmagazine.org/article/2711/david-scott.
[13] Theodor W. Adorno, *Negative Dialectics* (A&C Black, 1973), xix.

> paradoxes and reversals in which human action is ever open to unaccountable contingencies—and luck.[14]

Indeed, to assert that Fanon simply defended a "triumphant and seamlessly progressive rhythm" is to mistakenly take a snapshot of his writings and assume that it is determinative of his entire thinking. Like Scott's description of tragedy, the Fanonian corpus is structured by the idea that values are unstable and ambiguous, that what displays itself as freedom-affirming might fail, or if it indeed succeeds, it might fail in another context. When revolutionary overcoming appears in the Fanonian corpus, it is therefore embedded within this structure of historical tragedy.

Unlike Scott, however, the Fanonian conception of tragedy is still somewhat unique. While it does attribute some of these "paradoxes and reversal" to "contingencies" and (bad) "luck," it also asserts that, in the decolonial context, the tragic reversal of historical progress stems from the organized forces of imperial domination, and sometimes even the betrayal of its once revolutionary proponents. In this respect, the purpose of dispelling this romantic picture, I hope to show, is that it also dispels the idea that what was wrong-headed about the Algerian Revolution, and Thirdworldist revolution more generally, was its *idea* of revolutionary struggle. Fanon's negative dialectic shatters the Berlinian thesis that it was the utopian vision of anticolonial revolution that led it to unravel like a steam roller crushing any opposition to its goals; it shatters the supposed continuity that its critics have inextricably drawn between the violence of the anticolonial moment and the violence of the postcolonial one. Instead, the negative dialectic reveals how, in both cases, the most violent aggravations within the Third World rested in practices of colonial and imperial interference which, through an alliance between external forces and internal collaborators, uniformly repressed democratic freedom from the age of formal colonialism to the postcolonial era of militant liberalism.

[14] Scott, *Conscripts of Modernity*, 11.

This chapter tells this story in three parts. The first section turns to Fanon's first major work, *Black Skin, White Masks,* to work out his initial formulation of the negative dialectic. Through engaging with Hegel's traditional dialectic and his own experiences of racism, Fanon formulated an account of why liberal assimilationism inherently failed to solve the race problem. In contrast to Hegel who spoke of an implicit "reciprocity" in relations of domination, Fanon used the language of "alterity" to describe the unique horror of colonial violence: how colonialism violently treated the colonized not only as instrumental 'objects' who might one day become self-determining 'subjects,' but instead as 'Other'—that is, as beings outside the realm of moral or human concern. This radical exclusion meant that colonial relations did not exhibit any immanent resources that would allow the colonized to make successful moral claims on the colonizer, and that human freedom could only be achieved through decolonial "rupture"—that is, through the struggle against any political identity or consciousness that maintained alterial domination. While, at this point, Fanon turned to the tradition of négritude and its valorization of black culture to resist assimilationist politics and instill a sense of dignity in the colonized to motivate their struggle against unequal racial relations, he would also acknowledge the contingencies and dangers attached to this mode of belonging. Cultural identity was only liberatory in specific contexts; sometimes, it valorized culture for culture's sake and bred inaction, and in different historical moments, it might even aid and abet domination. It provided no guarantees, in other words, for "achiev[ing] something positive."[15]

The following sections build off this negative dialectical structure to show how it shaped Fanon's reflections about anticolonial struggle and the postcolonial future. The second section shows that Fanon would embrace revolutionary violence not out of a desire for utopian

[15] Theodor W. Adorno, *Negative Dialectics* (A&C Black, 1973), xix.

overcoming, but as a shift made necessary by the colonial cooption of cultural politics. Precisely when national liberation was finally becoming likely, France began to embrace cultural pluralism to retain a semblance of sovereignty over Algeria and other French colonies, while négritude thinkers, like Leopold Senghor, would even support this project. Because such an arrangement would keep unequal relations intact, Fanon defended revolutionary violence as the only force that could instill an autonomous national identity within the colonized and banish colonialism. While acknowledging that the appeal to violence might lead to dire results, the story that Fanon tells attributes the worst of such contingencies to the aggravations of colonial and imperial meddling. The last section follows this pattern, once again, showing how Fanon would disown his prior nationalist position once neocolonial arrangements coopted nationalist politics. Although nationalist identity was integral to ending colonial rule, Fanon argued that it would allow dictators to engage in repression as they attempted to modernize and catch up with Europe, while more dangerously allowing the national bourgeoise to liberalize their economies and throw their societies into deep internal conflicts. This account implied that there was no revolutionary logic connecting the abuses of the anticolonial and postcolonial periods. On the contrary, postcolonial nationalists failed to embody the revolutionary spirit when they continued to embrace nationalist politics once it could no longer achieve something positive.

From Assimilationism to Culturalism

"*Maman*, look, a Negro; I'm scared"—Fanon did not introduce *Black Skin, White Masks* with his famous story of an innocent child fearfully grasping his mother after seeing his black skin for the first time.[16] Yet this story would prove itself as the decisive starting point both for an

[16] Frantz Fanon, *Black Skin, White Masks* (Grove Press, 2008), 91.

analysis of racial domination and the seeming lack of adequate solutions for achieving freedom in such a context. This story captured how Fanon experienced the problem of racism, at least at this historical juncture, against a background that allowed the ideal of French liberal assimilation to remain intelligible as the *prima facie* solution to the race problem. Fanon did not experience the "white gaze" of a child from behind the walls separating the French Quarter from the Algerian Casbah. He experienced it as a supposedly free and equal citizen of the French Republic—one who not only had the luxury of traveling unencumbered throughout the French countryside, studying psychiatry in the best of French universities, and interacting daily with white French citizens, but also as one who joined the French army during World War II.

Indeed, these early years were unique for their confusing mixture of seeming inclusion and subtle exclusion. Both Fanon and the future President of Algeria Ahmed Ben Bella, for example, received medals of bravery for their actions during World War II which were authorized by none other than Schmitt's lauded anti-hero—as we shall see in Chapter 4—General Raoul Salan.[17] This was a time when the revolutionaries and counter-revolutionaries of the Algerian Revolution had not yet been born. Yet in the opposite vein, racism often crept up in the most mundane of moments. The French officers, for example, often unequally distributed resources between the white and dark soldiers, and when Ben Bella himself protested this practice, he was deemed an agitator and was threatened with the revocation of his medal.[18] This was also a time when future revolutionaries reflected upon their early experiences of racism and formulated the workings of a political program to overcome them.

Yet not all reflections about racism produced similar conclusions and with the existence of such differences arose important disagreements. It is of no small note that Leopold Senghor, the

[17] Macey, *Frantz Fanon,* 100.
[18] Macey, *Frantz Fanon,* 97.

first President of Senegal and négritude poet against whom Fanon most often directed his critiques of cultural politics, experienced the exact same instance of racism as Fanon: a white child fixated and reacted to the novelty of his black skin.[19] What is less often noted is that Senghor simply shrugged off the occurrence, while Fanon found that this experience filled him with shame or, as he described in phenomenological terms, "Nausea."[20] The feeling of nausea resulted from the realization that "the Other fixe[d] [the black man] with his gaze" and made him into "an object among other objects," instead of a subject with equal human status.[21] The particular emotion of the child—one of fear—however also revealed to Fanon the symbolic role the black man was meant to inhabit: "the Negro is an animal, the Negro is bad, the Negro is wicked... *Maman*, the Negro is going to eat me."[22] Not simply fixed as an object but also as an 'Other'—that is, as (non)beings excluded from the realm of human or moral concern—the black man found himself in a horrible double bind: he could not assimilate into white civilized society which always rejected him, but he could also not embody black culture proudly which was still burdened and tainted by the reality of racism. How to break this "vicious circle," as Fanon put it, was one of the central preoccupations of his work.[23] Even more importantly, understanding that there was a vicious circle in the first place was the only hope for moving beyond it. But that some actors did not quite understand it led to important implications: that liberation could fail, especially when men, like Senghor, brushed off the gaze and celebrated culture for its own sake. While demanding cultural *self-assertion* to shatter the colonial regime, Fanon understood that this dialectical reversal was negative—that is, it was bursting with historical contingency and tragic possibility.

[19] Macey, *Frantz Fanon,*165.
[20] Fanon, *Black Skin, White Masks*, 92.
[21] Fanon, *Black Skin, White Masks*, 89.
[22] Fanon, *Black Skin, White Masks*, 93.
[23] Fanon, *Black Skin, White Masks*, 119.

The Mask of Assimilation and the Origins of Negative Dialectics

Fanon only found himself discovering the pathway to liberation after ruling out alternative political paths that ended in failure and that subsequently led him to reflect on the peculiar nature of his racial status. Deeply influenced by Sartre's writings in general and his *Anti-Semite and Jew* in particular, Fanon described the ability of a political identity to affirm freedom in terms of the traditional phenomenological language of 'situation' and 'authenticity.' Like Sartre, Fanon believed that the black man was "a being 'in a situation'"—that is, the black man "form[ed] a synthetic whole with his situation… biological, economic, political, cultural, etc." and could not be "distinguished from his situation because it form[ed] him and decide[d] his possibilities."[24] Initially, Fanon understood that his situation was determined by his object status, a symbolic racial justification, and although not yet clearly unpacked in this work, a particular colonial logic of economic domination that provided material support for this racial schema. And like Sartre, Fanon understood how authenticity demanded that individuals make decisions that considered the limits of their situation recognizing themselves as free and responsible beings, while inauthenticity resulted when individuals either attempted to deny their situation or their capacity for freedom. While initially believing that racism could be confronted through assimilation, Fanon would soon discover that this politics of recognition was an inauthentic form of flight that masked the nature his situation—one that was structured by the tragic truth of the negative dialectic.

If Fanon would come to doubt the liberating potential of assimilation, it was not for the lack of an affirmative reception by the white man. On the contrary, Fanon initially sought to challenge his situation through engaging the white man and found a positive response. In order to

[24] Jean-Paul Sartre, *Anti-Semite and Jew: An Exploration of the Etiology of Hate*, trans. George J. Becker (New York: Schocken, 1995), 60.

"g[i]ve [him]self up as an object," Fanon denied the construction of blackness attributed to him while simply demanding recognition from the white man as "a man among other men," "a man… and nothing but a man."[25] This was initially possible, Fanon argued, since the liberal Frenchman—or, in Sartre's terms, "The Democrat"— explained that "some people [had simply] adopted a certain opinion [of him]… And what was that? Color prejudice."[26] In this respect, Fanon first considered racial prejudice as an "irrational" or subjective belief and consequently decided "to rationalize the world and show the white man he was mistaken."[27]

But even after appealing to reason and persuasion, Fanon "was soon disillusioned."[28] If "everyone was in agreement with the notion [that] the Negro is a human being… i.e. his heart's on his left side," Fanon soon discovered that about "certain questions the white man remained uncompromising"—for example, an implicit and continuous prohibition of intimacy or sex between the races stood firmly in place.[29] To explain this mistake, Fanon did not merely consider racial prejudice as irrational—like Sartre, as "a passion[ate]" hatred that could not be rationalized away—but as also structuring the actions of kind-hearted proponents of liberal assimilation themselves.[30] Reflecting on his experiences, Fanon found that the even liberal Frenchmen forced upon the black man an awareness of his difference while *genuinely* claiming him as human. Fanon paraphrased the Democrat as follows:

> 'You see, my dear fellow color prejudice is totally foreign to me,' 'Quite so, the Black is just as much a man as we are.' 'It's not because he's black that he's less intelligent than we are.' "I had a Senegalese colleague in the regiment, very smart guy.'[31]

[25] Fanon, *Black Skin, White Masks*, 92.
[26] Fanon, *Black Skin, White Masks*, 97. Compare, for example, when Sartre claims that the anti-Semite had "adopted in advance a certain idea of the Jew, of his nature and of his role in society. See Sartre, *Anti-Semite and Jew*, 13.
[27] Fanon, *Black Skin, White Masks*, 98.
[28] Fanon, *Black Skin, White Masks*, 99.
[29] Fanon, *Black Skin, White Masks*, 99.
[30] Sartre, *Anti-Semite and Jew*, 19.
[31] Fanon, *Black Skin, White Masks*, 93.

Indeed, what drove Fanon into full exasperation was how even the well-intentioned denial of negative racial stereotypes forced the black man into a position of extreme over-awareness about his blackness [32] This over-awareness provided evidence of a radical alienation, a split personality, at the heart of black experience: "not only must the black man be black"—that is, must he conform to his perceived sense of self—but "he must be black in relation to the white man"—that is, he must conform to a sense of self which was determined by the gaze of the white man.[33]

Fanon first hinted to deeper causes of this radical alienation when describing his book's method of investigation. He claimed that he was not "the bearer of absolute truths" and the structure of his work was "grounded in temporality."[34] He therefore also clarified that his work would not explore the abstract question of "ontology"—a timeless philosophical speculation about the nature of being and what it meant to be human. "Ontology," Fanon claimed, "does not allow us to understand the being of the black man since it ignores his lived experience."[35] The black man's lived experience thus far had proven that the assimilationist pathway towards men becoming human, through recognition of one's humanity through the eyes of the other, continuously failed. There was something about the colonized situation, in other words, which insured that "the black man ha[d] no ontological resistance in the eyes of the white man"—not even a minimal appeal to the realm of being that would allow for a full and final entrance into humanity.[36] When referring to the failure of the black man's ontological resistance, Fanon conjured to mind a philosophical target who led men to assume that they could appeal to such forms of resistance. "There is," Fanon claimed, "a 'being for other'… as described by Hegel"—a supposedly universal resource available

[32] "When they like me," Fanon wrote, "they tell me my color has nothing to do with it. When they hate me, they add that it's not because of my color." Fanon, *Black Skin, White Masks*, 96.
[33] Fanon, *Black Skin, White Masks*, 90.
[34] Fanon, *Black Skin, White Masks*, xvi.
[35] Fanon, *Black Skin, White Masks*, 90.
[36] Fanon, *Black Skin, White Masks*, 90.

to all men that permits human recognition in the eyes of the other.[37] "But any ontology" of this kind, Fanon further asserted, was "made impossible in a colonized and acculturated society."[38] To get at the heart of the matter, in other words, one needed to understand why the Hegelian dialectic, the process of recognition through which man inevitably ascended from object to subject, did not apply to colonial societies at all.[39]

The origins of the negative dialectic, in other words, stemmed from Fanon's critique of Hegel's master-slave dialectic. At the core of his critique was one simple idea: that "there is at the basis of the Hegelian dialectic an absolute reciprocity" that did not apply to the colonized.[40] The existence of reciprocity—the idea that there is a mutual bond between master and slave that, even when they do not recognize each other as equal, still ensures that the constitution of their identities are reliant on one another—is one of the foundational concepts of the Hegelian dialectic. The dialectic describes the process through which this mutual bond allows man to objectively acquire knowledge about his status as a human subject. Like Berlinian romanticism, Hegel argues that the initial stage of human awareness arises with the attempt to distinguish oneself from nature: the appearance of the desire or the will to negate bare existence seeking instead to become a creature defined beyond natural needs and dictates. The chance to negate the authority of nature arrives when two consciousness's initially meet and both risk their lives in a struggle towards death. This struggle proves their worth as creatures who do not merely seek survival but something more: human status. Unlike this romanticism, however, Hegel moves past struggle as the determinative

[37] Fanon, *Black Skin, White Masks*, 89.
[38] Fanon, *Black Skin, White Masks*, 89.
[39] See G. W. F. Hegel, *Phenomenology of Spirit*, trans. A. V. Miller, Revised ed. edition (Oxford: Oxford University Press, 1977).
[40] Fanon, *Black Skin, White Masks*, 191.

proof of this status. Instead, the initial struggle merely sets into motion a process which allows one to achieve objective awareness of his humanity through intersubjective recognition.

This awareness is not achieved in the short term but immanently unfolds outward as the logical result of the initial outcome of the struggle. The struggle results with one figure refusing to back down and becoming the master and the other figure cowering before death and becoming the slave. The master, although he proves himself as the superior counterpart, falls into a somewhat problematic position. He cannot kill the slave because this would defeat the initial purpose of the struggle: to gain human recognition. At the same time, the slave proves himself as an inferior counterpart and his recognition never quite satiates the master. The master, therefore, makes a bargain: the slave's life for his labor. Although this bargain treats the slave like an object, it also eventually leads to the master's demise. As Alexander Kojeve has pointed out, the master, although he does not recognize the slave as equal, implies that there is a minimal *equivalence* between himself and the slave—in so far as any bargain or contract assumes a certain equality between the parties.[41] The bond that exists between the master and slave is one of reciprocity or mutuality, even if there is not yet equal recognition. The dialectic, therefore, proceeds with the slave, who has not achieved recognition, throwing himself into his work and labor—or, as Fanon puts it, "the [Hegelian] slave turns away from the master and turns towards the object."[42] The slave then discovers his own humanity through work—through dominating nature and mastering his craft. Eventually, with this new-found awareness, the slave asserts his human status to the master who, in both refusing to kill the slave and already implying although simultaneously denying their

[41] See Alexandre Kojève, *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit*, ed. Allan Bloom, trans. James H. Nichols, 1st edition (Ithaca, NY: Cornell University Press, 1980). Also see Robert Howse and Bryan Paul Frost, "Introductory Essay: The Plausibility of the Universal and Homogeneous State," in *Outline of a Phenomenology of Right*, ed. Bryan-Paul Frost, trans. Robert Howse (Lanham, Md.: Rowman & Littlefield Publishers, 2007).
[42] Fanon, *Black Skin, White Masks*, 195.

equivalence, must acquiesce so that both can achieve mutual recognition and become independent human subjects. The initial bargain between master and slave, in other words, provides an immanent resource to subvert their unequal relations.

In contrast to this traditional story, Fanon asserted that the relation between the white master and black slave was best described as one of "alterity" or otherness, instead of as one of "reciprocity" or mutuality.[43] This meant that the black slave was not treated 'like' an object with an implicit equivalence that would allow him to make claims upon the master and eventually achieve proper subjecthood. Instead, the black slave was treated as an object without any moral or normative concern—that is, not simply as object but also as 'Other.'[44] The colonized were, therefore, "subaltern" figures: those who could not speak.[45] They could never level a political claim to their masters that would successfully erase their object status and turn them into subjects who were worthy of independence and moral concern. As Fanon succinctly claimed, "There [was] no question of finding being when [black slaves] live[d] at non-being."[46][47]

The root of all of this brought Fanon back to the core dimension of the Hegelian dialectic that was missing from black experience. According to Hegel, the dialectic only got off the ground because "conflict and the risk that it implie[d]" forced man out of his animal state.[48] Only conflict and risk insured that one went "beyond life toward an ideal which [was] the transformation of subjective certainty of [one's] own worth into a universally valid objective truth."[49] Since the black

[43] Fanon, *Black Skin, White Masks*, 197.
[44] Emmanuel Levinas popularized the critique that Hegel's conception of otherness was not one of alterity. See Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (Pittsburgh, Pennsylvania: Duquesne, 1969).
[45] See Gayatri Chakravorty Spivak, "Can the Subaltern Speak?" in *Marxism and the Interpretation of Culture* (Springer, 1988), 271–313.
[46] Fanon, *Black Skin, White Masks*, 162.
[47] Lewis Gordon has referred to this as the "hellish zone of non-being." See Lewis R. Gordon, *Fanon and the Crisis of European Man: An Essay on Philosophy and the Human Sciences* (New York: Routledge, 1995).
[48] Fanon, *Black Skin, White Masks*, 193.
[49] Fanon, *Black Skin, White Masks*, 193.

slave did not seem to even possess this potentiality, perhaps, this was because the black man "did not fight for his freedom."[50] Perhaps, this was because "historically, the black man, steeped in the inessentiality of servitude, was set free by the master."[51] Over here and for the first time, Fanon used the language of slavery quite literally, referring back to the moments when the Republic banished slavery throughout its colonies. Of 1792 and 1848, Fanon admitted that formal slavery was abolished but only as a gift. "As master, the white man told the black: 'You are now free.'" "Slavery," the white master thundered, "shall no longer exist on French soil."[52] But just because slavery was abolished did not mean that the black slave was necessarily propelled to formal equality with his master. Fanon asserted that the "black man [remained] a slave who was allowed to assume a master's attitude," while the "white man [remained] a master who allowed his slaves to eat at his table."[53] Because the "upheaval" of abolition "reached the black man from the outside," it did not provide the black slave with the resources to overcome his dependency: "he went from one *way* of life to another, but not from one life to another."[54]

Of course, this narrative was harsh. It seemed as if Fanon was erasing the struggles of those "black Jacobins" who led the first attacks against French slavery and whose continuous threat of violence, and not simply French good will, eventually led to the institution's dismantling.[55] More generously, however, Fanon was making a deeper theoretical point. Fanon was aware that importing phenomenological language developed for an imagined interaction between two pre-social beings and subsequently imposing it onto a historically constituted interaction between

[50] Fanon, *Black Skin, White Masks*, 194.
[51] Fanon, *Black Skin, White Masks*, 194.
[52] Fanon, *Black Skin, White Masks*, 194.
[53] Fanon, *Black Skin, White Masks*, 194.
[54] When the black slave reached for "liberty and justice," it was "always for a white liberty and a white justice, in other words, for values secreted by his masters." Fanon, *Black Skin, White Masks*, 195.
[55] C. L. R. James, *The Black Jacobins: Toussaint L'ouverture and the San Domingo Revolution* (Penguin Adult, 2001).

cultural or ethnic groups would inevitably lead to some stark analytic problems—arguably providing some evidence, as Paige Arthur has claimed, for the weakness of using such language to describe collective interactions at all.[56] Fanon therefore made clear that the so-called gift of abolition was less a claim about historical fact and more a claim about collectivities and their problematic capacity for intergenerational memory. The contemporary black slave, Fanon claimed, "ha[d] no memory of the struggle for freedom or that anguish of liberty of which Kierkegaard speaks."[57] The black Jacobins of 1792 may have experienced the liberating effects of struggle, but echoing traditional critiques of historical progress, Fanon argued that it was unclear whether this learned experience would be transmitted across generations—whether men could absorb the primordial Hegelian lesson about the connection between conflict and humanization from afar or whether they would need to experience this truth up close.[58]

If the black slave did not remember their struggles of the past, such collective amnesia was produced and maintained by the colonial system itself. The colonizer insured this doubt through creating within the colonized an "inferiority complex" which could "be ascribed to a double process: First, economic. Then internalization… of this inferiority."[59] The term 'economic' referred to the use of the black body for its laboring capacity, but to explain his transformation into human capital, Fanon believed that the colonial economy supported a particular racist picture of the black slave that he would internalize. At first, racism took on a biological form and hence "epidermalization" was the primary marker of inferiority. But as the techniques of colonial domination advanced and perfected themselves, colonialism moved beyond this primitive stage

[56] See generally Paige Arthur, *Unfinished Projects: Decolonization and the Philosophy of Jean-Paul Sartre* (Verso, 2010).
[57] Fanon, *Black Skin, White Masks*, 196.
[58] Strauss, for example, leveled this critique at Alexandre Kojeve in their debates about Hegelian History. See Leo Strauss, *On Tyranny: Corrected and Expanded Edition, Including the Strauss-Kojève Correspondence*, ed. Victor Gourevitch and Michael S. Roth (Chicago: University Of Chicago Press, 2013).
[59] Fanon, *Black Skin, White Masks*, xv.

towards a strategy of cultural destruction.[60] The destruction of the cultural past led to two particular, unsavory ideologies: on the one hand, a blatant and dominative ideology which wielded the standard of civilization to deny the possibility of sovereign independence to accultured creature who would be tamed and used for work (i.e. passionate racism), and on the other hand, a grander ideology which justified colonialism through a 'civilizing mission' which uplifted accultured creatures and dragged them into European modernity (i.e. assimilationism).[61]

In either case, however, the historical destruction of cultural identity allowed colonialism to transform the colonized man into an abstract Other, and hence short-circuit the immanent logic of the dialectical progress. The black slave could not achieve anything on his own or make claims on his master; he was either worked upon or made to work—with the colonial system contextually switching between each idea depending on what better kept him dependent. Unlike the Hegelian slave who lost "himself in the object and found the source of his liberation in his work," "the [black] slave turn[ed] towards the master and abandon[ed] the object"—that is, the black slave conformed to the demands of the colonizer only ever "wanting to be like his master."[62] Instead of destroying the distinction between master and slave, liberal assimilationism short circuited the historical trajectory towards freedom, serving as the ultimate symptom of colonial domination.

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[60] Since "[r]acism… is only one element of a vaster whole: that of systemized oppression of a people," as Fanon claimed in one of his later writings, "the people's system of reference [must] be broken." Thus, "expropriation, spoliation, raids, objective murder, are matched by the sacking of cultural patterns… the destruction of cultural values, of ways of life… language, dress, techniques are devalorized." Frantz Fanon, "Racism and Culture," in *Toward the African Revolution: Political Essays* (Grove Press, 1969), 33.

[61] The 'civilizing mission' was a recurrent theme in multiple colonialisms: British, French, and Portuguese. See, e.g., Harald Fischer-Tiné and Michael Mann, *Colonialism as Civilizing Mission: Cultural Ideology in British India* (Anthem Press, 2004); Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford University Press, 1997); Miguel Bandeira Jerónimo, *The "Civilising Mission" of Portuguese Colonialism, 1870-1930* (Palgrave Macmillan Press, 2015).

[62] Fanon, *Black Skin, White Masks*, 195.

The Ambivalences of Cultural Politics and the Risks of Dialectical Struggle

There seemed to be one obvious solution to this dilemma: if white racism was built on the deculturalization of the black man, then the black man might simply dispute this premise and proudly assert his cultural ancestry. This could be the authentic response to an inescapable situation that Fanon was looking for all along. Of course, Fanon was not the first thinker to imagine that culture could serve as a site of resistance. As Andres Damas, one of the founders of négritude, put it: "the word 'négritude'… [had always implied] that the black man… wanted to become a historical actor and a cultural actor, and not just an object of domination or a consumer of culture."[63] Indeed, what Fanon found valuable in culture was precisely this Damasian spirit. Fanon did not appeal to cultural politics to symbolically demonstrate that the black man had a culture *like* the white man—so that black men, as Fanon put it, could simply become "locked in the substantialized 'tower of the past.'"[64] Instead, Fanon valued culture when it transformed the resigned slave into a historical actor, providing him with the will to struggle against racism and achieve freedom. Yet even if preferring a politics of cultural struggle to one of mere cultural celebration, Fanon was still careful not to assert this binary too sharply. The colonized needed to 'lose' themselves in their culture to be proud enough to fight for it, and thus instrumental or strategic appeals to culture were lacking. This demand for authenticity meant that political goals were sometimes unclear and that political subjectivities could become outmoded when the perspective of the actor shifted or the historical context changed—realizations that not only reaffirmed the risks of historical contingency, but also the tragic idea that freedom struggles might aid and abet their own failure.

[63] Léon-Gontran Damas, 'Naissance et vie de la négritude', in Daniel Racine, Léon-Gontras Damas, *L'Homme et l'oeuvre, Paris and Dakar: Présence Africaine* (1993), 189. Cited in Macey, *Frantz Fanon*, 181.
[64] Fanon, *Black Skin, White Masks*, 201.

In reflecting on the liberatory role of cultural politics, Fanon first critiqued the overtly essentialist writings of Leopold Senghor which painted a picture of a "black essence" beyond "the metaphysical misery of Europe" and embodying a "natural harmony with the radiant majesty of life."[65] This culturalist response was, of course, understandable. If the colonizer attempted to deculturize the black man, it was natural that the black man would defend his culture, especially if cast as lacking the dark impulses of the European world.[66] Yet Fanon remained skeptical about the analytic truth of Senghorian négritude and whether it even made good politics. The culturalist response placed too much emphasis on, perhaps even reinforcing through its occasional racial caricatures, what was one dimension of racial domination instead of its supporting institutional structures. Against culturalist theorists who stressed a variation of racial essences, Fanon simply asserted that "there [was] nothing ontological about segregation."[67] In addition, it was unclear how nostalgic attempts at restoring black dignity would change the daily lives of black slaves. "It would be of enormous interest to discover a black literature or architecture from the third century before Christ," Fanon claimed. "But we [could] absolutely not see how this fact would change the lives of eight-year-old kids working the cane fields of Martinique or Guadeloupe."[68] This was because the "[t]he black problem [was] not just about Blacks living among Whites," a problem which a culturalist response might ease through admitting the inadequacies of pure assimilationism, perhaps inducing an acknowledgment of difference.[69] Instead, it was "about the black man exploited, enslaved, and despised by a colonialist and capitalist society that *happens to be* white."[70]

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[65] Fanon, *Black Skin, White Masks*, 162.
[66] As Senghor wrote, "The white man wants the world; he wants it for himself. He discovers he is the predestined master of the world. He enslaves it. His relationship with the world is one of appropriation. But there are values that can be served only with my sauce… Between the world and me there was relation of coexistence. I had rediscovered the primordial One." See Fanon, Black Skin, White Masks, 107.
[67] Fanon, *Black Skin, White Masks*, 163.
[68] Fanon, *Black Skin, White Masks*, 178.
[69] Fanon, *Black Skin, White Masks*, 178.
[70] Fanon, *Black Skin, White Masks*, 178.

The négritude movement, nevertheless, continued to exert a strong pull on Fanon's reflections especially an alternative strand of négritude which captured, as David Macey put it, "the cry of revolt voiced by the wretch of the earth."[71] If skeptical of Sengorian négritude, Fanon greatly admired the négritude of Aimé Césaire where the salvation of the colonized arose neither from the colonizer of the present nor from the cultural values of the past but from "their liberating struggle, from their concrete fight for life, freedom, and culture" which would create a new world beyond colonialism.[72] The emphasis, over here, was less about the particular content of black identity and more about the idea of struggle itself. This, of course, made much sense in terms of the Hegelian framework that Fanon already engaged with: a world where the achievement of mutual recognition was premised on an initial violent display of the human will. Since recognition was so far impossible, Fanon believed that it was best for the black slave "to assert [him]self as a BLACK MAN." "Since the Other was reluctant to recognize me," Fanon wrote, "there was only one answer: to make myself known."[73] This act of assertion, of making oneself known, was extremely important because it could, as George Ciccariello-Maher has put it, "jumpstart the decolonial engine" through "creat[ing] the necessary groundwork" for the black slave's "entry into being."[74] This entry was accomplished through a dialectical process which Fanon described using the language of "alterity" and "rupture"[75]—first, the black slave recognized how colonial alterial relations left him outside the realm of his master's normative concern, and second, the black slave 'ruptured' with, both negated and struggled against, the political identities which perpetuated this condition. This latter act of rupture was especially important—not simply for its negative role of

[71] Macey, Frantz Fanon, 182.
[72] Aimé Césaire, *Discourse on Colonialism* (NYU Press, 2001).
[73] Fanon, *Black Skin, White Masks*, 195.
[74] George Ciccariello-Maher, "Jumpstarting the Decolonial Engine: Symbolic Violence from Fanon to Chávez," *Theory & Event* 13, 1 (2010), https://muse.jhu.edu/article/377395.
[75] Fanon, *Black Skin, White Masks*, 197.

rejection but also for its positive role of will formation. The struggle reconstituted the political identity of the black slave transforming his passive consciousness into an active will and therefore instilled him with the necessary self-confidence to challenge the institutional features that, together with his previous alienated consciousness, maintained alterial domination.

To foment this radical politics, Fanon rejected certain pacifying political identifications, including the mythical desire to assimilate. But Fanon would not categorically reject essentialist conceptions of black identity as necessarily reactionary, even if preferring a négritude of struggle to one of culture and painting Senghorian cultural politics as politically futile in the face of racism. After all, Fanon did not simply choose self-assertion *tout court* but self-assertion as a 'black man'—which begged defining what determined and unified black men. Fanon never defined blackness nor did he think that it could be defined by necessary and sufficient conditions. But it would also be a mistake to infer from this that Fanon was simply committed to a kind of "strategic essentialism" which assumed the coherence of a black subject simply to generate support for political activism.[76] If placing less emphasis on the content of black identity, Fanon still believed that it needed an authentic, instead of strategic, content. And thus, if there was one last political identity or consciousness that Fanon rejected, it was a traditional form of Marxism which instrumentalized the appearance of négritude, contextualizing it in terms of a predetermined conception of universal history—the "stage before the stage of proletarian revolution."[77]

While surely one of his formative influences, Fanon most explicitly demonstrated his distaste with traditional Marxism through criticizing the overly intellectualized reading of

[76] See George Ciccariello-Maher, "Jumpstarting the Decolonial Engine."
[77] The traditional critique that Marxism could not account for cultural identity or nationalism on its own terms is best articulated in Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 2016). For a perspective claiming that Marx was indeed attentive to cultural identity and nationalism, see Erica Benner, *Really Existing Nationalisms: A Post-Communist View from Marx and Engels* (New York: Clarendon Press, 1995).

négritude conducted by Sartre. This interpretation, while seemingly sympathetic to the impending revolutions of the Third World, erased the subjective meaning of black experience and wielded its appearance for its own so-called objective political goal. In this sense, Sartre simply repeated and mimicked the problem of liberal assimilationism. Indeed, as Sartre argued in *Black Orpheus*, the appearance of négritude should be understood as an "anti-racist racism" which was a temporary stage in the eventual creation of a color blind and classless world of abstract individuals:[78]

> Négritude appears as the weak stage of a dialectical progression: the theoretical and practical affirmation of white supremacy is the thesis; the position of négritude as antithetical value is the moment of negativity. But this negative moment is not sufficient in itself and the Blacks who employ it well know it; they know that it serves to pave the way for the synthesis or the realization of the human society without race. Thus négritude is dedicated to its own destruction, it is transition and not result, a means and not the ultimate goal.[79]

Fanon was of course skeptical of négritude as an end in itself—a valuation of culture for culture's sake. Yet Fanon was also "robbed" by this passage which demonstrated the "relativity" instead of essential worth of black identity.[80] The paradox for Fanon was striking: Sartre valued négritude because it negatively attacked white supremacy, "but he forgot that this negativity draws its value from a virtually substantial absoluity"—that is, "black consciousness" draws its value from the fact that it "is immanent in itself… not a potentiality of something," through the black slave's capacity to claim that "I am fully what I am."[81] Through asserting that négritude was a mere means to a preconceived end, "this friend, this born Hegelian, had forgotten that consciousness need[ed] to get lost in the night of the absolute, the only condition for attaining self-consciousness."[82]In

[78] Fanon, *Black Skin, White Masks*, 112.
[79] Jean-Paul Sartre, "Black Orpheus," *The Massachusetts Review*, Vol. 6, No. 1 (1965), 49. Cited in Fanon, Fanon, *Black Skin, White Masks*, 112.
[80] Fanon, *Black Skin, White Masks*, 112.
[81] Fanon, *Black Skin, White Masks*, 113.
[82] Fanon, *Black Skin, White Masks*, 112.

lecturing to black consciousness that "the essence and determination of its being" was to transcend blackness, Sartre skipped ahead to the end of the dialectic and "drain[ed] the spring dry."[83]

If the Sartrean sin was to instrumentalize black identity towards a preconceived dialectical end, the Fanonian virtue was to cast this end as somewhat ambiguous. Indeed, Fanon remained skeptical of proactively outlining what his aspirational ideal of freedom entailed in concrete terms. While eventually valorizing an internationalism of cultural autonomy, and then subsequently rejecting this model for a more radical project of national liberation, Fanon only provided one picture in this work about what the struggle for self-determination looked like in practice—and this picture had nothing to do with collective independence. Fanon turned to "the United States" to describe a Du Boisian struggle of integration through self-assertion where "the black man fights and is fought against—where "there are laws that gradually disappear from the constitution… there are other laws that prohibit certain forms of discrimination… [and] none of this is given free."[8485] Fanon, in other words, acknowledged that a politics of struggle was consistent with a wide variety of institutional arrangements and political goals and that the nature of these goals were subject to historical context and best worked out in practice. The only limit that his proto-Hegelian philosophy imposed was one of normative aspiration—one where the politics of struggle transformed passive identities into an independent will and further sought to embody this newly acquired sense of freedom in institutional arrangements that would continue to guard it.

In embracing an independent will, however, Fanon also began to display a certain ambivalence about the cultural identities motivating the struggle for freedom. If appreciating négritude for its ability to instill an attitude of struggle and rupture, Fanon also considered how the

[83] Fanon, *Black Skin, White Masks*, 113.
[84] Fanon, *Black Skin, White Masks*, 196.
[85] See, e.g., W. E. B. Du Bois, *The Souls of Black Folk*, (New York: Dover Publications, 1994).

refusal to engage in "the intellectualization of black *existence*," as his critique of Sartre put it, might compromise the search for freedom—that with the unconditional protection of such authenticity would come the risk of defending forms of négritude that were completely inept at motivating political struggle, or worse that might aid and abet colonial domination.[86] Sartre, after all, wrote *Black Orpheus* as an introduction to an anthology of Leopold Senghor's poetic works—and Fanon, in critiquing Sartre, was at least partly defending Senghor. Rather than simply rejecting the perspective of the Sartrean intellectual, Fanon found himself burdened with an irresolvable tension: the protection of subjective experience was necessary for generating political struggle, but sometimes it was also necessary to step back and critique such experiences, especially if they failed to "jumpstart the decolonial engine." Fanon began to realize, in other words, that political identities which affirmed freedom and motivated struggle could easily reinforce domination if approached from a different perspective or if situated in a different context. Not yet with a concrete political program beyond vague calls for a "new humanism," this dilemma would only reach fruition as decolonial history continued to unfold and Fanon began to discover that his commitment to culturalism was not only indeterminate but also dangerously defunct.[87] It would only reach fruition as Fanon decided to embrace the role of the Sartrean intellectual urging his allies to break with the tragic results of cultural politics and instead defend the formative violence of the national will.

From Culturalism to Nationalism

By the time Fanon wrote his infamous defense "On Violence," almost ten years had passed since his initial thoughts about colonialism and racism appeared in *Black Skin, White Masks*. Much could change in the span of ten years and indeed such changes, both personal and political,

[86] Fanon, *Black Skin, White Masks*, 113.
[87] Fanon, *Black Skin, White Masks*, xi.

occurred. The personal and political were of course deeply interlinked: Fanon arrived in Algeria in 1953 eager to put into practice his psychiatric training but found himself resigning from his post in protest only three years later. Between these two moments, the FLN began to solidify its authority as the front organization of the Algerian revolution and initiated a campaign of terror against the *Pied Noir* civilian population. The French, in turn, responded with a resolute display of violent force signaling to the revolutionaries that Algeria would not become another Dien Bien Phu.[88] In fact, the circle of violence and the intensification of French intransigence over the question of Algerian autonomy led Fanon to conclude that something was so deeply amiss in Algeria that attempting to ease the condition of the mentally ill made little sense. "If psychiatry is the medical technique that aims to enable man no longer to be a stranger to his environment," the events in Algeria led Fanon "to affirm that the Arab, permanently an alien in his own country, lives in a state of absolute depersonalization." In such a context, "hope [was] then no longer an open door to the future but the illogical maintenance of a subjective attitude in organized contradiction with reality." This reality was one of "a systemized de-humanization" where the French colonization of Algeria was organized around "an abortive attempt to decerebralize a people." It was futile, Fanon wrote in his resignation letter to the Blida Hospital in December of 1956, to readjust the mentally ill to society for a "society that drives its members to desperate solutions is a non-viable society, a society to be replaced."[89]

Indeed, after his resignation from Blida, Fanon was soon expelled from Algeria and met this turn of events by more actively pursuing societal replacement, both formally joining the FLN and carefully reflecting upon and promoting its strategic program. Through serving as a writer for

[88] See, e.g., Martin Windrow, *The Last Valley: Dien Bien Phu and the French Defeat in Vietnam* (Orion Publishing Group, 2011).
[89] Fanon, "Letter to the Resident Minister," in *Toward the African Revolution: Political Essays* (Grove Press, 1969).

the FLN's newspaper, *El Moudjihad*, as well as a party representative at multiple Pan-African and Thirdworldist conferences, Fanon began to think through and theorize the virtues and vices of political violence finally articulating a concrete political vision. This vision started with the hypothesis that cultural pride could lead to national liberation but soon suspected that cultural politics, absent a structuring vision of nationalism, was simply a philosophy of liberal assimilationism by other means. The rejection of cultural politics, in turn, led Fanon to assert a more radical thesis: that violence itself could radically reconstitute the Algerian nation—that the identification of the masses with armed struggle would unite the nation not around shared cultural values but around the mere will to reject colonialism.[90] If the violent formation of the national will often led to immoral and anarchic disasters, this was a matter of historical contingency and tragic cooption. Fanon defended violence as strategically necessary for moving beyond colonialism, all while acknowledging that colonialism induced it and imperialism aggravated it. Success, of course, was not guaranteed, but neither was violence the result of some utopian longing.

The Tragic Reversal of Cultural Politics

Fanon would only come to believe in the liberating effects of national violence after considering that the Algerian situation was in no simple sense equivalent to his early reflections about racism in Martinique and France. As a historical symbol, Algeria had always darkly epitomized the unique persistence of savagery in moments of even tentative progress: if 1848 was the year of slavery's abolition in Martinique, it was also the year when France asserted its formal claim over Algerian soil; if 1945 was the year of French liberation from German rule, it was also the year when France massacred almost 15,000 Algerian protestors defending its imperial status

[90] Of course, Fanon still embraced the idea of a national culture, but such culture would arise out of national struggle, not motivate it. See generally, Fanon, "On National Culture," in *The Wretched of the Earth*.

in the postwar world. During significant moments when global freedom was expanding, Algeria remained stillborn, somewhat impervious to the movements of progress pushing forward elsewhere. As a political symbol, Fanon thus took Algeria's tragic history and uniqueness into account. The Algerian problem, Fanon recognized, did not arise out of the possibly well intentioned although futile attempt to assimilate the black or, in this case, Arab slave. It arose out of the organized and quite successful attempt to explicitly dominate the colonial inhabitants—from the fact that colonial domination displayed itself openly and "never manage[d] to mask the human reality."[91] In such a context, Fanon also realized that his previous concern with protecting the subjective integrity of négritude, or culture more broadly, was contextually obsolete and misplaced.[92] This was because history had cunningly shifted to the negative. Cultural politics no longer fomented resistance against colonialism but tragically played into liberal assimilationism, although this time at collective or civilizational level.

This critique of cultural politics evolved in two steps—one that occurred before and one that occurred after Fanon's expulsion from Algeria. Before his expulsion, Fanon gave a speech at the Présence Africaine's *First Congress of Black Writers and Artists* (1956), expressing concern about how cultural values could be used to ensure the efficiency of the colonial system's inner workings. While previously focusing on how colonial dominance deculturized the local inhabitants through marking them as inferior, Fanon now argued that "the setting up of the colonial system [did] not of itself bring about the death of the native culture."[93] Along with their tanks and guns, the colonizers brought with them an exogenous administrative apparatus: they created urban centers, a colonial bureaucracy, and a civil service that would not only structure the lives of the

[91] Fanon, "On Violence," 5.
[92] Fanon made clear that his criticisms of négritude sometimes also applied to the "cultural phenomenon commonly known as the awakening of Islam. Fanon, "On National Culture," in *The Wretched of the Earth*, 151.
[93] Fanon, "Racism and Culture," 34.

natives but that would also form a native middle class—a class of collaborators—to help ease the transition to colonial rule. In order to garner legitimacy, "[t]hese bodies appear[ed] to embody respect for the tradition, the cultural specificities, the personality of the subjugated people."[94] In doing so, colonialism produced a somewhat two-faced discourse of domination: one that not only claimed to dominate or civilize acultural creatures but that, at other times, also asserted concern for "'respecting the culture of native populations.'"[95] Of course, Fanon asserted that "the appointment of [these] 'reliable men' [wa]s a deception" and that their concept of culture was geared towards objectification, often appealing to forms of "exoticism" that turned the colonized into "curiosities" instead of humans.[96] But at this point, Fanon was at least aware that the concept of culture went beyond merely risking the inaction that arose with cultural worship; it was sometimes used by the colonial powers to maintain domination.

One response to this problem, of course, was to distinguish between 'good' culture and 'bad' culture—the culture that kept the colonized in an inert state and the culture that sprung them to action. Because of his newfound concerns, Fanon made such distinctions peering down on Algeria from up high, even despite his previous concern of protecting the subjective integrity of cultural experience from below. Fanon spoke of 'good' culture when referring to the "former émigré" who, although once expelled from his past, had returned to his culture and cultivated it into a dynamic and living organism capable of instilling a "will to struggle."[97] This former émigré created "a passion-charged mechanism making it possible to escape the sting of paradox"—that paradox that included and simultaneously rejected the colonized from the banner of humanity.

[94] Fanon, "Racism and Culture," 34.
[95] Fanon, "Racism and Culture," 34. For an argument that shows how liberalism slides back and forth between civilizing and cultural arguments, although in the British context, see Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J: Princeton University Press, 2010).
[96] Fanon, "Racism and Culture," 35.
[97] Fanon, "Racism and Culture," 42.

Through instilling in the colonized native a sense of dignity, "[t]he plunge into the chasm of the past [could become] the condition and the source of freedom."[98] Unlike his previous ambiguity over political goals, Fanon now also asserted that the birth of the Algerian revolution provided this plunge with a concrete end: it made possible "the total liberation of the national territory."[99] Not simply local but also global, Fanon believed that national freedom would give birth to a new "universality" that would reside "in th[e] decision to recognize and accept the reciprocal relativism of different cultures"—to accept different cultures as equal.[100] Of course, there was one proviso: this reciprocity could occur only "once the colonial status [was] irreversibly excluded."

As the war in Algeria continued to escalate and his involvement in FLN activities increased, Fanon became increasingly convinced that this 'good' form of cultural politics did not exist. Almost three years after his initial reflection, Fanon gave a speech at the Présence Africaine's *Second Congress of Black Writers and Artists* (1959) and claimed that the concept of culture had become a pacifying force at the global level, thus no longer serving as a resource for overcoming colonial domination. Taking one last stab at his arch-enemy Leopold Senghor, Fanon argued that the négritude movement was now committed to proving its worth to Europe, instead of fomenting resistance and national struggle. For example, the African Society for Culture—a society committed to cultural renewal and supported by Senghor —sought to establish the existence of African culture on a continental scale instead of detailing, what Fanon called, the "inner dynamism" of each individual nation.[101] The "colonized intellectual," the term that Fanon chose to refer to intellectuals like Senghor, sought to "prov[e] the existence of his own culture, [but]

[98] Fanon, "Racism and Culture," 42.
[99] Fanon, "Racism and Culture," 44.
[100] Fanon, "Racism and Culture," 44.
[101] Fanon, "On National Culture," 152

never [did] so in the name of Angola or Dahomey."[102] Instead, "the culture proclaimed [was always] African culture."[103] While this was initially understandable because "colonialism's condemnation was continental in scale," the decision to embrace this strategy belied a dangerous impulse.[104] "At the root of this decision" was "the preoccupation with taking [one's] place on an equal footing in the universal arena" and raising African culture "within the ranks of the European Society for Culture"—with achieving, in other words, assimilation at the collective or civilizational level.[105][106]

The problem with this impulse was that it was reactive and hence continued to look at black bodies through white eyes refusing to condemn the system that made white eyes dominant in the first place. In this regard, many of Fanon's previous reasons for remaining skeptical towards assimilation at the individual level also applied to the collective. Through embracing a continental cultural politics, the colonized intellectual did not escape his alienation but continued to weigh his cultural self-worth against a civilizational standard fabricated by the colonizer. The colonized intellectual was therefore also plagued by cultural over-awareness, constantly wondering whether his culture measured up to Europe. Seeking to continuously prove his equality through discovering cultural relics of the past, the colonized intellectual would eventually find himself failing at what was an impossible task. Colonialism had destroyed much of African culture and during the colonial era inhibited it from dynamic growth and creativity—so much so "that the cultural model," which the colonized intellectual wanted "to integrate for authenticity's sake, offer[ed] little in the way of figureheads capable of standing up to comparison with the many illustrious names in the

[102] Fanon, "On National Culture," 150.
[103] Fanon, "On National Culture," 150.
[104] Fanon, "On National Culture," 152
[105] Fanon, "On National Culture," 152
[106] For my information about the Society of Culture, see Nancy Jachec, *Europe's Intellectuals and the Cold War: The European Society of Culture, Postwar Politics and International Relations* (London: I.B.Tauris, 2015).

civilization of the occupier."[107] The failure of cultural politics, again, not only proved that the colonized were objects instead of subjects; it also proved that they were culturally 'Other'—that is, incapable of making claims to the colonizer about their equal status that would possibly succeed.

Unlike his earlier analysis, however, Fanon was no longer concerned with the futility of cultural worship but instead with how this politics informed a growing political consensus that was sympathetic to French interests and proposals. Through attempting to satiate cultural self-worth through the eyes of the oppressor, Fanon believed that the proponents of cultural politics were "running the risk of severing the last remaining ties with [their] people" and softening their stance to the colonizer.[108] After all, Fanon was aware that Senghor softened his previous intellectual stance of pitting "Negro emotion" against "Greek reason," eventually determining that one need not choose between these two identifications.[109] When Fanon expressed his lack of "surprise to hear some colonized intellectuals… speaking as a Sengalese and a Frenchman… stumbling over the need to assume two nationalities, two determinations… unwilling or unable to choose," he surely had Senghor in mind.[110] What was surprising, however, was that this intellectual transformation mapped and mirrored a transformation in the politics of négritude. "These intellectuals," Fanon claimed, "[would] collect all the historical determinations which ha[d] conditioned them and [attempt to] place themselves in a thoroughly 'universal perspective.'"[111] No longer simply satisfied with having a culture and civilization like the Europeans, these colonized intellectuals now desired to create a culture and civilization *with* the Europeans—a type of universal liberal civilization reducible to neither but inclusive of both.

[107] Fanon, "On National Culture," 157.
[108] Fanon, "On National Culture," 155.
[109] Fanon previously quoted Senghor: "Emotion is negro as reason is Greek." Cited in Fanon, Black Skin, White Masks, 106.
[110] Fanon, "On National Culture," 155.
[111] Fanon, "On National Culture," 156.

The problem with this goal brought Fanon back to his previous proviso: that "universality" resided "in th[e] decision to recognize and accept the reciprocal relativism of different cultures" *but only* "once the colonial status [wa]s irreversibly excluded."[112] Fanon was worried that the new-found tolerance of the négritude movement, even if it was attempting to create a novel and universal conception of civilization, maintained the underlying power imbalances within the colonial system. To be sure, this worry stemmed from specific historical developments. "Senghor," Fanon claimed, "had no scruples… about instructing his delegation to back the French line on Algeria," most likely referencing how Senghor had broken with the FLN's bid for independence and instead supported de Gaulle's proposal to create the French Community of the Fifth Republic.[113] De Gaulle attempted to sell the Community to both France and its colonies as a type of compromise that would satisfy neither the Algerian nationalists nor the French hard-right, yet one that would still play to moderates on both sides. Algeria and other former French colonies would be given a certain degree of regional autonomy and self-government but this autonomy would be expressed within a federal structure where "the 'Community,' or in other words France, was responsible for foreign policy, defence, economic policy, education, justice, and transport and communication." [114] Gary Wilder has recently argued that Senghor's short-lived and novel conception of universality was "meant to quietly reconstitute France itself, by quietly exploding the existing national state from within."[115] Arguably, Senghor supported de Gaulle's Community because it came closest to this vision in practice. In granting regional autonomy to colonial territories, France was giving up its previous commitment to assimilationism, perhaps even giving

[112] Fanon, "Racism and Culture," 44.
[113] Fanon, "On National Culture," 170.
[114] Macey, *Frantz Fanon*, 364.
[115] Gary Wilder, *Freedom Time: Négritude, Decolonization, and the Future of the World* (Durham: Duke University Press Books, 2015), 2.

up the sacred ideal of *laïcité* with the certain role that religion would play in the former colonies. But it is important to realize that even if such arrangements would have partly transfigured France quietly exploding it from within, Fanon and the FLN did not oppose it because they had too literal a conception of French and France, "unable to revise their own [literal] understanding of these categories."[116] They opposed the Community because it both mirrored the historically dominant and ineffectual claims of the pre-revolutionary Algerian parties, while maintaining France's material supremacy and hence, in their view, the "freely consented domestication" of the colonized.[117]

The idea of exploding French rigidity over issues of identity and humanism were hardly new. As Fanon was aware, Sartre himself offered such a solution for the problem of anti-Semitism arguing for a kind of "concrete liberalism," where assimilation did not mean giving up one's identity for the sake of inclusion but instead required "that the Jews—and likewise the Arabs and Negroes—from the moment that they are participants in the national enterprise, have a right in that enterprise… *as* Jews, Negroes or Arabs—that is, as concrete persons."[118] This solution blended universality with particularity into a novel yet hybrid form of multicultural liberal respect, allowing the Jew, the Negro, and the Arab to gain human recognition but within a context that paid tribute to cultural identities that were once attacked precisely to deny their humanity. In addition, the dominant pre-revolutionary parties in Algeria engaged in similar types of projects despite their professed disagreements. Ferhat Abbas—the future president of the FLN and previous leader of the reformist movement in Algeria—preached assimilationism before the Revolution. But when

[116] Gary Wilder, *Freedom Time,* 7. Indeed, if Fanon and the FLN really had too literal an understanding of France, they would have believed that Algeria was part of France, just as the France colonists did.
[117] Frantz Fanon, "Appeal to Africans," in *Toward the African Revolution: Political Essays* (Grove Press, 1969), 132.
[118] Sartre, Anti-Semite and Jew, 146.

Abbas used the word assimilationism, he meant to denote a project of achieving equal political rights *while* forcing France to accept Algerian fidelity to their cultural identity.[119] Similarly, Messali Hadj—the leader of the FLN's only rival during the revolution, the Mouvement National Algérien (MNA), and original founder of the first pre-revolutionary nationalist party—preached cultural autonomy based on an Arab-Islamic identity. But when Hadj fought for autonomy, even he admitted that Algeria would not achieve a complete break with French rule accepting that Algeria would remain part of a French system of collective security.[120] Both options would have quietly exploded France's previous conception of itself and both required Algerians to refashion their own identities adopting European ideals and institutional structures that were deemed helpful and worthy. But neither of these platforms improved the Algerian people's lot in the years leading up to the Revolution and hence it was out of French intransigence, not a failure of imagination, that the FLN platform was born.

If Fanon was skeptical of Senghor's final and most sophisticated iteration of cultural politics, it was because his politics were too cozy with what was the last-ditch attempt of France to maintain its regional dominance. It was of no coincidence that, after years of failing to move towards more equal relations with Algeria, France finally sought to realize some of the pre-revolutionary parties' more modest goals.[121] This was not because France had finally listened to the colonized, because the colonized were not quite 'Other' after all. It was because the FLN was the first party to successfully challenge French rule, even garnering international recognition, legitimacy and esteem abroad. With a background of increasing success, Fanon reasonably

[119] Robert Malley, *The Call from Algeria: Third Worldism, Revolution, and the Turn to Islam* (Berkeley: University of California Press, 1996), 46.
[120] Macey, *Frantz Fanon*, 254.
[121] "The reforms introduced by the Organic Statute of Algeria of 1947 had established a system under which one million Europeans and nine million 'Arabs' elected the same number of députés to the Assemblée algérienne: the Algerian people could accede to the theoretical equality it had been offered only by acknowledging its own de facto inferiority." Macey, *Frantz Fanon*, 156.

concluded that the proposal of the French Community was simply colonialism by another name, a move that allowed France to maintain economic and military dominance while leaving symbolic bread crumbs for the Algerian populace. Fanon reasonably assumed that Senghor's political position played into French hands both aggravating the colonial situation and failing to negate and supersede the alterial relations that remained intact. Any authentic anticolonial position, Fanon therefore argued, needed to rupture with such an identification.

The Ambivalences of Nationalism and the Risks of Revolutionary Violence

If cultural politics played into the hands of French colonialism, Fanon proposed a different politics based upon one simple, even if mysterious, idea: that violence could shape the popular will and lead to national liberation. It would be a mistake to assume that the power of violence rested in the appeal to total brute force and Fanon even mocked colonialism for "imagin[ing] that [the FLN's] power [was] measured by the number of [its] heavy machine guns."[122] Instead, the power of violence followed the same proto-Hegelian account found in *Black Skin, White Masks*. The power of violence stemmed from its ability to transform a passive mass into a national will—one that, in negating colonial and collaborative identities, reconstituted the consciousness of the colonized into an autonomous force that made continued colonization virtually impossible. This account, of course, did not imply that this formative process was without considerable risks or contigencies. The main "difficulty"—as Simone De Beauvoir wrote about her interactions with Fanon—was that although, "[Fanon] was constantly reaffirming his commitment [to] the Algerian people [as] his people… no one person or group among the leaders could really be said to represent

[122] Frantz Fanon, *A Dying Colonialism*, trans. Haakon Chevalier (New York: Grove Press, 1994), 31.

that people completely."[123] There was a "boundary problem," in other words, which further opened up moral problems and potential anarchic disasters threatening to severe the connection between national violence and democratic freedom.[124] If rarely theorizing this difficulty in explicit terms, Fanon still offered an explanation about why decolonial actors needed to particularly solve it through violence. This explanation had less to do with the utopianism and more to do with the dire conditions created by formal colonialism. Indeed, the most unsavory results of revolutionary violence were either induced by colonialism or aggravated by additional imperial aggression.

The initial difficulty for democratic inclusion should not be underestimated. When referencing the term 'violence,' Fanon may not have always had physical violence in mind. But sometimes Fanon did indeed equate 'violence' with "red-hot cannonballs and bloody knives," and such equations made it necessary to consider the popular will not only in its most generous formulation but also in its less generous actualization.[125] The talk of physical violence meant that the will was not simply an abstract consciousness but a bounded entity sanctioning violence against those who fell on the other side of its dividing line. It was therefore quite instructive to witness in practice who Fanon and the FLN considered as legitimate targets. Fanon initially attempted to claim that the popular will grew out of "the national consciousness, the collective suffering and terrors that [made] it inevitable that the people [would] take its destiny in its own hands"—and hence Fanon may have thought that one could simply elide the problem of concretely defining the

[123] Simone de Beauvoir, *Hard Times: Force of Circumstance - The Autobiography of Simone de Beauvoir, 1952-1962* (Basic Books, 1994), 317.
[124] For a discussion of "the boundary problem" or "the paradox of the people," see Alan Keenan, *Democracy in Question: Democratic Openness in a Time of Political Closure* (Stanford, CA: Stanford University Press, 2003; Bonnie Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory," *American Political Science Review,* Vol. 101, no. 1 (2007): 1-17; Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000); Jason Frank, *Constituent Moments: Enacting the People in Postrevolutionary America* (Durham: Duke University Press Books, 2010); Margaret Canovan, *The People* (Cambridge: Polity Press, 2005); Robert Dahl, *Democracy and Its* Critics (New Haven, Connecticut: Yale University Press, 1989), 146-7.
[125] Fanon, "On Violence," 3.

nation's boundaries through appealing to the collective consciousness itself.[126] Yet the fact that "dissensions" and "liquidations" would "break out into such open and violent conflict"—as Simone de Beauvoir also put it—implied that the boundaries of the national consciousness were also anything but clear.[127] And if this was so, violence would do more than merely tap into an already available resource and radicalize it. Violence would rather constitute the line of national inclusion and, in doing so, threaten the democratic nature of the popular will.[128]

Historically, this occurred at two main levels. First, the FLN set off bombs in civilian areas— including cafes and restaurants full of women and children—partly signaling to the *Pied Noir* population that they were an unwelcome part of the budding Algerian nation. These acts were especially problematic in light of the FLN's commitment, at least initially, to an aspirational vision of Algeria as democratic, inclusive, and secular.[129] Fanon similarly believed that "Algeria's European minority was far from being the monolithic block that one imagine[d]" and therefore asserted that Europeans could be included within a national project bound neither by ethnic ties nor religious litmus tests but rather the mere will to reject colonialism.[130] But if this were so and the European minority were potentially part of 'the people,' from where could one derive the legitimacy to indiscriminately bomb them in its very name? Second, the FLN often used its military apparatus to target competing Algerian parties and their supporters. The most famous incident occurred when the FLN massacred over three hundred Algerians who supported the armies

[126] Fanon, *A Dying Colonialism*, 28.
[127] Beauvoir, *Hard Times*, 317
[128] For a general discussion of the consensual and inclusive dimensions of Fanon and the political will, see Peter Hallward, "Fanon and Political Will," *Cosmos and History: The Journal of Natural and Social Philosophy* 7, 1 (June, 2011): 104–27.
[129] These commitments were articulated in the platform for the FLN decided at the Soumman Conference. See Henry F. Jackson, *The FLN in Algeria: Party Development in a Revolutionary Society* (Greenwood Publishing Group, Incorporated, 1977), 32- 43.
[130] Fanon, *A Dying Colonialism*, 148. In chapter five of *A Dying Colonialism*, Fanon particularly speaks about the important role that Algerian Jews are to serve in the budding nation.

commanded by General Mohamed Bellounis of the MNA—the last Algerian party outside of the FLN's authority. After a stark battle with the FLN, General Bellounis and his MNA fighters fled to the south of Algeria, eventually finding safety among the civilian populace of Melouza. In response to these events, the FLN military forces traveled to Melouza and killed all the men who were of fighting age—not only hacking up and mutilating their bodies but also shooting anyone who attempted to escape.[131] Although MNA members did indeed have connections with the French and were often viewed as "traitors,"[132] the message in these massacres were both clear and problematic for democratic inclusion: anyone who aided the FLN's enemies, even if subjectively identifying with the Algerian nation, were also part of the enemy.

Sometimes, however, there were even more disastrous consequences arising out of the decision to determine the boundaries of the people through violence. While the Algerian revolution, at least in its early years, delivered a semblance of political stability, national violence in other geographic areas often devolved into civil war and tribal conflict—anarchic disasters in the worst sense of the term. One such notable instance occurred when Fanon and the FLN attempted to expand revolutionary activity past the borders of Algeria. After attending the All-African Peoples Conference in Accra, Fanon convinced the FLN to provide monetary and arms support to the Angolan militant, Holden Roberto, attempting to solidify the Union of Peoples of Angola (UPA) as the vanguard party of the revolutionary struggle against Portuguese colonialism. Despite considering how the UPA was an imperfect vehicle due to its rumored connections to the CIA, Fanon still urged the FLN to support Roberto because the alternate and more popularly attentive political party—the Popular Movement for the Liberation of Angola (MPLA)—was not prepared to immediately initiate an armed struggle. This support, however, eventually amounted

[131] Macey, *Frantz Fanon*, 350-52.
[132] Macey, *Frantz Fanon*, 256.

to a deep miscalculation on Fanon's part. With the initial arms that the FLN provided, the UPA scoured the Angolan countryside indiscriminately killing civilians, plundering resources and slowly building up their ranks. These massacres would have simply imitated the moral horrors of the Algerian Revolution, if not for the additional fact that the UPA's increasing strength led to even worse results. By the time the Portuguese empire began to dissolve in the 1970s, the UPA had broken up into two parties—the Front for the Liberation of Angola (FNLA) and the more radical National Union for the Total Independence of Angola (UNITA). The ambiguity in the boundaries of Angolan consciousness allowed both parties as well as the MPLA to try and claim absolute and total authority over representing the will of 'the people,' thrusting Angola into a decades long civil war.[133]

While these events of course occurred much after Fanon's death, the Angolan civil war, along with the others acts of terror, might lead one to conclude that Fanon naively embraced utopian violence and that this utopianism was the cause of all the horror. Fanon did not, however, consider violence as an unmediated act of pure heroic will. Instead, Fanon theorized violence strategically, carefully thinking about its consequences. Indeed, Fanon ended up embracing two traditional kinds of realisms: one that envisioned violence as necessary and hence in tension with categorical morality; and another that recommended violence based on an assessment of, what Fanon called, the 'atmospheric' conditions making this means effective at destroying the entire colonial system. Together, these two realisms interacted with one another: the former realism would explain the initial appeal to violence and the latter realism would explain how violence was oriented towards transcending colonial dependency and hence the need to wield violence altogether. Together, these two realisms, however, also properly contextualized the moral and

[133] Macey, *Frantz Fanon*, 366-67, 386-88.

anarchic disasters threatening decolonization, showing how the contingencies of failure were structured by the aggravating conditions of colonial domination and imperial intervention.

Perhaps one of the most striking aspects of "On Violence" is how Fanon refused to justify decolonial violence as morally superior, instead situating such violence in terms of a colonial structure which made it necessary.[134] On the one hand, Fanon believed that the line between violence and non-violence was never quite clear. The colonial situation was one where "a look of envy" or non-violent protest was often interpreted by the colonizer as violent, especially when the colonizer "realize[d] bitterly that 'They want to take our place.'"[135] The indeterminacy or ambiguity of what constituted violence also meant that non-violence was not an option at all. This was not simply for the lack of good will but because "the colonized subject [was] always presumed guilty"—because non-violent resistance did not even appear as such.[136] On the other hand, Fanon asserted that, even if the colonized could make the distinction between violence and non-violence from their own purview, the choice of non-violence often led to equally dire results. Following an infamous leftist position of his time, Fanon seemed to subscribe to the belief that "in advocating nonviolence one [could simply] reinforce[] established violence, or a system of production which [made] misery and war inevitable."[137] In contrast to Berlin, Fanon therefore also rejected the idea that violence in the name of a distant goal was somehow inherently dangerous.[138] The colonial context proved that danger equally plagued violent and non-violent action: both were uncertain in

[134] Perhaps, Fanon achieved this reputation because of Jean Paul Sartre's Forward to the Wretched of the Earth which was both directed to the First World and struck a deeper moralizing tone. See Jean Paul Sartre, "Forward," in the *Wretched of the Earth*.
[135] Fanon, "On Violence," 5.
[136] Fanon, "On Violence," 16.
[137] Maurice Merleau-Ponty, *Humanism and Terror: An Essay on the Communist Problem*, trans. John O'Neill (Boston: Beacon Press, 1990), xviii.
[138] As George Ciccariello-Maher has argued, Fanon rejected the idea that there were "'inherent [read: universal] dangers' of political life and violence" more generally. George Ciccariello-Maher, "Decolonial Realism: Ethics, Politics and Dialectics in Fanon and Dussel," *Contemporary Political Theory* 13, 1 (2014), 18.

their consequences and each could lead to dire results. Against such a background, the embrace of armed struggle had a deeper logic: non-violence, even if it was interpreted as such, would not necessarily avoid violence.

That violence was structurally inescapable did not, however, legitimize any specific act of violence. Unlike Sartre, for example, Fanon did not moralize decolonial action through subscribing to the somewhat traditional distinction between Left and Right—between the progressive Left which believed in human reconciliation and therefore only ever violently targeted structures and behaviors, and the regressive Right which believed in a "Manichean" world and therefore violently targeted real individuals who supposedly reflected metaphysical, biological or cultural "essences."[139] After all, even if this distinction was true, it was not quite clear how it could absolve leftist violence or moralize it as ethically superior. While one could violently target property through appealing to a structural logic, what would it mean to kill a person and then claim that one was simply targeting a structure or a behavior? How could one reconcile with the enemy if this enemy was dead?

In contrast to this traditional account, Fanon surprisingly claimed that decolonial violence was morally equivalent to colonial violence in categorical or formal terms. Fanon argued that the "Manicheanism of the colonist produce[d] a Manicheanism of the colonized" and then asserted a similarity between these two figures, where "the theory of 'the absolute evil of the colonist'" mirrored "the theory of 'the absolute evil of the native.'"[140] To be sure, Fanon could not have possibly meant to associate the colonized and colonist in order to ban both of their behaviors. Instead, Fanon acknowledged that individuals affected by violence would morally perceive such acts as abhorrent, while still asserting that their moral perception was somewhat beyond the point.

[139] Sartre, *Anti-Semite and Jew*, 37-8.
[140] Fanon, "On Violence," 50.

The correct inference to draw from the circular reality of violence was not to suspend or ban violence which was impossible. Instead, the correct inference was for both sides to view violence as a necessary part of the battle and accept the relevant consequences.[141] As Fanon wrote,

> The colonized… do not keep account. They register the enormous gap left in their ranks as a kind of necessary evil. Since they have decided to respond with violence, they admit the consequences. Their one demand is that they are not asked to keep accounts for others as well. To the expression: "All natives are the same," the colonized reply: 'All colonists are the same.' When the colonized subject is tortured, when his wife is killed or raped, he complains to no one.[142]

The decision to embrace such consequences was not, however, unconditional and instead stemmed from the belief that violence could indeed serve as a *revolutionary* force. Fanon therefore also posed the question of strategy as a key issue that needed an adequate response. In reaction to "the reformist leaders who [said] the same thing: "What do you expect to fight the colonists with? With your knives? With your shotguns?"—Fanon admitted the potential power of this critique while further articulating a historical realism to soften its bite.[143] Indeed, Fanon did not believe that violence achieved liberation in a vacuum, and foreshadowing Schmitt in the next chapter, he provided "the Peninsular War" as "an authentic [instance of] colonial war where Napoleon was forced to retreat, despite having mustered the massive figure of 400,000 men during the 1810 spring offensive."[144] While explaining how "the Spanish, buoyed by an unshakeable national

[141]If this sounded quite harsh, it was not all talk. When Djamila Bouhired—the female terrorist who famously bombed the Algiers Milk Bar —was sentenced to death, Fanon chastised the French Left for failing to grasp this point. The problem, to be sure, was not that the French Left asked for clemency and mercy when terrorists deserved none. The problem was rather that "the majority of French Democrats experience[d] alarm only in connection with individual cases that [were] just fit to wrench a tear or to provoke little pangs of conscience." The problem, in other words, was a humanitarian sentiment that, in defending a specific individual, failed to embody a revolutionary perspective based on collective sacrifice and struggle. Such a perspective, Fanon wrote, found that "the murder of Djamila Bouhired [did] not present any problem for the Algerian people." "Djamila Bouhired's message," Fanon claimed, "belong[ed] in the tradition of Algerians who have given their lives for an independent Algeria"—the tradition where "conscious Algerian patriot[s]" would "smile in the face of death" and ask "neither for commiseration or pity." See Fanon, "Concerning a Plea," in *Toward the African Revolution*, 74.
[142] Fanon, "On Violence," 50.
[143] Fanon, "On Violence," 26.
[144] Fanon, "On Violence," 26.

fervor, discovered guerrilla warfare" and defeated Napoleon despite his "enormous resources.,"[145] Fanon argued that the Spanish success proved that men could revolt only under certain conditions which required an analysis of "political tactics and History." Fanon considered it important to pose "a theoretical problem of crucial importance": "When [could] it be said that the situation [was] ripe for a national liberation movement?"[146] To do "anything less" than answer this question, Fanon claimed, "would be but blind voluntarism with the terribly reactionary risks this implies."[147] This did not mean, as Angola eventually proved, that Fanon always got his analysis right. What it meant was that the success of national violence was more than a matter of pure will and instead a matter of sustained struggle amid a favorable confluence of external factors.

This analysis, of course, started with the underlying ideal of struggle: how national violence created power not through mere brute force but through negating collaborative identities and positively forming the national will. On the one hand, popular violence revealed the 'truth' of the colonial situation—that it was a "world divided by two" and "continued at the point of the bayonet and under cannon fire."[148] This truth was not, however, automatically cognizable, and Fanon worried that collaborators could dissimulate while the colonized would continue to embrace assimilation, whether individual or collective, in their attempt to achieve independence and dignity. Such positions were "nothing but a carnival parade and a lot of hot air,"[149] and Fanon therefore argued for a "counter violence" which would serve as the "cleansing force" that "provid[ed] the key for the masses *to decipher social reality*."[150] Only such "counter violence" made "any attempt at mystification… virtually impossible."[151] On the other hand, popular violence

[145] Fanon, "On Violence," 26.
[146] Fanon, "On Violence," 21.
[147] Fanon, "On Violence," 21.
[148] Fanon, "On Violence," 2.
[149] Fanon, "Grandeur and Weakness and Spontaneity," in *The Wretched of the Earth*, 96.
[150] Fanon, "On Violence," 51; "Grandeur and Weakness and Spontaneity," 96.
[151] Fanon, "On Violence," 52.

served the positive role of forming an independent national will. With his proto-Hegelian framework in mind, Fanon argued that "[for] the colonized this violence [was] invested with positive, formative features because it constitute[d] their only work."[152] Unlike the Hegelian slave who achieved a sense of independence through his labor and then demanded recognition from his master, the colonized masses relied on violence to discover an independent will. Through seizing the moment and taking action into their own hands, the colonized "rid themselves of their inferiority complex" (i.e. object identities) and "their passive and despairing attitude" (i.e. assimilationist identities) and then "embolden[ed] them[selves], and restore[ed] their self-confidence."[153] It was this self-confidence more than the violence itself that threatened the efforts to maintain colonialism.[154]

In addition to the formative power of violence, Fanon also argued "that violence [was] atmospheric"—that is, national violence had deeper effects for decolonial actors and colonial regimes beyond the national boundaries and borders where such violence occurred.[155] The success of violent national struggle in one territory played "not only an informative role but also an operative one" showing other nations how to rise up and achieve liberation.[156] "The great victory of the Vietnamese people at Dien Bien Phu," Fanon wrote, was not "strictly speaking a Vietnamese victory," just as the Algerian struggle was not Algeria's alone. Instead, Algeria, like Vietnam before it, was a "guide territory" providing other colonized peoples with a working example of

[152] Fanon, "On Violence," 50.
[153] Fanon, "On Violence," 51.
[154] Through simply viewing the armed struggle as a military threat, Fanon argued, "colonialism shut[] its eyes to the real facts of the problem." While "all the general-in-chiefs of all the colonial wars repeat[ed] the same things"—that "'the possibility of victory over the rebellion [could] no longer be ruled out'"—Fanon argued that "they fail[ed] to understand that no rebellion [was] ever vanquished, for what could it possibly mean to vanquish the will of the Algerian people which exceeded any individual death. Fanon, *A Dying Colonialism*, 31.
[155] Fanon, "On Violence," 30.
[156] Fanon, "On Violence," 30.

how to successfully wield violence.[157] Furthermore, Fanon claimed that "this pervading atmosphere of violence affect[ed]… the colonizers who realized the number of latent Dien Bien Phu's" and would become "gripped in a genuine wholesale panic."[158] The colonialist countries realized that they were "[in]capable of mounting the only form of repression which would have a chance of succeeding i.e. prolonged and large scale military operations."[159] The colonizers were unable to do this for a variety of reasons but no matter the specific contextual reason, it was obvious that non-violent resistance did not lead the colonizer "to turn the liberation movement to the right and disarm the people."[160] Non-violent movements, after all, were already disarmed. Instead, it was the threat of violence across the globe that led colonialist countries to claim, "Quick! Let's decolonize."[161] "In answer to the strategy of a Dien Bien Phu defined by the colonized, the colonizer replie[d] with the strategy of containment – respecting the sovereignty of nations."[162]

The language of "sovereignty" hinted to the fact that there were affirmative reasons that led colonizing countries to embrace the pathway of formal decolonization beyond their mere material limits. One important reason was that the extension of territorial sovereignty to formerly colonized territories matched the economic interests of the "metropolitan bourgeoisie."[163] While sovereign independence would not satisfy hard right militants, the extension of territorial sovereignty would find no dissatisfaction with "metropolitan financiers and industrialists" who did not expect "the devastation of the colonial population but the protection of their 'legitimate

[157] Fanon, "The Algerian War and Man's Liberation" in *Toward the African Revolution*, 146.
[158] Fanon, "On Violence," 31.
[159] Fanon, "On Violence," 34.
[160] Fanon, "On Violence," 31. Fanon claimed that "at home, the colonialists countries [were] faced with contestation and workers' demands that required the deployment of their security forces," and "in the current international situation [i.e. the cold war], these countries need[ed] their troops to protect their own regime." Fanon, "On Violence," 34.
[161] Fanon, "On Violence," 31.
[162] Fanon, "On Violence," 31.
[163] Fanon, "On Violence," 27.

interests' using economic agreements."[164] Indeed, Fanon argued that "capitalism, in its expansionist phases, regarded the colony as a source of raw materials which once processed could be unloaded on the European market," but "after [this] phase of capital accumulation, capitalism ha[d] now modified its notion of profitability" instead seeking to transform the colonies into "a market" for capital investment and trade surpluses.[165] While the transformation of colonial countries from sites of extraction to production was never quite complete or successful, the insight that the metropolitan bourgeoisie had an interest in turning the periphery into a market could explain why such forces would come to support decolonization. The metropolitan bourgeoisie would neither "support a government whose policy [was] based solely on the power of arms," nor would they support "blind domination on the model of slavery" which was "not economically profitable for the metropolis."[166] Their lack of support for such policies showed their true interest: "the issue [was] not whether an African region [was] under French or Belgian sovereignty but whether the economic zones [were] safeguarded."[167]

The language of "containment" further hinted to the fact that there were political reasons that led the Western powers to more broadly support formal decolonization, especially during the cold war. Not only did Fanon believe that France, and perhaps even Britain, would become increasingly infatuated with "the myth of the liberation movements masterminded by Moscow"—that "the communists [would] very likely take advantage of the unrest in order to infiltrate these regions."[168] Fanon also asserted that "the Americans would take their role as the barons of international capitalism very seriously," first "advis[ing] the European countries to decolonize on

[164] Fanon, "On Violence," 27.
[165] Fanon, "On Violence," 26.
[166] Fanon, "On Violence," 26.
[167] Fanon, "On Violence," 27.
[168] Fanon, "On Violence," 34.

gentleman's terms" and then "officially declaring [that] they [were] the defenders of the right of peoples to self-determination."[169] At the heart of this plea was more than mere economic interest but also broader strategies of ideological warfare. Both the Americans and Western Europeans realized that their "military strategy ha[d] everything to lose if national conflicts were to break out."[170] What needed to be "avoided at all costs [were] strategic risks, the espousal by the masses of an enemy doctrine and radical hatred by tens of millions of men."[171] Such hatred would send decolonized countries out of the hands of the Western bloc and into the hands of their enemies.[172]

What should one make of this twofold account where violence was both necessary and strategically desirable, yet also sometimes immoral or quite simply disastrous? If difficult to get past moral concerns with political ruthlessness or moral radical democratic concerns with violent solutions for constituting peoplehood, one should at least consider the dire conditions of colonialism that would lead Fanon to make such radical statements about collective sacrifice in the first place. Through admitting that it was impossible to justify any act of individual violence as necessary, while also somewhat paradoxically providing an account of colonialism which asserted violence as generally unavoidable, Fanon set up a moral dilemma without a straightforward solution. This account did not morally justify external terrorism or the internal antagonisms; Fanon, after all, explicitly refused to "excuse" such acts in his writings.[173] This account also did not offer subjective consolation; Fanon, after all, suffered personal hardships from

[169] Fanon, "On Violence," 38.
[170] Fanon, "On Violence," 39.
[171] Fanon, "On Violence," 39.
[172] If there was any proof of this, it could be found in the anti-independence positions of the non-communist left as well as the French Communist Party (PCF): the non-communist left opposed decolonization fearing that sovereignty would only increase Soviet influence, while the Communist left similarly worried about American influence also maintaining that colonialism would further support communist radicalization. In addition, PCF was concerned that decolonization did not take a classically recognized Marxist form, while it also feared that it would alienate its worker electorate who was still enthusiastic about colonialism. See Fanon, "French Intellectuals and Democrats and the Algerian Revolution" in *Toward the African Revolution*. Also see Macey, *Frantz Fanon*, 333.
[173] Fanon, *A Dying Colonialism,* 25.

the violence—for example, his good friend Ramdane Abane, a senior member of the FLN who was at the helm of formulating the FLN's initial and quite secular democratic socialist vision, was assassinated by military and religious zealots within the organization.[174] If violence was both morally inexcusable and subjectively horrible, all that this account implied was that Fanon would not allow such disasters to derail him from his revolutionary struggle. Fanon would not resign himself to a colonial 'reality' which, if unchallenged, would continue to murder the colonized with no end in sight. This account only implied that, despite his hesitations, Fanon would close ranks and attempt to transcend the colonial situation.

Similarly, if difficult to get past the strategic missteps, one should consider how Fanon was aware that the success of decolonial violence was partly dependent on precarious imperial interests.[175] Fanon did not claim that, if communism or capitalism risked taking hold in the postcolonial world, the cold war powers would simply grant sovereignty its due. On the contrary, Fanon recognized that external powers might "practice anticolonialism in the same way the French colonels in Algeria engage[d] in counter-terrorism"—through "'us[ing] the people against the people" and asserting geopolitical influence. Indeed, one might even consider how the Angolan civil war, for example, displayed this risk in its most heightened and extreme form. The Soviet Union and Cuba, the United States and South Africa and even China—each of these external powers intervened in Angola and aggravated the war more intensely than the FLN's initial monetary support.[176]

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[174] Macey, *Frantz Fanon*, 352-54.

[175] For an account of how the FLN consciously exploited imperial interests, see Matthew Connelly, "Rethinking the Cold War and Decolonization: The Grand Strategy of the Algerian War for Independence," *International Journal of Middle East Studies* 33, 2 (May 2001): 221–45.

[176] For further discussion of the Angolan crisis and Cold War meddling, see Michael E. Latham, "The Cold War in the Third World," in *The Cambridge History of the Cold War*, Melvyn P. Leffler and Odd Arne Westad, eds. (Cambridge University Press, 2012).

What this account did, however, imply was that physical violence was only one step, even if an integral step, on the path towards achieving decolonization. After all, Fanon made clear that decolonization was not merely *anticolonialism*; it was also a continuing process of actualizing freedom after the end of formal colonialism. Fanon would therefore also build upon ideas previously expressed in Third World conferences to articulate a vision of what would arrive after the formal colonizer disappeared. Indeed, Fanon urged Third World nations to unite around policies of neutrality and non-alignment to avoid the very interventions that would soon tarnish his legacy. Such policies would pull the argumentative rug from beneath the feet of the cold war powers and their allies: they could not claim that such interventions were necessary to stifle the ideological expansion of their enemies. In addition, Fanon would think ahead and consider the institutions and identities that might further guard postcolonial freedom *within* the newly liberated nations themselves. Such considerations would lead Fanon to articulate a substantive vision of political freedom for the postcolonial world—one that would prove, yet again, that the tragic implications of negative dialectic, and not formative acts of violence, were the true dangers threatening postcolonial freedom.

From Nationalism to Socialism and the Tragedies of Postcolonialism

If the *Wretched of the Earth* is often remembered for the chapter "On Violence," Fanon concluded with a dire plea that the proponents of decolonization live by two anti-European theses: first, to avoid becoming "obsessed with catching up with Europe" and second to "look elsewhere besides Europe" when "creating states, institutions and societies."[177] At the heart of both requests was an extension of the insight that Fanon first learnt on Algerian soil—that it was worth

[177] Fanon, "Conclusion," in *The Wretched of the Earth*, 236, 239.

considering whether national sovereignty was becoming the last and latest example of the negative dialectic and history's tragic cunning. Indeed, as Edward Said has claimed, Fanon would conclude his thoughts about decolonization through articulating a theory of nationalist demise—that "unless national consciousness at its moment of success was somehow changed into a social consciousness, the future would hold not liberation but an extension of imperialism."[178] What this meant was that Fanon decided to rupture with his formerly asserted political identity and, once again, embrace a new political consciousness as the former one failed to achieve something positive.

In contrast to interpreters like Said himself, however, Fanon did not base this identity around "a particular sort of nomadic and anti-narrative energy" rejecting "new authorities, doctrines, and encoded orthodoxies" as well as "established institutions and causes."[179] Instead, Fanon embodied an almost ironically Arendtian position, locating the authority of the revolution in the decentralized institutions and councils that were created during the period of liberation and struggle.[180] To support these institutions, Fanon also urged the inhabitants of the Third World to replace their national consciousness with a transnational social consciousness, further relocating the axis of struggle towards combatting neocolonial forces that cut across colonial lines. If rarely stressed, this final moment of Fanon's thinking was quite important: not only did it lead to a substantive vision of global inclusion connecting the masses of the Third World with the First, but it further explained why the failures of decolonial revolution had little to do with the ideals of the revolution itself. If successful liberations were to descend into repressive one-party rule, this was not a failure of revolution but of mimicking the Soviet Union; and if successful liberations were

[178] Edward W. Said, *Culture and Imperialism* (New York: Vintage, 1994), 267.
[179] Edward W. Said, *Culture and Imperialism*, 279.
[180] Ironic, because Arendt considered Fanon's theory of violence as imparting the exact opposite lesson. See Hannah Arendt, *On Violence* (New York: Harcourt Brace Javanovich, 1970).

not only to descend into repression but civil war and anarchy, this was not a failure of positive freedom or the national will but of the historical betrayal of nationalist revolutionaries submitting to the forces of neocolonialism.

With each of these dilemmas, Fanon acknowledged how the language of nationalism—how the idea of the Third World attaining nation-states like the West—allowed the project of 'catching up' to get off the ground. While the First World had already developed modern infrastructure, industrialized economies, complex networks of communication and overseas outlets to make their states viable, Fanon worried that the Third World was quite simply without the resources, power or positionality to recreate such a dream in mass. In searching for what was an unobtainable end, Fanon therefore also believed that the newly liberated countries would not simply fail but also find themselves creating states of failure: weakened states, authoritarian states, or dependent states—all neo-colonial arrangements greased by an ideology of nationalism. On the one hand, Fanon worried that the Third World would mimic the old socialist centralized model which would descend into militancy and repression.[181] The Soviet Union, Fanon claimed, was now more concerned with its "rivalry" with the United States than with any substantive commitment to socialism, while even in its best of times, it demanded a "spirt of [national] self-sacrifice" that was impossible to "sustain[] for long at such an infernal pace."[182] On the other hand, Fanon also worried about how the postcolonial defenders of national sovereignty—the Thirdworldist bourgeoisie and the national party itself—would come to embrace the interests of capital. While this latter fear did not describe the early years of Algeria, Fanon was correct to focus on it: it described the worst that

[181] Fanon, "On Violence," 56.
[182] Fanon, "On Violence," 56.

was yet to come once the "the coordinated crystallization of the people's innermost aspirations"—national consciousness—transformed into "nothing but a crude, empty, fragile shell."[183]

Fanon predicted that the story of nationalism-gone-bad would center on the "national bourgeoisie. [184] If this class often found a seat at the table of power after the demise of the colonial regime, the national bourgeoisie was also an "underdeveloped bourgeoisie" and therefore needed to exercise their power in a parasitic way. The national bourgeoisie did not "accumulate capital" or become "captain[s] of industry" but instead sold out 'the people' using their national identity against them.[185] This could occur in any number of ways, but in each case, the language of nationalism was used to mask a new form of dependency. If the state continued to base its economy around agriculture, for example, the national landowners would intensify "the exploitation of farmworkers… in the name of the national interest, of course."[186] Without establishing a system to generate wealth at home, this appeal to the national interest was simply a ploy where landowners "continue[d] to ship raw material" and "continue[d] to grow produce for Europe."[187] On the flip side, if the state sometimes attempted to develop their own local economies around a certain conception of "national industry," the most common industries were often not for the benefit of 'the people' at all.[188] Instead, these industries revolved around "tourism"—"exoticism, hunting and casinos"—and were therefore simply "establishe[d] for entertaining the Western bourgeoisie."[189] Finally, if the national bourgeoisie were somewhat more militant seeking to both challenge the First World and eventually nationalize its 'stolen' resources, such nationalization rarely created national prosperity or socialism for all. Instead, "nationalization signifie[d] very

[183] Fanon, "On the Trials and Tribulations of National Consciousness," in *The Wretched of the Earth*, 97.
[184] Fanon, "On the Trials and Tribulations of National Consciousness," 97.
[185] Fanon, "On the Trials and Tribulations of National Consciousness," 98.
[186] Fanon, "On the Trials and Tribulations of National Consciousness," 102.
[187] Fanon, "On the Trials and Tribulations of National Consciousness," 100.
[188] Fanon, "On the Trials and Tribulations of National Consciousness," 101.
[189] Fanon, "On the Trials and Tribulations of National Consciousness," 101.

precisely the transfer into indigenous hands the privileges inherited from the colonial period"—the creation of colonialism within the nation, between the Third World and the Fourth.[190]

Fanon, however, also believed that, for these economic arrangements to work, the "national bourgeoisie" required soft and hard power of various guises. First, Fanon argued that "the bourgeoisie [would] discover… the need for a popular leader whose… role [would] be to stabilize the regime" often through his charismatic authority.[191] The bourgeoisie realized that "the people trust[ed] the leader because of the revolutionary period" and therefore relied on such revolutionary leaders to "pacif[y] the people" and remind them of the distance travelled since the old colonial order.[192] Second, Fanon argued that the bourgeoisie needed to form a new collective identity to bind the nation together.[193] In capturing "the organic party" and ensuring that it no longer "enable[ed] the free circulation of an ideology based on the actual needs of the masses," the bourgeoisie needed to stop the nation from breaking apart under the weight of "individual interest" and corruption. Postcolonial identity therefore often "switched from nationalism to ultra-nationalism, chauvinism, and racism."[194] If the masses, however, avoided the bait and challenged the hollowed-out party, Fanon believed that the hardest form of hard power would finally emerge. "Bourgeois dictatorship" would respond to the people's grievances by "keep[ing] its grip on the people… increasingly [as] an instrument of coercion."[195] Sometimes, an even worse scenario

[190] Fanon, "On the Trials and Tribulations of National Consciousness," 100. For one attempt at making sense of the idea of a "Fourth World," see George Manuel, *The Fourth World: An Indian Reality* (Collier-Macmillan Canada, 1974).
[191] Fanon, "On the Trials and Tribulations of National Consciousness," 111.
[192] Fanon, "On the Trials and Tribulations of National Consciousness," 112.
[193] Fanon, "On the Trials and Tribulations of National Consciousness," 115.
[194] On the one hand, ethnic national identities could maintain popular compliance through serving as the symbolic marker to distribute privileges to dominant tribes and ethnic groups (such as jobs and positions of authority within the developing bureaucratic state apparatus). On the other hand, racial propaganda could also help displace a brewing internal struggle against the increasingly corrupt regime, distracting the masses with the growing possibility of international conflict. Fanon, "On the Trials and Tribulations of National Consciousness," 103.
[195] Fanon, "On the Trials and Tribulations of National Consciousness," 116.

would eventualy arise: the instruments of violence—the army and the police—would turn against the regime marking the development of a radically militarized and securitized state.

How then could one avoid such developments? If bourgeois corruption hollowed out the popular party which further hollowed out national unity, Fanon did not believe that violence was the answer—that one should form the will of people through violence yet again, even if this time against internal oppressors. Indeed, Fanon stressed that "professional soldiers" should be immediately dismantled after national liberation because standing armies were part of the problem: they were both a "waste of talent" and only reinforced "caste consciousness."[196] This recommendation was, of course, exemplary of Fanon's broader politics—one where breaking with certain political identities was paramount once decolonial history moved onwards and conscripted the old political positions into new forms of domination.

But unlike his previous ruptures, Fanon now found himself in an interesting temporal moment. While assimilationist and cultural politics were the dominant political ideologies in the moments when Fanon opposed them, the future character of the postcolonial world was not yet determined and remained quite open. Fanon therefore made predictions about the future dystopia of the neocolonial state not to foreshadow solutions for dealing with such states once they appeared. Instead, he made such predictions to think ahead and outline a political program that preemptively avoided them before they took hold. If timing was important, substance and realism, however, mattered too. Fanon argued that national liberation would only succeed if the nation "rapidly switch[ed]from a national consciousness to a social and political consciousness" and then also followed several aspirational proposals about strategy and direction.[197]

[196] Fanon, "On the Trials and Tribulations of National Consciousness," 142.
[197] Fanon, "On the Trials and Tribulations of National Consciousness," 144.

The primary hope for developing a social and political consciousness originated in the revolutionary moment itself. While previously remaining ambiguous about the end of national liberation, Fanon now pointed to how the revolutionary period developed substantive institutions of collective freedom which made a novel social consciousness possible in the first place. "Today," Fanon wrote about the Algerian revolution, "people's courts are functioning at every level; local planning commissions are organizing the breakup of big farms, and are building the Algeria of tomorrow."[198] Today, Fanon claimed, the Algerian revolution was spontaneously producing decentralized systems of self-management that incorporated the masses into decision-making processes about economic and political governance. As David Macey has described in depth:

> [Fanon] describe[d] how an alternative economy was organized in the zones where freedom of movement had been severely restricted by the French army. Peasants could no longer go into the towns to buy provisions and a thriving black market developed. Unable to pay their debts in kind, the peasants began to mortgage their land or even to sell it to pay the few shop owners who could go into town. According to Fanon, 'the political commissars' now intervened to ensure that all supplies were bought from nationalist wholesalers in the towns, that fair prices were set. Heavy fines were imposed on those traders who tried to cheat; in extreme cases, an elected management committee took over the running of the business. Fanon's self-management model clearly refer[ed] to the FLN's Political-Administrative Organization, which did function as an alternative administration in many parts of Algeria... Self-management (auto-gestion) was indeed a feature of post-independence Algeria, where elected committees did run factories and farms and it seemed to many to represent a decentralized and democratic socialism.[199]

If this "revolutionary treasure" made a budding social consciousness possible, Fanon further asserted that this consciousness required deeper refinement.[200] To accomplish such refinement, Fanon recommended that "the party's political bureau should give priority to the disinherited regions" and that "the party should be organized in such a way that" it was "the direct expression of the masses."[201] The party, in other words, needed to embody the perspective of the

[198] Fanon, "On the Trials and Tribulations of National Consciousness," 130.
[199] Macey, *Frantz Fanon*, 483.
[200] See Hannah Arendt, *On Revolution* (New York: Penguin Classics, 2006).
[201] Fanon, "On the Trials and Tribulations of National Consciousness," 130.

true revolutionary actor of the revolution—the peasant—and guard this perspective through embracing several radical aspirations. The government, for example, needed to resist locating its capital in an urban city—which would only conform to "a commercial notion inherited from the colonial period"— instead "relocat[ing] the entire government to one of the most destitute regions."[202] It also needed to disassociate the markers of citizenship from property ownership or ethnicity and instead tie it to the labor of the peasants because "work presuppose[d] freedom, responsibility, and consciousness."[203] Finally the government needed to institute a broad based obligation of "national service" which would further bind the party and the masses together through projects of civic duty.[204] Together, one could even say that these various proposals painted a picture of Fanon as a "black Rousseau"—one who cared "much less for economic 'development' than for brotherhood [and] democracy."[205]

Yet if slightly Rousseauian, Fanon was still a Thirdworldist, and hence also an internationalist, and he therefore also argued that this newly forming social consciousness needed a transnational dimension that broke with the straight jacket of cold war ideologies. Although their dilemmas were distinct, Fanon believed that a common thread of interest bound the first and Third World masses together: that the militarization arising out of the cold war threatened all substantive forms of democratic control. Fanon believed that the initial struggle would come from the Third World masses. "Since the Third World [was] abandoned and condemned to regression… through the selfishness and immorality of the West," Fanon argued that "the underdeveloped people [would] decide to establish a collective autarchy"— a self-sufficient economy that cut the West

[202] Fanon, "On the Trials and Tribulations of National Consciousness," 129.
[203] Fanon, "On the Trials and Tribulations of National Consciousness," 133.
[204] Fanon, "On the Trials and Tribulations of National Consciousness," 141.
[205] Francois Bondy, "The Black Rousseau," *The New York Review of Books*, accessed December 2, 2016, http://www.nybooks.com/articles/1966/03/31/the-black-rousseau.

off from the rest.[206] This global strike, Fanon further argued, would deprive industries of their "overseas outlets" and allow "capital goods [to] pile up in the warehouses."[207] Fanon then predicted that these actions would cause economic crises in the West which would further conscript the First World massed into battle— "factory closures, layoffs and unemployment would force the European proletariat to engage in open struggle with the regime."[208] Together, these two fronts would unite in solidarity forming a common challenge against the anti-democratic forces of capitalist and socialist development. It would challenge the "cold war that gets us nowhere," possibly stop "the nuclear arms race" which maintained the dominance of the cold war powers, and further insure that "the undeveloped regions" were provided with "generous investments and technical aide… without too many conditions."[209]

Yet despite the professed realism, several deep problems plagued this somewhat provisional vision for the future of global politics. For one, this vision was dependent on a degree of international and domestic trust and solidarity that was extremely difficult to create and sustain, with the added problem that, when such solidarity was lacking, there might be a return to violence and repression. In addition, if not quite underestimating the power of capitalists and the West, this vision did not have a good answer about how to avoid the impending coups and interventions that might destroy the project—especially as Third World powers broke with neutrality and joined the ranks of the cold war. Furthermore, the vision was sometimes quite simply wrong about the facts—Fanon's strategy of the transnational strike, for example, was based on the belief that capital would

[206] Fanon, "On Violence," 60.
[207] Fanon, "On Violence," 60.
[208] Fanon, "On Violence," 60.
[209] Fanon, "On Violence," 61. Fanon believed that reparations were integral, that it was paramount that postcolonial international consciousness was a "dual-consciousness": one where the "consciousness of the colonized" was that reparations was "their due," while the "consciousness of the colonizer" was "that effectively they must pay up." Fanon, of course, did not think that the governments of the West would pay up without a fight, and he therefore also wagered that the Third World could only achieve this "colossal task… with the crucial help of the European masses." Fanon, "On Violence," 59, 62.

flow out towards the Third World, even though it often flowed in reverse.[210] Finally, the vision might have simply demanded too much, asking the Third World to remain wedded to the rustic and the rural—to refrain from seeking a similar standard of living as the plunderers of the First World.

If this vision was too demanding, it need not breed nostalgia. The point of recovering a lost political vision, after all, is not simply to mourn the tragedy of its disappearance or to yearn for its unlikely return. Indeed, such yearnings often romanticize the past, which encompasses dangers of its own. But if engaging with not only the failures but also the aspirations of decolonization is worth anything at all, it is because this moment provides insights that moves beyond its context. It is because "like all deeply felt utopias," as Francois Bondy wrote about Fanon almost 50 years ago, "Fanon's contains an important critical truth."[211]

This critical truth, to be sure, was not that the disasters of the Third World could be ascribed to external forces alone or to a confluence of bourgeois forces cutting across the old colonial lines. If correctly predicting the eventual demise of postcolonial states, Fanon wrongly placed so much emphasis, at least initially, on the collaboration of the metropolitan and national bourgeoisies. The immediate fate of post-revolutionary Algeria stemmed not from the embrace of markets, but from an unsavory model of socialist development that was reliant upon authoritarian rule and the uncritical extraction of natural resources. While arguments have been made that President Ben Bella was attentive to the interests of the peasant, General Boumedienne was certainly not.[212] After

[210] See, e.g., Jose Alvarez, "The Once and Future Investment Regimes," in *Looking to the Future: Essays on International Law in Honor of W. Michael Reisman,* eds. Mahnoush H. Arsanjani and Jacob Cogan (Martinus Nijhoff Publishers, 2010).
[211] Francois Bondy, "The Black Rousseau," *The New York Review of Books*, accessed December 2, 2016, http://www.nybooks.com/articles/1966/03/31/the-black-rousseau.
[212] For an extensive discussion about whether Ben Bella and Boumedienne were of similar ideology, see Malley, *The Call from Algeria,*138-41. For Ben Bella's perspective in his own words, see Robert Merle, *Ahmed Ben Bella* (Walker, 1967).

forcefully taking over the government, Boumedienne sought to ensure that Algeria would continue to serve as a "guide territory" for the Third World, raining judgment on Western-style capitalism in the halls of the UN General Assembly. Algeria was at the forefront of advancing a New International Economic Order (NIEO) based not around agrarian decentralization but the unconditional expropriation of foreign property, the nationalization of local resources and the creation of uneven tariffs and trading structures favorable to Third World development.[213] What allowed such a project to remain viable was the uniform authority and focus of "one party" maintaining its power not through bourgeois support, but through breeding fear in the masses about possible plots of Western infiltration—sometimes true, sometimes imagined—and creating an unsustainable patronage system broadly distributing the rewards of Algeria's oil reserves.

Yet if the national bourgeoisie did not always precede or cause authoritarianism, Fanon and his more general warnings often proved correct. Fanon warned about the dangers of mimicking unsustainable models of socialist development, and he would have certainly been disappointed to witness the era of the Boumedienneian state—to witness how Algeria failed to respect the general dictum against playing catch up with Europe. Fanon also warned about placing too much faith in the United Nations or the General Assembly,[214] and he would have felt sadly vindicated to witness the events marking the end of the Boumedienneian state— to witness the eventual collapse of

[213] For a sympathetic discussion of NIEO, see Michael Hudson, *Global Fracture: The New International Economic Order* (London: Pluto Press, 2005).

[214] Fanon, for example, argued that the failure of Patrice Lumumba was to appeal to the United Nations to help stabilize the Congo shortly after his electoral success and the continuing threats of violence coming from the military. Fanon characterized the UN as another assimilationist forum where the colonized would appeal to the good graces of external powers instead of finding freedom from within. See Fanon, "Lumumba's Death: Could We Do Otherwise?" in *Toward the African Revolution*.
Recent works have further confirmed Fanon's worries, demonstrating how the UN and the United States were involved in the Coup. See Emmanuel Gerard and Bruce Kuklick, *Death in the Congo: Murdering Patrice Lumumba* (Cambridge: Harvard University Press, 2015).

NIEO and the broader US push back against the Thirdworldist strategy of generating power through engaging with international institutions of "authoritative allocation."[215]

More importantly, however, the idea that crony capitalism could transform pacifying authoritarianism into full-scale repression did indeed explain the more disastrous events that plagued Algeria as it spiraled into civil war. The authoritarianism of the old revolutionary guard was not sufficient to bred war with the new Islamist forces, and the more likely cause, as Robert Malley has argued, was attributable to the mixture of authoritarianism and increasing economic liberalization. While maintaining a basic standard of living for the Algerian masses during the post-revolutionary period, the FLN was eventually struck by the oil crisis of the mid 1980s and found itself eventually relying on IMF borrowed money in the 1990s to avoid state collapse and fund their activities. With the arrival of such resources, however, arose requirements of structural adjustment and imposed disinvestment: Algeria was forced to liberalize its economy which included instituting austerity measures that cut basic social services to the populace. These conditions allowed the Islamic Salvation Front (FIS) to gain popular support through providing benefits previously delivered by the state and further developing a power base to challenge the FLN. While the FLN, of course, displayed an authoritarian reaction to the rise of the FIS by refusing to share power with the party, it did "not follow that economic liberalization and pluralistic democracy [were] able to cope with the public feelings the former [had] generated or [to] even withstand them." On the contrary, "economic liberalism" ended up "exacerbat[ing] social tensions" with the subsequent display of neocolonial repression of which Fanon predicted—the

[215] See Stephen D. Krasner, *Structural Conflict: The Third World Against Global Liberalism* (Berkeley: University of California Press, 1985). Also cited in Malley, *The Call from Algeria,* 92.

violence of Third World authoritarians backed by First World interests against the inhabitants of the Fourth.[216]

The critical truth, then, is that socialist authoritarianism and austerity-based repression were not only Algerian problems but exemplary of larger patterns of revolutionary demise that had little to do with ahistorical appeals to revolutionary or sovereign drives. Even if somewhat utopian, the Fanonian vision of universal self-determination was not one of positive self-mastery, but one of global solidarity between various peoples who united against heteronomous rule. National violence certainly found its productive limit at this point, unable to aid in the continuing march towards freedom. But the initial resort to violence was not the source of all the trouble, nor was it the continuing solution for achieving greater postcolonial freedom. In his better moments, Fanon did not moralize or categorically justify violence—and certainly not to bind nations together in an ever-expanding global war between varying imperialisms. Fanon rather asserted that decolonial violence was structurally unavoidable, strategically important, and temporarily necessary on the path towards achieving formal liberation. If formal liberation, then, did not automatically generate institutionalized freedom, it is important to remember that Fanon never provided any historical guarantees: his negative dialectic was attentive to how history shifted and betrayed—how new forms of domination would appear and conscript the old freedom struggles into their service. The romantic narrative of positive freedom thus not only places more emphasis on an idea than on the colonial, imperial, and neo-colonial contexts aggravating such disasters; it also ignores the deeper dialectical logic of decolonial revolution—how, only half a century ago, some political actors and intellectuals refused to accept (neo)colonial violence as the never-ending and inevitable state of our world, while other actors and intellectuals tragically betrayed them.

[216] Malley, *The Call from Algeria,* 255.

CHAPTER 4

THE PARTISAN OF REACTION: CARL SCHMITT AND THE GLOBAL SEARCH FOR SOVEREIGN FREEDOM

"Every rise of Fascism bears witness to a failed revolution."
— Walter Benjamin

Cold War Spain and the Fascist Hangover of Carl Schmitt

"Political power," the Marxist leader Mao Tse-Tung notoriously claimed, "grows out of the barrel of a gun."[1] But this statement could have been equally uttered by the infamous Nazi jurist, Carl Schmitt. During March 1962, in fact, Schmitt traveled to Francoist Spain where he delivered two lectures in Pamplona and Zaragoza casting Mao not only as the hero of his reflections but also as the last hope of the entire postwar order.[2] In celebrating Mao, Schmitt attempted to underplay the Marxist and self-described universal character of his communist philosophy, and instead focused on his wartime strategy of using guerrilla tactics to defeat his competing nationalist enemy, the Kuomintang (KMT).[3] Out of disorder and civil war, Schmitt argued, arose a ruler who created national unity providing a model for how violent insurgency could lead to collective independence during the postwar era. Schmitt, of course, traced the Maoist logic back to the Spanish partisans of the Napoleonic wars, seeking to teach the Spanish hardliners an important lesson about remaining true to their past. After the end of World War II, Spain had become greatly isolated by the international community because of its support, even if only sporadic at times, of the Axis powers. In the 1950s, General Francisco Franco struck a deal with the United States bringing Spain into the United Nations and granting it normal diplomatic

[1] Mao Tse Tung, *Quotations from Mao Tse Tung: War and Peace*, https://www.marxists.org/reference/archive/mao/works/red-book/ch05.htm.
[2] These lectures were published as Theory of the Partisan in 1963. Carl Schmitt, "Forward" in *Theory of the Partisan: Intermediate Commentary on the Concept of the Political* (Telos, 2007).
[3] See, e.g., Jian Chen, *Mao's China and the Cold War* (The University of North Carolina Press, 2001), 9.

relations with the Western world. The caveat was that Spain would allow the United States to place troops and military equipment in Spanish territory, using it as one of the many buffers against Soviet aggression during the Cold War.[4] Spain had recovered diplomatically and economically because of the agreement, but what of its national independence? Could Spain claim to represent a politically independent people when an imperial power from across the Atlantic was strong-arming it into serving as a Cold War proxy?

At the root of the concern for collective independence was a political concept that had structured Schmitt's thinking for almost his entire intellectual life: the concept of sovereignty. Half a century earlier, Schmitt famously defined "the sovereign" as "he who decides the exception," grounding the authority and power of the state in an extra-legal, arbitrary, and inherently violent act of decisionism.[5] The underlying logic of this extra-legal act, at least according to defenders as early as Hobbes, was to maintain unity and finality for a political realm that was continuously threatened by deep-seated disagreements that could potentially merge into disorder and conflict.[6] Hannah Arendt, who included Mao's statement in her 1969 essay *On Violence,* perhaps quoted this line for similar reasons. "The chief reason warfare is still with us," Arendt claimed, "[was based upon] the simple fact that no substitute for this final arbiter in international affairs has yet appeared on the political scene."[7] But the necessity of sovereign violence, Arendt also speculated, had less to do with the theoretical impossibility of an alternative than with the spirit of collective freedom that Schmitt was defending. While a federal system of government could perhaps better

[4] See, e.g, David Gilmour, *The Transformation of Spain: From Franco to the Constitutional Monarchy* (Quartet Books, 1985); Stanley Payne, *Fascism in Spain, 1923–1977* (University of Wisconsin Press,1999).
[5] Carl Schmitt, *Political Theology* (University of Chicago Press, 2005), 5.
[6] See Thomas Hobbes, *Leviathan* (Penguin, 1982).
[7] Hannah Arendt, *On Violence* (Harvest, 1970), 5.

solve political disagreements than violence and warfare, Arendt concluded that the spirit of the times meant that the appearance of such an alternative was unlikely.[8]

The reason for this, Arendt continued to explain, rested in how the more radical essence of Schmittian sovereignty had come to dominate the current political moment. Arendt only once mentioned Schmitt by name, acknowledging that he "recognize[d] clearly that the root of sovereignty is the will… the sovereign is who wills and commands."[9] But the importance of this sovereign will, as numerous other commentator have pointed out, rested not only in its ability to solve disagreements and create order, but in its capacity to reaffirm, through exceptional acts of sacrifice, collective freedom and dignity—to reaffirm, in other words, the very seriousness of life.[10] Arendt herself would trace this line of thinking from Mao to other members of the New Left, including Jean Paul Sartre and, as already mentioned, Frantz Fanon.[11] That this expressive orientation was consuming Thirdworldist politics, Arendt claimed, not only rendered an ironic state of affairs but also a quite pessimistic one. "A substitute [to war was un]likely to appear," Arendt wrote, "so long as national independence, namely, freedom from foreign rule, and the sovereignty of the state, namely, the claim to unchecked and unlimited power in foreign affairs, [were] identical."[12]

If the last chapter dispelled the idea that anticolonial struggle was structured by an idea of romantic overcoming, this chapter dispels a similar argument that what activated Thirdworldist politics, and what may have even resulted from it, was a different iteration of positive freedom: the unconditional defense of sovereign freedom. If there is one consistent insight present in the

[8] Arendt, *On Violence*, 5 (where Arendt provides the example of US federalism as overcoming the traditional conception of sovereignty).
[9] See Hannah Arendt, *On Revolution* (Penguin, 2006).
[10] See Leo Strauss, "Commentary on The Concept of the Political" in *The Concept of the Political* (University of Chicago Press, 2007).
[11] Arendt, *On Violence*, 5.
[12] Arendt, *On Violence*, 14.

Theory of the Partisan, it is that one cannot intelligibly link national liberation with state sovereignty in the postwar world—that the proliferation of partisan warfare during the twentieth `century signaled the death of state sovereignty, not an attempt to replicate this institutional ideal. Surely, Schmitt would never disown his belief in the expressive and vitalizing dimensions of violence, but sovereignty, for him, also implied something rather historical and specific. Unlike Arendt who used this word to point to a general notion of "unchecked and unlimited power in foreign affairs"—or even Henkin, as we saw in Chapter 2, who spoke of the formal constraints of legal sovereignty—Schmitt used the word 'sovereignty' to refer to the historically concrete notion of Westphalian sovereignty of the *Jus Publicum Europaeum*, or European international law. Unlike Henkin's concept, for example, this iteration of 'sovereignty' did not point to legal constraints on foreign intervention or external meddling.[13] Instead, it hinted at the existence of an extralegal realm of political power where states exhibited an unconditional right to initiate warfare. This political notion of sovereignty, Schmitt argued, is what made non-intervention and territorial integrity substantively possible and conceptually intelligible. It was only when states activated their right to warfare, often intervening in the affairs of others, that they proved their willingness to take a final stand for their brethren and hence their existence as a sovereign community; and it was precisely because this right had been challenged in the postwar order that speaking about sovereignty, in its strict sense, was misguided.

When turning to Thirdworldism to find hope, Schmitt therefore did so to find movements that were attempting to radically rethink the viability of national independence outside the framework of state sovereignty—to discover how strategies of violent action might deliver an alternative vision of international order. While the former chapter showed how romantic

[13] See, e.g., Draft Declaration on Rights and Duties of States, UN GA Res 94, A/RES/375 (IV) (1949)

interpretations of Thirdworldism inhibited a more sympathetic interpretation of its democratic alternatives and the causes of its authoritarian and anarchic failures, the flip side is also true: the conflation of nationalism and sovereignty has suppressed the recognition of darker and more reactionary political alternatives arising out of the decolonial process. This chapter seeks to articulate this darker and more reactionary manifestation: to show how Schmitt relied on the figure of the partisan to argue that, with the death of sovereignty, it was necessary to expansively recreate the values of collective freedom in a new imperial form—what Schmitt called the *Großraum*. In the following pages, I reconstruct this historical account about the death of sovereignty, all while making an important textual argument that brings Schmitt's reactionary partisan into closer view. While often juxtaposing his own defensive territorial politics with the aggressive politics of liberalism and communism, Schmitt implicitly hinted to how this opposition made little sense within the terms that his work sets up. The purely defensive partisan, Schmitt implied, needed to revolutionize himself and react offensively to defeat universalist ideologies or, at very least, to keep them at bay. This was especially the case in a world where the cold war ensured that territorial autonomy was never quite safe.[14]

The chapter proceeds in two parts. The first section describes how Schmitt narrated a story about how the global rise of liberalism and communism—and with them, the proliferation of partisan warfare—inversely corresponded to the destruction of state sovereignty. The second section shows how Schmitt relied on the figure of the partisan to find hope for a future international order that recreated the underlying spirit of sovereign freedom in a novel political formation—a

[14] This claim opposes the common understanding about the *Theory of the Partisan* in the academic literature, which takes Schmitt's distinction between defensive and revolutionary partisans quite seriously—as a distinction that provides analytic categories that help us understand partisan warfare today. See, e.g., William Hooker, *Carl Schmitt's International Thought* (Cambridge, 2009); L. Odysseos and P. Fabio eds., *The International Political Thought of Carl Schmitt* (Routledge, 2007).

territorially-based and economically self-sufficient empire. But just as Fanon and his own project for decentralized democracy was challenged by militant liberalism and the liberal order more broadly, the chapter concludes by arguing that this alternative was made increasingly unlikely by the expansion of liberalism throughout the globe—so much so, that Schmitt even sought to find its realization in a figure like Mao who did not quite reflect his underlying vision.

Because his works are vast and variegated, a textual note about Schmitt's narrative is also required. While the *Theory of the Partisan* provides the theoretical resources for articulating this story and argument, Schmitt more carefully worked out much of his historical narrative and many of his conceptual formulations in his earlier internationalist works of *The Großraum Order* (1939) and the *Nomos of the Earth* (1950)—and hence the chapter also relies on these works to reconstruct his account.[15] Indeed, the *Theory of the Partisan* is a text of allusions and insights that are rarely organized in a systemic fashion. In systemizing these insights into a coherent narrative, I hope that this chapter also clarifies why Schmitt cannot be appropriated as a defender of local autonomy or an anti-imperialist—a contribution, which considering the Leftist appropriations of Schmitt, is important its own right.[16]

Partisan Warfare and the Crisis of Sovereignty

"The initial situation for our consideration," Schmitt claimed in his opening ode to the Spanish attendants of his lecture, "is the guerrilla war that the Spanish people waged against the army of a foreign conqueror from 1808-1813."[17] This, of course, immediately elicited a

[15] Carl Schmitt, *Theory of the Partisan: Intermediate Commentary on the Concept of the Political* (Telos, 2007); Carl Schmitt, "The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers (1939-1941)" in *Writings on War* (Cambridge University Press, 2007); Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum* (Telos, 2006).
[16] See, e.g.,Chantal Mouffe, ed., *The Challenge of Carl Schmitt* (London: Verso, 1999).
[17] Schmitt, *Theory of the Partisan*, 3.

straightforward question: why begin with these figures and why in this temporal moment? Schmitt admitted that there were "countless Indian wars of the white conquerors against the American redskins from the 17th to the 19th century, [] the methods of the riflemen in the American War of Independence against the regular English army (1774-83), and the Civil War in the Vendee between the Chouans and the Jacobins (1793-96)"—all of which exhibited irregular modes of violence and occurred prior to the Spanish resistance. But Schmitt dismissed these moments as the origin of the modern partisan because they belonged to "the pre-Napoleonic stage" of warfare.[18] Although the French army functioned as a conventional fighting force mostly engaging in traditional interstate wars, Schmitt believed that Napoleon introduced a "new art of war" and a "new, revolutionary form of battle." These novelties foretold the shifting and irregular shape that violent conflict would take in the twentieth century—a shape that the Spanish guerillas helped temporarily defeat.[19]

What was the nature of this shift? Before the French Revolution, Schmitt argued that European war was defined by the values of its feudal monarchs, who engaged one another as sovereign equals and in the form of chivalric duels. But shortly after the Revolution, Schmitt claimed that Napoleon introduced "compulsory military service" bringing 'the people' onto the battlefield and causing "all wars [to] become in principle wars of national liberation."[20] The meaning of national liberation, Schmitt carefully explained, would realize itself in offensive and defensive guises. On the one hand, the Napoleonic spirit would introduce imperial and revolutionary traditions of partisan warfare: a liberal tradition which instrumentalized partisan warriors to externally impose its values on the rest of the world, and a revolutionary tradition which

[18] Schmitt, *Theory of the Partisan*, 4.
[19] Schmitt, *Theory of the Partisan*, 4.
[20] Schmitt, *Theory of the Partisan*, 10.

directed partisan warriors to violently subvert the state from within. On the other hand, the "world-historical significance" of the Spanish guerrillas lay not just in their physical victory, but in their ability to resist the Napoleonic spirit—to help restore the ideal of state sovereignty and escape the universalist appeals of Enlightenment thinking.[21] But the need to more systematically reflect on the partisan during the twentieth century, Schmitt further explained, was an unfortunate reality; these reflections were made necessary by the fact that the Spanish victory was incomplete—that sovereignty eventually crumbled as partisan warriors would come to overwhelm and then define a new global battlefield.

On the Origins of Offensive and Defensive Partisans

"The partisan," Schmitt claimed, "fights irregularly."[22] This irregularity expressed itself, in the methods of warfare and forms of organization partisans adopted. The partisan engaged his enemy with "an increased mobility"—a "flexibility, speed and the ability to switch from attack to retreat."[23] It expressed itself in how partisans remained resistant to the traditional rules of warfare—where, for example, "weapons must be carried openly" and "the requirements of a clearly visible badge of rank."[24] But this irregularity, Schmitt also clarified, had a special social significance. "For a complete theory of the partisan," Schmitt claimed, "it is important to recognize that the power and significance of his irregularity has been dependent on the power and the significance of the regularity he challenges."[25] Schmitt believed that the increasing importance of the partisan was inverse to the strength of sovereign ideals—that the triumph of sovereignty "from

[21] Schmitt, *Theory of the Partisan*, 6.
[22] Schmitt, *Theory of the Partisan*, 3.
[23] Schmitt, *Theory of the Partisan*, 16.
[24] Schmitt, *Theory of the Partisan*, 26.
[25] Schmitt, *Theory of the Partisan*, 3.

the 16th to the end of the 19th" century" meant that "the partisan could be only a marginal phenomenon" because strong unified states achieved a monopoly of violence and overcame the threat of irregular warfare.[26] But if the partisan was marginal during this era, Schmitt also believed that this was only as a matter of practice. [27] The long "epoch of interstate international law," which extended from Westphalia to the Congress of Vienna and then to the twentieth century, was disturbed by subterranean intellectual resources arising out of the French Revolution.[28] This epoch was also the theoretical origins of an aggressive form of partisan warfare that foreshadowed the eventual demise of the sovereign system.

The moment when the partisan first became "marginal," Schmitt argued, reached back to the birth of the sovereign state at the Peace of Westphalia. While the creedal wars of the middle ages wrought death and destruction, Schmitt argued that Westphalia introduced a secularized form of authority—state sovereignty—that could "neutralize, and thereby… overcome the conflicts between religious factions… to end both religious war and civil wars." The sovereign achieved this goal through issuing "public-legal decision[s]" that created pure supremacy over "the territorial domain of the state." But if it could not be challenged internally, the sovereign could also not be challenged externally. What therefore arose with state sovereignty was also a "new interstate order of the European Continent and inter-European form of war."[29] The sovereign had the right to make war against other sovereigns—a right which served two positive functions: first, it allowed sovereigns to sufficiently solve their political disagreements; and second, it provided them with means to prove their equality, "test[ing] their strength against one another under the

[26] Schmitt, *Theory of the Partisan*, 9.
[27] Schmitt, *Nomos*,140.
[28] Schmitt, *Nomos*, 141.
[29] Schmitt, *Nomos*, 141.

watchful eyes of [other] European sovereigns."[30] For Schmitt, these features "demonstrated a real progress, namely a limiting and bracketing of European wars."[31] The classic system "recognize[d] clear distinctions, above all between war and peace, combatant and non-combatant, enemy and criminal." It created a world where "war was waged between states, between regular state armies… [which] respected each other as enemies… so that a peace treaty was possible and even constituted the normal, self-evident end of war."[32]

While this account implied a golden age where the intensity of war was dispelled, Schmitt was rather blunt about the horrific conditions, even if he rarely called them horrific, that made this world possible. Since war, properly speaking, only occurred between sovereigns, partisan warfare was often dealt with quite harshly. In this regard, Schmitt argued that "two types of war [were] especially important and in a certain sense even related to [the partisan]: civil war and colonial war." Schmitt believed that "open civil war was [often]… defeated with the help of a state of siege by police and troops," while "colonial war," although it "still remain[ed] within the purview of the military science of European nations such as England, France and Spain," "did not challenge regular state war as the classical model." Even when civil war and colonial wars grew in intensity, there were mechanisms and principles that allowed Europe to deal with them. "[C]lassical European international law," Schmitt concluded, "pushed these dangerous forms of war and enmity to the margins."[33]

The latter phenomenon of colonial war, although it was of the most extreme brutality, pushed partisan warfare to the margins precisely because it was on the margins. Schmitt partially believed that 'the free spaces' of the colonial world were important because they helped meet the

[30] Schmitt, *Nomos*, 145.
[31] Schmitt, *Nomos*, 140.
[32] Schmitt, *Theory of the Partisan*, 9.
[33] Schmitt, *Theory of the Partisan*, 11.

economic needs of Europe. This early form of colonial capitalism avoided an abstract drive towards commodification—a drive which often perturbed Schmitt—and instead remained focused on land-appropriation as a fundamental act of instituting economic relations, constitutively incorporating native land into processes of production, trade, and distribution.[34] Although the theoretical justifications of these land appropriations varied greatly, Schmitt understood that the practice of discovery in the new world always dispossessed the native inhabitants of their land, and when such dispossession met resistance, the colonial powers would viciously put an end to such defiance.[35] The *Jus Publicum Europaeum,* after all, only applied to European states which further meant that non-European civilizations could be dealt with absolute normative impunity.[36]

On the European continent, however, more complex assumptions and procedures were required to ensure that the regime of sovereign equality perpetuated itself, pushing the second iteration of partisan warfare, civil war, to the margins. On the one hand, the colony served an integral role in ensuring that strong states that could overcome civil war developed back on European soil. For relative peace to exist in Europe, Schmitt argued that the *Jus Publicum Europaeum* needed to develop "amity lines"—that is, lines that not only separated Europeans from non-Europeans, but lines that separated the normative practices that applied to Europeans who were on the continent and those who were outside it. Schmitt, over here, showed his true colors as an offensive realist, although one with more historical depth, positing the need for a realm where states could expand and conquer.[37] "Such lines" were absolutely necessary because they

[34] See, e.g., Ulas Onur Ince, Colonial Capitalism and the Dilemmas of Liberalism (Oxford University press, *Forthcoming*).
[35] For the differing theoretical justifications and limitations on colonialism among early modern political thinkers—such as, for example, between Francisco Vitoria and Hugo Grotius—see Richard Tuck, *Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford University Press, 1999).
[36] For historical support of this claim, see Fredrich Megret, "From 'Savages' to 'Unlawful Combatants': a Postcolonial Look at International Humanitarian Law's Other," in *International Law and its Others* ed. Anne Orford (Cambridge University Press, 2006).
[37] Compare, e.g., John Mearsheimer, *The Tragedy of Great Power Politics* (W. W. Norton & Company, 2014)

"delineate[d]… a not yet pacified space for the reckless struggle for power regulated in such a way that the mutual violations of law and inflicting of damages on both sides… play[ed] out [only] inside the delineated space."[38] Indeed, if these amity lines did not exist, every small infraction could have threatened war in Europe, descending sovereign states into a continental civil war.[39] The conventional armies of Europe would then become partisans themselves—that is, partisans in the sense that they would explode the 'regular' regime bracketing war.

On the other hand, Schmitt also posited that the *Jus Publicum* developed complex procedures to ward off the risks of civil wars developing within individual sovereign states. Against legal positivists, Schmitt believed that international law could not find its foundation on "*pacta sunt servanda* [pacts are observed], on ties voluntarily contracted by sovereign" which were "a highly precarious type of law."[40] Instead, international law was based upon a recognition among sovereigns about the common interests of the European community, which primarily meant that territorial exchanges within the "European spatial order" were the concern of all.[41] When partisan resistors arose, sovereign states would often internally destroy these movements before they became substantial. But when such attempts failed, Schmitt found it important that the international system permitted "the great powers" to recognize new sovereigns, allowing the sovereign system to perpetuate itself. "The specific problematic consisted in the fact that the purely *inter*state concept of war in European international law [needed to be] transformed into a purely *intra*state struggle, i.e. into a civil war." This transformation, although difficult, was often

[38] Schmitt, "The Großraum Order,"116.
[39] Schmitt's these cut against traditional explanations about the World Wars that viewed colonial practices as their precondition, instead of their avoidance. See, e.g., Hannah Arendt, *Origins of Totalitarianism* (Harvest Book, 1973); Vladimir Lenin, "Imperialism the Highest Stage of Capitalism" in *Essential Works of Lenin* (Dover, 1987).
[40] Schmitt, *Nomos*, 239.
[41] Schmitt, *Nomos*, 196.

accomplished without shattering the sovereign system: the great powers extended recognition to rebel groups, initiating "an extraordinarily significant and fundamental upgrading of their status."[42]

While this might have seemed like a breach of sovereignty against already existing sovereigns, Schmitt maintained that such recognitions "arose from ideas of neutrality and their connection to non-intervention."[43] After all, "the free right to war, the sovereign *jus ad bellum,* allowed every member of this order to intervene formally at any time, and if need be, to insist upon participating in common deliberations and decision… [about] significant territorial changes."[44] The concepts of neutrality and non-intervention were therefore only intelligible in relation to the background concepts structuring the sovereign system. Since war was generally sanctioned in the *Jus Publicum*, "nobody considered this interest to be an intervention."[45] Instead, what was important was that such interventions were done in the name of "European Great Power politics"—to balance the system as a whole, not to support ideological positions that might challenge the integrity of the system itself.

Of course, the great villain of Schmitt's work—Napoleon—and the great tragedy of the modern world—the French Revolution—put pressure on this proviso. The French Revolution introduced a "new principle of legitimacy, of the democratic self-determination of peoples" which contradicted "the old, monarchic-dynastic principle of legitimacy."[46] This new principle put pressure on a divine right of kings which so neatly fit with the ideals of sovereign decision. While much of his early work focused on reconciling sovereignty with democracy, Schmitt's later works mostly stressed the irreconcilable iterations of democratic rule that threatened the sovereign

[42] Schmitt, *Nomos*, 208.
[43] Schmitt, *Nomos*, 208.
[44] Schmitt, *Nomos*, 192.
[45] Schmitt, *Nomos*, 192.
[46] Schmitt, *Nomos*, 208.

concept. What he discovered in the French Revolution was the origins of liberal imperialism and global revolution, both of which coopted the organic nature of the people and could be traced back to Napoleon himself.

When it came to Napoleonic politics, Schmitt argued that spirit of the Enlightenment ruled. In a straight forward sense, Napoleon incorporated the nation into a universal enlightenment vision that perverted 'the people' towards ridding the world of feudal forces once and for all. Surely, in this vision, Napoleon did not engage in any form of partisan warfare, but these practices did hint to some future where liberal imperialists exploited and relied on popular forces to overthrow illiberal regimes. That Napoleon marched across Europe and even into Russia was early proof that some states would find a way to meld popular unrest with an imperial project that paid no attention to territorial limits. But more importantly, Schmitt also worried that foreign societies began to internalize France's more radical revolutionary spirit. This led Schmitt to follow "a spark that jumped from Spain to the North" where Prussian, German and Austrian spectators grasped the deeper implications of the Napoleonic campaigns.[47]

In terms of concretely supporting Napoleon, the North surely expressed a mixture of opinions: "the great German poet Goethe wrote hymns to Napoleon's glory," while the Austrian government "with the help of famous publicists, among them Friedrich Genz and Friedrich Schlegel… staged a national propaganda campaign" against him.[48] But when it came to philosophically resisting Napoleon, Schmitt believed that "Berlin in the years of 1808-1813 was infused with a spirit that was thoroughly consistent with the philosophy of the French Enlightenment, so consistent that it was equal of it, if not allowed to feel superior to it."[49] The

[47] Schmitt, *Theory of the Partisan*, 6.
[48] Schmitt, *Theory of the Partisan*, 6-7.
[49] Schmitt, *Theory of the Partisan*, 44.

event that motivated this philosophical development was the Prussian Royal Edict of 1813—the Prussian *Landstrum*—which first mimicked the Napoleonic method and then radicalized it, proving itself as one of "the most astounding document[s] in the whole history of partisan warfare."[50] Like Napoleon's policy of conscription, the Prussian King passed the Royal Edict as a centralized and uniform call to incorporate a *levée en masse* (or mass uprising) into resisting the French onslaught. As Schmitt described it,

> Every citizen, according to the royal Prussian edict of April 1813 is obligated to resist the invading enemy with weapons of every type. Axes, pitchforks, scythes, and hammers are (in §43) expressly recommended. Every Prussian is obligated to refuse to obey any enemy directive, and to injure the enemy with all available means. Also, if the enemy attempts to restore public order, no one should obey, because in so doing one would make the enemy's military operations easier. It is expressly states that "intemperate, unrestrained mobs" are less dangerous than the situation whereby the enemy is free to make use of his troops. Reprisals and terror are recommended to protect the partisans and to menace the enemy. In short this document is a Magna Carta for partisan warfare. In three places—in the introduction and in §8 and §52—the Spanish and their guerilla war are mentioned expressly as the "model and example" to follow. The struggle is justified as self-defense, which "sanctifies all mean" (§7), including the unleashing of total disorder.[51]

The radical edict would only last three months and would hardly have any practical effect in a war that continued to be "played out in the struggles of the regular army," but the "special significance of this short-lived Prussian decree"[52] even surpassed the Prussian King's initial intentions. The King, after all, simply sought to reinstate the autonomy and authority of the monarchy, but the French Revolution pushed against such restorations. It was therefore the Prussian intelligentsia who grasped, even more like Napoleon, that the *levée en masse* might unleash total disorder for the prevailing order, creating a new political existence—an "unnatural" revolution, as Schmitt quoted the words of Joseph de Maistre—that could destroy the monarchy itself.[53]

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[50] Schmitt, *Theory of the Partisan*, 42.
[51] Schmitt, *Theory of the Partisan*, 43
[52] Schmitt, *Theory of the Partisan*, 44.
[53] See, e.g., Joseph de Maistre, *Considerations on France* (Cambridge, 1995).

The famous Prussian theorist of war—Carl von Clausewitz—best captured the significance of the Edict with his famous dictum: "war in the continuation of politics by other means."[54] While "the traditional devoutness of the people in Berlin at the time was as little threatened as was the political unity of the king and the people," Schmitt still believed that Clausewitz had made the partisan "philosophically accredited and socially presentable" and "aroused national feeling with philosophical education… for an educated elite."[55] The King, of course, relied on a *levée en masse* to simply expel Napoleon, but in legitimizing this form of warfare, Schmitt believed that the King also opened the door to his own demise, authorizing intellectuals to corrupt 'the people' into rising up removing him from the seat of power. "Acknowledgement of armed civilians, of insurrection, of revolutionary war, resistance and rebellion against the existing order," Schmitt paraphrased Clausewitz, "[opened up] something dangerous" in that it challenged the traditional "sphere of lawful states."[56] For Clausewitz, partisan warfare was therefore "above all a political matter in the highest sense, meaning precisely of a revolutionary character." The Prussian event permitted men to remake the world anew and institute new political relations; it was the originary moment where "a political theory of the partisan—beyond a technical-military classification—[became] possible"—one that could "capture the partisan in his glow and… negotiate his existence in other hands."[57]

But against these alternatives, Schmitt still found some hope. Speaking to his Spanish audience, he celebrated the Spanish guerrillas of the early nineteenth century as the true defenders of national liberation. Whereas Napoleon formed a "modern, well-organized, regular army" and the Prussian king organized and directed the *levée en masse*, the Spanish partisans fought

[54] See Carl von Clausewitz, *On War* (Princeton, 1989).
[55] Schmitt, *Theory of the Partisan*, 44.
[56] Schmitt, *Theory of the Partisan*, 45.
[57] Schmitt, *Theory of the Partisan*, 9.

spontaneously and anarchically. The Spanish partisans were not 'the people'—a conceptual abstraction in a battle for legitimacy—but "a people—a pre-bourgeois, pre-industrial, pre-conventional nation." As such, they resisted any attempt to be manipulated and controlled by those of an elite rank, and when they did fight, it was not because they were ordered to do so. In fact, "the [Spanish] king and his family" initially supported Napoleon, "[un]able to tell who was the real enemy."[58] It was only the Spanish partisans, those "poor devil[s]," who "dared the hopeless fight" seeking to protect their "own home soil" from foreign invasion.[59] Schmitt analytically described this aspect of the partisan as his "*telluric*"—or land-based—characteristic. This connection to land and soil granted the Spanish partisans a natural form of legitimacy. It also made "the defensive (i.e. limited) nature of their hostility spatially evident," ensuring that they did not, like the French Revolution and then Napoleon, promote "absolute claims of an abstract justice."[60]

Indeed, the eventual defeat of Napoleon ensured that the territorial spirit of the Spanish partisans traveled back to a stable institutional form with the restoration of principles of state sovereignty during the Congress of Vienna. No doubt, the legacy of the French Revolution would put pressure on sovereign principles. Nineteenth century Europe also found itself with a proliferation of liberal constitutions that sought to curb sovereign supremacy by distinguishing between "the state and free, individualistic society," institutionalizing 'the rights of man' and 'the rights to property' uniformly across the continent.[61] But at this point in time, Schmitt also believed that the crisis of sovereignty had not yet unraveled in its entirety. On the one hand, Schmitt asserted that "the Congress of Vienna... reestablished the [classical] concepts of European laws of war,"

[58] Schmitt, *Theory of the Partisan*, 3. For a historical account of the Spanish struggle, see Ronald Fraser, *Napoleon's Cursed War: Popular Resistance in the Spanish Peninsular War, 1808-1814* (New York: Verso, 2008).
[59] Schmitt, *Theory of the Partisan*, 6.
[60] Schmitt, *Theory of the Partisan*, 20.
[61] Schmitt, *Nomos*, 208.

keeping the bellicose structure of Europe intact. On the other hand, Schmitt also believed that liberalism captured the democratic spirit subverting its more revolutionary interpretations—that liberalism, as Schmitt argued earlier in the *Crisis of Parliamentary Democracy*, was able to align itself with democracy so long as it "polemically" challenged the institution of monarchy.[62] The liberal emphasis on morality and economics—the rights of man and property rights—were therefore still hierarchically inferior to the norms of sovereign warfare, while the democratic spirit had not yet yielded a global revolutionary vision. It was only once the realms of morality and economy would rise above sovereign principles—it was only once the spirit of Clausewitz traveled to Hegel and Marx and the then onwards to Lenin, the archetypal philosopher/party leader wielding the people in a global struggle against the state—that Schmitt would finally find a true crisis upon hand.

On the Triumph of Humanitarian and Revolutionary Ideologies of Warfare

In the later nineteenth century and the early twentieth, Schmitt claimed that the sovereign system began to fall apart as a concept closely related to sovereignty—"the concept of the political"—was simultaneously subverted by liberalism and then radically revolutionized by Marxist-Leninism. The concept of the political, as Schmitt argued during the Weimer Period, demarcated the most "intense form of association" that "exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity."[63] Although this concept seemed to imply that politics had something to do with war, the classical concept of 'the political' found its realization in the sovereign system which maintained strict delineations between war and peace—

[62] Carl Schmitt, *Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, Mass.: The MIT Press, 1988), 24.
[63] Schmitt, *The Concept of the Political*, 10.

and hence clear delineations about "the specific political distinction that political actions and motives can be reduced… that between friend and enemy."[64] While *Jus Publicum Europaeum*, of course, pushed colonial and civil wars to the margins of the European legal system, ensuring that stable friend-enemy relations could exist, the rise of liberal internationalism and international communism brought these features to the core of world politics initiating a new age of "global civil war."[65]

Both liberalism and communism, Schmitt argued, contributed to this global civil war rather distinctively. On the hand, the most powerful force arising out of World War II—the United States—sought to build a new form of universal liberalism based around the protection of commercial and humanitarian interests. To institute this new world order, the United States subverted the concept of 'the political,' both criminalizing aggressive warfare and territorial conquest, while further attempting to universalize liberal constitutions to guard the basic rights, primarily property rights, necessary for the expansion of global capitalism. The partisan, according to Schmitt, was the important link that allowed the United States to realize its political vision: in an age where aggressive interstate warfare and territorial appropriation had become outmoded, it could institute its preferable form of government by funding military coups and revolutions. On the other hand, Marxist-Leninism would seek to rally the energy of self-determination movements across the globe, helping transform the state into a revolutionary apparatus that centered itself on questions of economic redistribution. In this vision, partisan warfare was conscripted into a global reinterpretation of friend-enemy relations—a conflict between the proletariat and the bourgeoisie—that led to the destruction of any state regime that stood in the way of a post-capitalist order. In both cases, however, the sovereign state had died and the right to bracketed warfare

[64] Schmitt, *The Concept of the Political*, 26.
[65] Schmitt, *Theory of the Partisan*, 95.

between territorially bounded sovereigns had dissipated. What arose in its place was a world of "absolute" enemies, who no longer treated their opponents as equal and instead sought to eliminate them.

In his earlier works of *Großraum* (1939) and *Nomos* (1950), Schmitt focused on the rise of twentieth century liberalism and how it subverted sovereign freedom through hierarchically raising the realms of economy and morality above the state. In place of a world structured by friend-enemy relations, Schmitt argued that liberalism sought to organize the world in terms of economic competition and humanitarian considerations. How morality and economy developed with one another was often sociologically complex: sometimes morality was simply a cover for economic or imperial interests, while at other times Schmitt acknowledged that "the freedom oriented, humanitarian, universal interpretation [of moral norms could not] merely be explained as cant and deception," instead forming an "unavoidable link between ways of thinking about international law and a certain kind of political existence."[66] What it was about morality and economy, and its political existence, that perturbed Schmitt also often shifted in focus: sometimes, it was how both shared an underlying feature—individualism, for example—while at other time it was the nature of how these concepts were asserted (i.e. universally). What Schmitt did, however, make clear was that the economic and moral features of the interwar and then postwar period helped explain the legal transformations that eventually subverted the sovereign state. There were two legal changes, in specific, that Schmitt thought caused or, at least, tracked the proliferation of partisan warfare throughout the globe: the criminalization of aggression and the transformation in practices of governmental recognition, both of which were amenable to a new global capitalist order.

[66] Schmitt, "The Großraum Order," 95.

Although seemingly concerned with only state violence, Schmitt argued that the criminalization of aggression, as first articulated by the Allied powers in the Kellogg-Briand Pact of 1928, elevated the role of partisan warfare in the international system. While "the First World War began in August 1914 as a European state war in the old style," Schmitt argued that the end of the war, and especially its concluding treaties, introduced a radical "transformation in the meaning of war."[67] Building on the spirit of the Versailles Treaty of 1919 and then the Geneva Protocol of 1924, the Kellog-Briand Pact "succeeded in making a formal condemnation of war, an abolition of war, as a means of national policy."[68] The Pact made it a crime for sovereigns to engage in interstate warfare for the sake of territorial conquest or to impose a spatial balance—both of which were now considered "acts of aggression." While this change was seemingly justified by humanitarian considerations (i.e. aggression was the supreme "crime against humanity"), Schmitt also argued that there was an economic logic behind this so-called advance, which brought the partisan back into view. [69] Stretching back to the Versailles Treaty itself, Schmitt argued that the criminalization of aggression had less to do with holding German officers individually responsible for the war and more to do with attributing responsibility to entire German people to reap economic reparations. [70] In casting warfare as a crime, both Great Britain and the United States continued to engage in warfare, *albeit* economic, against their German opponent. But even more importantly, this specific iteration of economic warfare represented a broader attempt on the part of the Anglo-American powers to defend their vision of global capitalism against a land-locked enemy—one that no longer required territorial expansion and land

[67] Schmitt, *Nomos*, 259.
[68] Schmitt, *Nomos*, 279.
[69] Schmitt, *Nomos*, 265.
[70] Schmitt, for example, compared the original criminalization of aggression in the Pact with the Nuremberg Trials which held individuals liable. See Carl Schmitt, "The International Crime of the War of Aggression and the Principle '*Nullem crimen, nulla poena sine lege,*'" in *Writings on War* (Cambridge University Press, 2007).

appropriations as the precondition for capitalist accumulation and production, and instead could rely on partisan warfare to perpetuate liberal governments around the world.

To add persuasiveness to his argument, Schmitt paid close attention to the reservations that the Anglo-American powers inserted into the Pact and then their qualification of other relevant international legal regimes. These reservations and qualifications proved that the Allied powers were not interested in ending warfare per se, but only the traditional form of sovereign warfare. Initially, the British sought to protect their already existing colonial empire through simply carving out an exception for this realm. The "British Secretary for Foreign Affairs," Schmitt for example argued in the *Großraum* (1939), qualified "the renunciation of war as an instrument of national policy" through claiming that "[t]here are certain regions of the world… [whose] welfare and integrity… constitute a special and vital interest for our peace and safety… [and t]heir protection from attack is to the British Empire a measure of self-defence."[71] But by 1950, it was not quite clear whether the British could hold onto their empire, and Schmitt therefore focused on the qualifications of the United States. While essentially isolating itself throughout most of the nineteenth century, Schmitt claimed that postwar context led the United States to assert itself in world politics, championing a universal project of expanding international law and liberal principles to apply to all nations across the earth.[72] This novel *Jus Publicum* did not only apply to the "closed community" of Europe, but "gradually [incorporated] the states of Asia as well as of Africa and Polynesia."[73] In decentering the traditional distinction between European and non-European space, this novel universal law also needed to provide an alternative norm, beyond

[71] Schmitt, "The Großraum Order," 92-93.
[72] Schmitt marveled at the previous doctrine of isolation--the Monroe Doctrine which descended from the United States' attempt to carve out a general sphere of interest in the Western Hemisphere, viewing further attempts at colonization on the part of European powers as aggressive acts of war. See Schmitt, *Nomos,* Part IV, Chapter 6.
[73] Schmitt, *Nomos*, 232.

"civilization," that would structure the system and further clarify what types of violent action were permitted.

"The democratic form of legality and legitimacy," Schmitt claimed, "was declared to be the [new] standard of international law." The United Stated argued that "no government could recognize the government of another that had come to power by *coup d'etat* or revolution, rather than constitutionally by democratically elected representatives," and herein one could find the reappearance of 'the political" in a new subversive light.[74] "Of course," Schmitt was quick to point out, "what *democratic* and *legal* meant in practice was left to the recognizing government, i.e., these terms were to be defined, interpreted and sanctioned by the United Sates." The United States "assumed the right to decide justice and injustice of any territorial change [or any governmental change] anywhere in the world,"[75] and it therefore also reserved the power to decide when rebels were legitimate or not. Much like Henkin, Schmitt pointed to how the new international law carved out the permissibility of military intervention. When illiberal violence threatened the possibilities of liberal government, the United States could support alternative forces that it thought might guarantee basic rights and, most importantly, the property rights necessary for capitalist production.

There was, of course, more than just one interpretation of 'democracy'; there was also the interpretation of America's great enemy: Soviet Communism. Returning to the *Theory of the Partisan* a century later, Schmitt therefore continued to tell the story of the death of sovereignty from the perspective of this revolutionary ideology. In reinterpreting friend/enemy relations to track class conflict, Schmitt argued that Marxism revolutionized "the political," divorcing it from

[74] Schmitt referenced the Tobar Doctrine of 1907 which states US policy against recognizing governments that arise through violent force.
[75] Schmitt, *Nomos*, 305-08.

its historical connection with the sovereign state. The origin of this transformation was, of course, Clausewitz's famous dictum of "war as the continuation of politics by other means," but the deeper radicalization of this tradition would be located in the founding figure of Soviet Communism: Vladimir Lenin. If liberalism externally assaulted sovereignty though criminalizing aggression and sanctioning intervention, Lenin internally assaulted sovereignty through universally calling on the peoples of the world to unite in overthrowing the traditional (capitalist) state form. Schmitt claimed that Lenin was an avid reader of Clausewitz, quickly learning that war, if wielded correctly, could become a political tool. Indeed, the class dimensions of Lenin's politics led him to radicalize Clausewitz's dictum: not only was war the continuation of politics, but politics could become nothing but war itself.

Schmitt was not completely off base about the radical dimensions of Lenin's arguments. He cited Lenin's 1902 pamphlet, *What is to be Done?,* claiming that this essay introduced the idea of continuous warfare against more moderate forces and arguments.[76] Peter Struve, in his *Objectivism*, for example, exemplified the popular attempt by many socialists to meld normative philosophy with socialist ideals, but Lenin rejected such attempts as reactionary arguing for an emphasis on class conflict above all other means.[77] This debate came to a starker fruition when Lenin's Bolsheviks and Julius Martov's Mensheviks opposed one another at the Second Congress of 1903, and Lenin quite explicitly rejected the Mensheviks' thesis that it was possible to achieve communism through universal suffrage i.e. peaceful means.[78] For Lenin, partisan warfare was not

[76] Schmitt, *Theory of the Partisan,* 50.
[77] Schmitt, *Theory of the Partisan,* 50.
[78] See, e.g., Leszek Kolakowski, *Main Currents of Marxism* (W. W. Norton & Company, 2008). Although he does not mention Martov, Schmitt does claim that Lenin rejected the line of thinking that also could be found in Engels, who "considered it possible that bourgeois democracy, with the help of universal suffrage, could create a proletarian majority in parliament, and thus legally could turn the bourgeois social order into a classless society." Schmitt, *Theory of the Partisan*, 49.

just one tactic among many, one that could potentially be avoided; it was *the* strategy—the only strategy—that could ensure the destruction of the capitalist order.

What allowed Lenin to pursue this line of thinking, Schmitt further argued, was his introduction of "the party" concept in juxtaposition to the state. While Clausewitz spoke of a war against the monarchy which "always presupposed the regularity of the existing state," Lenin spoke of a war against the state which presupposed the regularity of a party apparatus. In this vision, the state would become "an instrument of the party" and the party would "give orders to the state."[79] The state therefore no longer had sovereign authority and instead transformed into a mere instrument that could be directed from elsewhere. In the current anticolonial context, Schmitt believed that this allowed the Soviet Union to initiate mass conscription on a global scale, developing a revolutionary justification for interventionism that would allow the party to direct the energies of self-determination movements across the world.

Indeed, it was for this reason that Schmitt believed that Lenin initiated the most "subversive turn" in the concept of the political.[80] While the political once demarcated a realm where collectivities would fight one another in competitive contest, Schmitt clarified that two types of enmity beyond the "conventional" enemy existed: the "real enemy" and the "absolute" enemy. If the Spanish Partisans, and even Clausewitz, made claims that provided no room for compromise with their enemy, they at least only sought to take the seat of the sovereignty away from a 'concrete' threat. But Lenin sought more radical goals. "Lenin, as a professional revolutionary of global civil war, went still further [than Clausewitz] and turned the real enemy into an absolute enemy."[81] These enmity relations, as Schmitt explained, were not "real"—that is, the enemy was

[79] Schmitt, *Theory of the Partisan,* 93.
[80] Schmitt, *Theory of the Partisan,* 49.
[81] Schmitt, *Theory of the Partisan,* 93.

not a concrete person or entity that existed in the world, such as an invader to expel or even a King to decapitate. Instead, they were absolute—that is, they could indefinitely persist, travel across space and time, and attach themselves to anyone suspected of bourgeois sympathies or collaboration with anti-communist forces. It was for this reason that Schmitt believed that the Soviet Union was the only true "totalitarian" organization; without spatial limits or a fixed enemy, its ideological reach was physically and temporarily total. This deep level of abstraction, Schmitt claimed, was simply a perfection of the philosophical spirit that developed in the French Revolution—"an alliance of philosophy and the partisan that… unleashed unexpected new explosive forces."[82]

What would happen to the telluric ties of partisan warriors, like the Spanish guerrillas, in such a world? While the *Jus Publicum Europaeum* overcame civil war and instituted a unified public sphere ruled by sovereigns, the proliferation of partisan movements throughout the world marked the disintegration of this traditional public sphere. "A commonwealth exists as res publica, as a public sphere, and is challenged," Schmitt wrote, "if a non-public space develops within in it, which actually repudiates this public sphere."[83] In the past, the European powers often recognized these rebellious repudiations allowing new sovereign entities to develop, but in contemporary times, Schmitt argued, they signaled the "destruction of [the traditional] social structures."[84]

Unlike the Spanish who arrived with pitchforks ready in hand, the external meddling of liberalism and communism betrayed the Spanish spirit. Of course, such meddling provided concrete benefits to telluric partisans, and hence was not simply forced upon them. The increasing development of weapons technology, for example, made "the partisan dependent on the constant

[82] Schmitt, *Theory of the Partisan,* 53.
[83] Schmitt, *Theory of the Partisan*, 72.
[84] Schmitt, *Theory of the Partisan*, 73.

help of a community that [was] in a technical-industrial position to provide him with the newest weapons and machines." It made the partisan dependent on an "interested third party" to provide him with the necessary "weapons and munitions, money, material support, and all types of medicines." In addition, this interested third party "create[d] the type of political recognition that the irregular fighter need[ed]… not to sink into the criminal realm"—to demonstrate that the partisan stood for a properly political position that could not be brushed away by the domestic powers of police or the procedures of criminal law.[85] But, together, these developments threatened the telluric nature of the partisan: with the arrival of technology and recognition, Schmitt claimed, the partisan became "motorized… leav[ing] his own turf and becom[ing] more dependent on technical-industrial means, which he need[ed] for his struggle." The partisan would then stop fighting for nation, country, and soil and instead "cause the power of the interested third party to grow, so that it ultimately reache[d] planetary proportions."[86] If liberalism and communism instrumentalized the partisan to further their ideological vision, the proliferation of partisan movements "caused nothing less than the destruction of the whole Eurocentric world that… the Congress of Vienna had hoped to restore."[87]

Partisan Warfare and the Global Search for Sovereign Freedom

If Schmitt spent so much time describing the differing ways that liberalism and communism disturbed the concept of 'the political,' it was only because each ideology, in lieu of these contexts, set forth a different set of possibilities for successfully fomenting resistance while resisting cooption. After Lenin, Schmitt continued to narrate his history of the partisan, turning to

[85] Schmitt, *Theory of the Partisan*, 75.
[86] Schmitt, *Theory of the Partisan*, 76.
[87] Schmitt, *Theory of the Partisan,* 53.

the French General Raoul Salan and the Chinese Leader Mao Tse-Tung to reflect on the possibilities of opposing these universalist ideologies. While the latter descended from the militant trenches of Marxist ideology, the former acted within the bounds of French society and its overly legalistic culture. These two contexts, Schmitt implied, would mean all the difference for finding an effective telluric partisan in the present moment: liberal legalism had so strongly subverted 'the political' that Salan would fail, while Marxism—although it revolutionized and unbracketed 'the political' from all restraints—could possibly be tethered back to soil and earth.

Yet despite these differences, both figures still provided a uniform lesson about the relationship between violence and freedom: telluric partisans, even while oriented by their commitment to ground and soil, could no longer inhabit a strictly defensive position. It is perhaps for this reason that Schmitt found "an intermediate commentary"—as his subtitle notes—on the *Concept of the Political*. Schmitt did not speak of the partisan as defending the existence of the tradiational sovereign state. Instead, he spoke of the partisan as a half-way point to a new regularity, one who provided hope and possibilities for realizing conventional political relations in a new institutional form. With the death of sovereignty and the transformation of the state into a technocratic machine, telluric partisans needed to radically react and reconstruct their political goals, so that the idea of national independence could achieve substantive meaning and a realistic embodiment. This was not a context that Schmitt mourned, but a challenge that allowed him to peer out into the international universe seeking that figure who would lead the transition to a new order, that hero who would move the struggle for territorial politics forward.

In this light, perhaps one of the great ironies of Schmitt's work is that although it served as an ode to Spain, the one attempt by Spanish Fascists to aid in telluric forms of partisan warfare ended in absolute disaster. Schmitt wrote quite sympathetically about General Raoul Salan, one of

the founding members of the Organisation d'Armée Secrète (OAS) in France, who sought support from Spanish fascists to train and supply his paramilitary army as it was becoming increasingly clear that President de Gaulle would turn his back on this right-wing constituency. Spain accepted Salan's request out of solidarity to their cause—one where the OAS sought to retain jurisdiction and authority over what was supposedly 'their' territory, French Algeria, at all costs. As de Gaulle began to accept the inevitability of Algerian separatism, Salan broke with the French central command, even ordering terrorist actions against the Algerian and French civilian populations.[88] For Schmitt, Salan's turn to terrorism conformed to "the old adage," whom he attributed to Napoleon himself, that "with a partisan, one fights like a partisan." Because the Algerian guerillas, in their irregular methods of warfare, caused such trouble for the regular French army forcing their defeat, Salan decided to adopt similar methods to defeat them. "The result was that he was transformed into a partisan."[89]

Speaking directly to his audience, Schmitt disconcertingly defended this behavior, although an extended focus on this fact ignores what was his important and subtle critique. "It is not our task," Schmitt exclaimed, "to second-guess the intelligent and experienced officers of the Algerian putsch of April 1961 and the organizers of the OAS regarding what for them were obvious and concrete questions."[90] Scholars have rightly emphasized the echoes between this line of thinking and the contemporary war on terror, where the Bush Administration attempted to place enemy combatants outside the protection of the Geneva Conventions due to their irregular status.[91] But what remains less stressed is that, despite his rationalizations, Schmitt still acknowledged that

[88] For more information, see Alexander, Martin S., and John FV Keiger, eds. *France and the Algerian War, 1954-1962: Strategy, Operations and Diplomacy* (Routledge, 2013).
[89] Schmitt, *Theory of the Partisan*, 81.
[90] Schmitt, *Theory of the Partisan*, 82.
[91] See William E. Scheuerman, "Carl Schmitt and the Road to Abu Ghraib," *Constellations*, 13, 1 (2006).

Salan and his attempted coup ended in spectacular failure. If he did not judge their actions, Schmitt did not valorize their results. The OAS was eventually dismembered and Salan was tried, convicted and sentenced to death (although this was later commuted to life imprisonment).[92] Schmitt thought this was an unsavory end to a noble attempt, and hence the important issues for him were diagnostic: why did Salan fail and how this could be avoided?

To explain his failure, Schmitt pointed to, what was from his perspective, a dark development in the history of legality and legitimacy. It was, of course, obvious that the "French Republic [was] a government ruled by law" and that "neither the judiciary nor the army [was] above the law." After all, "the public prosecutor in Salan's trial took a simple and clear position; he always and again took refuge in the 'sovereignty of the law,' which remained superior to every other authority and norm." While the law was clear that the terror of the OAS was illegitimate, Schmitt noted that Salan still rendered a powerful rhetorical defense, one that had once garnered much authority. Salan claimed that President de Gaulle had "deceived and betrayed" the nation for promising to commit the "fatherland to the struggle" of retaining Algeria and then only backtracking on this promise. In disobeying the order to decolonize, Salan therefore appealed to "the nation against the state, to a higher type of legitimacy against legality."[93] This appeal conformed to some of Schmitt's earlier ideas that legality and legitimacy were not necessarily intertwined—that legitimacy rested in the *pouvoir constituant* of 'the people' who could decide the form of its political constitution and legal procedures without normative restraint.[94] But now, in the early 1960s, Schmitt claimed that "Salan's case demonstrate[d] that even the legality that is

[92] For a good account of the events surrounding Salan, see David Macey, *Frantz Fanon: A Biography* (Verso Books, 2012).
[93] Schmitt, *Theory of the Partisan*, 83.
[94] See generally, Carl Schmitt, *Legality and Legitimacy* (Duke University Press, 2004); Also see, Carl Schmitt, *Constitutional Theory* (Duke University Press, 2008), 102.

challenged"—that is even the legality that is claimed as illegitimate—was "stronger than any other type of right," including extralegal appeals to the nation.[95] In a world where the United States made the liberal democratic form the hegemonic norm of international recognition, legality and legitimacy had fused together without much probability of being wedged apart.

It would be a mistake, then, to think that Schmitt worshipped Salan and the OAS for *merely* expressing the nationalist spirit, embodying warrior values, and fighting in the dark alleys of an irregular war for the soil that they so dearly loved. On the contrary, because of their failure, the Algiers putsch was no model to mimic or mirror. It was equally important that the telluric partisans were *actually* successful at breaking with the forms of legality that suppressed and perverted their nationalist and telluric ties. The irregularity of the partisan, as Schmitt claimed, should not be worshiped for its own sake. "In and of itself irregularity does not amount to anything. It is simply illegality."[96] Like the sovereign state before it, Schmitt therefore hoped that telluric partisans, in claiming "the right to determine the enemy," could also claim "the right to his own new legality."[97] The hope was that telluric partisans could set up a "new *nomos* of the earth" that would capture the spirit and gravity of the sovereign system. It was only upon achieving such a task that telluric partisans would prove themselves as relevant figures in an intermediate commentary on the concept of the political, instead of relevant figures in a eulogy of it.

To achieve such success, Schmitt surprisingly turned to Mao Tse-Tung. Whereas Salan struggled against liberal legality, Mao—like Lenin before him—struggled with how to reconcile revolutionary ideology with the nationalist spirit. In one respect, Mao fit neatly with the tradition of Clausewitz, taking the "formula of war as the continuation of politics even further than Lenin."[98]

[95] Schmitt, *Theory of the Partisan*, 84.
[96] Schmitt, *Theory of the Partisan*, 84.
[97] Schmitt, *Theory of the Partisan*, 84.
[98] Schmitt, *Theory of the Partisan,* 51.

"Mao," Schmitt claimed, "encountered various types of enmity." In addition "to class enmity against the capitalist bourgeoisie," Mao embraced "racial enmity against the white, colonial exploiter… national enmity against the Japanese intruder… and the growing enmity against his own national brothers in long, bitter civil wars."[99] But while this seemed like an expansion of absolute enmity to a whole host of players, Schmitt resisted this conclusion. The truth was that Mao highlighted various concrete enemies—various real enemies—and in doing so, provided resources to reverse the rotation and orientation of "the political" found in the communist tradition.

While the Soviet Communists, both Lenin and Stalin, "succeeded in linking… the essentially defensive, telluric power of patriotic self-defense… with the aggressivity of the international communist world revolution,"[100] Mao brought the ideology of world revolution back down to earth: he "linked a universal, absolute, global enemy lacking any territorial space—the Marxist class enemy—with a territorially limited, real enemy of the Chinese-Asiatic offensive against capitalist colonialism."[101] Somewhat providentially, Schmitt thought it "a significant coincidence that Mao completed his most important writings in 1936-38, i.e., the same years in which Spain defended itself against a war of national liberation sponsored by the international communist movement."[102] Although believing that "partisans played no significant role" in defeating communism "in the Spanish Civil War," Schmitt claimed that Mao had divinely captured the Spanish terrestrial spirit. "The Chinese Communists under Mao and his friends had struggled for two decades on their own national soil with a national opponent (the Kuomintang) in an enormous partisan war." In this war, Mao did not reproduce the dangers of the philosophers and the sophisters—that plague of the Enlightenment spirit that corrupted the people and coopted them

[99] Schmitt, *Theory of the Partisan,* 59.
[100] Schmitt, *Theory of the Partisan*, 55.
[101] Schmitt, *Theory of the Partisan*, 58.
[102] Schmitt, *Theory of the Partisan*, 56.

into dangerous universalist ideologies. The Chinese guerillas were therefore not like "the Russian Bolsheviks of 1917" who "from a national standpoint" were "a minority 'led by a group of theoreticians whose majority were émigrés.'" Instead, they were peasants and farmers. "Mao's revolution was more tellurically based than was Lenin's," perhaps hardly comparable to Lenin's at all.[103]

But was there any hope to be found in Mao? Could he avoid the failures of General Salan? Much hope, Schmitt implied. Although Leninist ideology constructed "the party" to direct revolutionary movements across the globe, Mao no longer answered to the Soviets and hence ceased to serve as their tool in world revolution. There was an "ideological difference," Schmitt claimed, "between Moscow and Peking, which ha[d only] become increasingly stronger since 1962."[104] Perhaps, Schmitt could have better pointed to the year 1959, the year when Chairman Nikita Khrushchev visited President Eisenhower seeking to relax tensions between the Soviet Union and the United States—"the beginning," as Khrushchev later described the visit, "of the mutual interaction of the two worlds."[105] The desire for some kind of rapprochement famously led Mao to announce that China would become the new vanguard of the communist movement continuing to push the global struggle against capitalism forward.[106] But in pointing to 1962, Schmitt perhaps sought to underplay this highhanded revolutionary rhetoric, instead highlighting how Maoism was also being driven by more material concerns. Indeed, Sino-Soviet relations had turned sour by 1962 over more traditional issues of statecraft and power. The recall of Soviet economic experts who were aiding Chinese development, Soviet push back on the Chinese

[103] Schmitt, *Theory of the Partisan*, 57
[104] Schmitt, *Theory of the Partisan*, 61.
[105] Kyle A. Kordon, "Khrushchev Comes to America: The Advent of Mutual Understanding," *Voces Novae: Chapman University Historical Review* 1, no. 1 (June 11, 2009).
[106] Jian Chen, *Mao's China and the Cold War* (The University of North Carolina Press, 2001), 9.

handling of the Taiwanese crisis and Indian border disputes, Soviet refusal to share nuclear technology with the Chinese, and then eventual Soviet support for India in the Sino-Indian war: each of these issues contributed the growing Sino-Soviet split.[107] Certainly, scholars have recently attempted to show that this split was also driven by ideological concerns, but Schmitt was perhaps tapping into the more traditional interpretations of this event which saw ideology as an excuse for what were really matters of power and security.[108]

Indeed, the importance of this broader point—that China was asserting its own path against the Soviets—allowed Schmitt to claim that he saw the origins of another *nomos of the earth*. While Marxist-Leninist ideology sought to construct an international order in the image "*One World*, i.e., a political unity of the earth and its humanity," Schmitt claimed that Maoism had the potential of delivering a "plurality of *Grossräumen* [i.e. large spatial-political spheres] which [could be] rationally balanced internally and in relation to one another."[109] Schmitt quoted Mao's 1935 Poem *Kunlun* to make this point:

> If I could stand above the heavens,
> If would draw my sword
> And cut you in three parts:
> One piece for Europe,
> One piece for America,
> One piece left for China.
> Then peace would rule the world.[110]

But would peace truly rule the world in this vision? And, if so, what kind of peace? The first aspect to note about this poem is that the lines Schmitt quoted implied that whatever peace

[107] See, e.g., Lorenz M. Lüthi, *The Sino-Soviet Split: Cold War in the Communist World* (Princeton, 2008).
[108] Compare Jian Chen, *Mao's China and the Cold War* (The University of North Carolina Press, 2001) withMelvin Gurtov and Byong-Moo Hwang, *China under Threat: The Politics of Strategy and Diplomacy* (Baltimore: Johns Hopkins University Press, 1980); Nakajima Mineo, Thomas Robinson, and Jonathan Pollack in *The Cambridge History of China*, ed. Denis Twitchett and John K. Fairbank, vols. 14 and 15 (Cambridge, Eng.: Cambridge University Press, 1987 and 1991).
[109] Schmitt, *Theory of the Partisan*, 58.
[110] Schmitt, *Theory of the Partisan*, 59.

would arrive would be "cut out" by the "sword." Of course, Schmitt was not seeking a world of "perpetual peace," but one that simply avoided the reality of perpetual war—the interventions of the United States and the Soviets.[111] The poem seemed to recover the concept of 'the political' and its strict delineations between friend and enemy; it seemed to reconstruct the ideals of the *Jus Publicum Europeaum* and its strict boundaries between peace and war—and for this reason, Schmitt admired it. The second and perhaps more disturbing aspect to note is that Schmitt misquoted one line of the poem. In the original version, the poem did not read "One piece left for China," but rather "One piece left for the East."[112] With this mistranslation, Schmitt perhaps revealed his cards too clearly: where Mao wrote a poem carving out a space of autonomy for all non-Western peoples, Schmitt claimed that Mao was developing a hegemonic space of influence ruled by China—a *Großraum,* as Schmitt coined it during the dire and dangerous period of Hitler's early rule.

Even if only mentioned just once in the *Theory of the Partisan*, the appearance of the *Großraum* idea—literally greater space or sphere of interest—created a massive difficulty for the distinction between the defensive and the aggressive partisans that structured Schmitt's text. The *Großraum*, as Schmitt explained to the audience at the University of Kiel in 1939, "escape[s] from the false alternative of, on the one hand, the merely conservative maintenance of the interstate way of thinking that has prevailed until now, and on the other hand, a non-stately, non-national overreach into a universalistic global law carried out by the Western democracies."[113] The *Großraum* idea was therefore not introduced to defend the nation-state, but was self-admittedly reactionary: it sought to capture and reconstruct ideals from the past and then generate "new

[111] Compare Immanuel Kant, "Perpetual Peace" in *Political Writings* ed. H. S. Reiss (Cambridge, 1991).
[112] See Mao, *Kunlun,* available at https://www.marxists.org/reference/archive/mao/selected-works/poems/poems16.htm.
[113] Schmitt, "The Großraum Order," 102.

concepts of state and nation."[114] This of course did not mean that the *Großraum* did not borrow from the spirit of sovereignty. Just as sovereign states once avoided transposing their way of life onto other sovereign states, the *Großraum* marked out an idea of non-intervention where "spatially alien powers" would not intervene into its sphere of interest.[115] But unlike the sovereign states of old, the *Großraum* also captured a radically new feature: it did not have one nation that corresponded to its zone of authority and was instead structured by a *Reich*—literally a "realm" or empire—"which in this sense [was] the leading and bearing power[] whose political ideas radiate[d] into a certain *Großraum*."[116]

Schmitt, of course, attempted to argue that "*Reich*, imperium, and empire [were] not the same," but his reasoning proved both facially true and deeply incredulous if attempting to save it as a defensive concept.[117] Schmitt claimed that *Reichs* and empires were "not comparable with one another when viewed from within"—when viewed in terms of the concrete ways of life that each formation protected. "While imperium often [had] the meaning of a universalistic structure encompassing the world and mankind – in other words, all nations," the "Reich [was] fundamentally determined on the foundation of respect for every national identity." By claiming such respect, Schmitt was tapping perhaps into one of the darker features of his times: how the Reich would avoid, what he considered, the root cause of all failures of empire—"the mix[ing] of nations in the declining Roman imperium, as well as the ideals of assimilation and melting pots of the imperia of Western democracies."[118] But if the Reich respected, or more accurately, policed the boundaries of national identity, it certainly could not avoid entering the territorial space of

[114] Schmitt, "The Großraum Order," 109.
[115] Schmitt, "The Großraum Order," 99.
[116] Schmitt, "The Großraum Order," 101.
[117] Schmitt, "The Großraum Order," 101.
[118] Schmitt, "The Großraum Order," 102.

other nations. While finding a hierarchy of national groupings rather unproblematic, Schmitt therefore demonstrated that the *Reich* was not merely *defending* itself against universalism; it was *offensively* and *aggressively* carving out a grand territorial space where it and only it would rule.

It was only through embracing this aggressive spirit, Schmitt clarified, that the *Großraum* concept guaranteed non-intervention, and hence the *Reich's* territorial freedom. The key to this freedom, Schmitt argued, was that the *Großraum* was not simply a political space, but also a "*Großraum* of… economic-industrial-organizational radiation that reach[ed] out of the *national soil* and the *state territory*."[119] At first, Schmitt attempted to make this idea of a "*Großraum* economy" sound rather harmless. Referencing the German economy of the 1920s, Schmitt argued that the "the '*Großraum* economy' became specifically clear as a word and fact for the first time, all as a result of the cooperation of distant electrical power and gas line networks stretching across great distances, and owing to an 'associative economy.'"[120] Anchoring the expansion of the German state not in violence but in a form of free association, Schmitt argued that "[t]he economic formation of a *Großraum* [could] arise from below when spatially small districts more or less 'organizationally' merge themselves into larger complexes."[121] But what interested Schmitt about this economy was not its formal process. What interested him was its concrete character. Unlike the British and American conceptions of economic freedom which concerned the "freedom of the seas" and "freedom of trade"—"a shoreless universalism of the Anglo-Saxon rule of the seas"—the *Großraum* economy was expansive yet terrestrial, and hence it could ensure economic self-sufficiency within a bounded spatial area.[122]

[119] Schmitt, "The Großraum Order," 113.
[120] Schmitt, "The Großraum Order," 78.
[121] Schmitt, "The Großraum Order," 79.
[122] Schmitt, "The Großraum Order," 124.

After all, the one concrete example that Schmitt provided as a model for the *Großraum* economy was based on the extractive colonies of the past. "The old Europe-centric system of international law," Schmitt reiterated, "rested upon the differentiation in international law of a European space of states… [and] a non-European space of free European expansion." It was precisely because "[t]he non-European space was without a master, uncivilized or half-civilized, an area of colonization, an object of the seizure of holdings" that "the European powers… became *Reichs*." But while "[a]ll *Reichs* of this system of international law had a *Großraum* available for expansion," Schmitt clarified that there was only one power who was land-locked, stuck without the possibility of meeting its needs.[123] "Prussia," Schmitt claimed, was "the only great power that, if it became spatially larger, could only do so at the cost of neighbors who already belonged to the European community of international law."[124] But against those external critics who made moral arguments against such expansion, Schmitt chastised them for building their societies on the backs of the colonized while denying the same right of expansion to the Germans. If anything, Schmitt asserted, German expansion was all the more pressing in the current global political environment. It was only "the *Deutsches Reich*, in the middle of Europe between the universalism of the powers of the liberal democratic… West and the universalism of the Bolshevik, globally revolutionary East, [who] ha[d] the holy honor of defending a non-universalistic, *völkisch* order of life."[125] "The action[s] of the Fuhrer," Schmitt concluded, "ha[d] lent the concept of our *Reich* a political reality."[126]

[123] As Schmitt claimed, "Portugal, Spain, England, France, and Holland in their overseas colonies, the Habsburg monarchy in the Balkans with respect to the holdings of the Ottoman Reich (which did not belong to the community of international law), the Russian Reich both with respect to Ottoman holdings as well as territories in Siberia, East and Middle Asia." Schmitt, "The Großraum Order," 114.
[124] Schmitt, "The Großraum Order," 114.
[125] Schmitt, "The Großraum Order," 102.
[126] Schmitt, "The Großraum Order," 111.

But now in the 1960s, Mao was the hero who, Schmitt hoped, would provide a similar political reality for China. The problem, of course, was that this hope was more an imposition of the Schmittian imagination that derivative of any ideas arising from Maoism. If China was partly driven by traditional security interests during the Sino-Soviet split and onwards, the one ideological difference that China sought to stress in relation to Soviets is that, unlike them, it would not embrace imperial practices. Of course, China supported North Korea during the Korean war, and North Vietnam during its conflict with the US. But "despite its tendency toward using force," as Jian Chen argues, "Mao's China was not an expansionist power…. While Mao and his comrades were never shy about using force in pursuing China's foreign policy goals, what they hoped to achieve was not the expansion of China's political and military control of foreign territory or resources—which was, for Mao and his comrades, too inferior an aim—but, rather, the spread of their influence to other 'hearts and minds' around the world.[127]

Similarly, the economic model that Schmitt embraced required that Mao treat his surrounding areas as an extractive colony, lest he become dependent on external forces to meet his needs. But the actual history of the Chinese economy did not speak to the Schmittian vision; it rather spoke to the eventual arrival of (inter)dependence. The Maoist period was defined in antithesis to the imperial spirit that Schmitt demanded. During both the great Leap Forward (1958-1961) and the Cultural Revolution (1966-1976), Mao did not seek to centralize and expand but rather to decentralize Chinese political institutions to avoid the pitfalls of Stalinism. As Ronald Coase has argued, it was a misunderstanding of the past to think that the Chinese and Soviet models mirrored one another. On the contrary, local governments," under Mao, "obtained more autonomy in economic planning, resource allocation, fiscal and tax policy, and personnel management,"

[127] Chen, *Mao's China and the Cold War*, 15.

while "the administration of most state-owned enterprises was [also] devolved to [them]."[128] Indeed, the disasters of Maoist economics often stemmed from his conception of continuous revolution, where Mao directed his energies inwards to smashing the autonomy of the state bureaucracy. If this strategy failed over and over again, it would eventually give rise to a Chinese iteration of capitalism which Schmitt would find equally distasteful. While the road from Maoist socialism to Chinese capitalism was uneven and bumpy, Schmitt would certainly cast the current state of affairs as quite dark and dreary: a Chinese economy inextricably linked to the global economy and hardly the picture of self-sufficiency.

But if Mao did not embody the *Großraum* concept, such failures did not disprove the primary insight that Schmitt sought to teach: that the spirit of the Spanish guerillas of 1808 had already extinguished and disappeared from the world. These partisans surely defended their homeland, sought to expel an invader, and desired to guard their national soil, but these acts only made sense in a world where the sovereign state still existed and could continue protecting territorial limits once irregular war was done. The viability of the sovereign state, according to Schmitt, had clearly disappeared in the present moment so in what meaningful sense could one talk of defensive postures that merely sought to restore? Even Raoul Salan, after all, fought for a piece of land that, despite France's own attempt to incorporate it into the Republic, lay somewhere across the Mediterranean and with native inhabitants that vastly overpowered and outnumbered the French *pied-noirs*. Perhaps, Salan's battle was telluric, but could it be called defensive? Of course not. Salan could not accomplish what Mao could have achieved and what Spain should perhaps posit as its distant goal: the construction of a territorial empire that truly radiated outwards protect national independence from universalist ideologies. How Spain could achieve this goal on

[128] R. Coase and N. Wang, *How China Became Capitalist*, 2012 edition (Basingstoke: Palgrave Macmillan, 2012).

its own, while remaining the ally of the United States in a continuous cold war, Schmitt never made quite clear. But the goal itself was clear enough, just as the fact that it was a reactionary attempt to remake the world anew.

CONCLUSION
DISAVOWALS, DISCONTENTS, AND THE FUTURE OF FOREVER WAR

> "You can't separate peace from freedom because no one can be at peace unless he has his freedom."
> — Malcolm X

The endless war on terror has been a project long in the making. If shortly after 9/11, George Bush casually claimed that "[t]his crusade, this war on terrorism, is going to take a while," many took such comments as pointing to a vision of a warfare for an infinite duration, and indeed this vision would soon appear in practice. What started as a response to the horrific events of 9/11 morphed into a pretext for invading Iraq, both of which further morphed into pretexts for hunting terrorists around the globe and then remaining in Iraq, well beyond any anticipated timetables, to fight the new threat of ISIL. But if it is difficult to imagine an end to the war on terror, the dissertation also argues that global warfare has much deeper roots: it should be understood in terms of a deeper structure of American practice that can be traced back to decolonization itself, one which deemed militant liberal action in the face of irredeemable illiberal threats as necessary.

But there is also another side to "forever war," the story of how global terror came to be. If not quite telling this story in depth, the dissertation has reconstructed the theories of antiliberal critics who do indeed provide resources for highlighting its important dimensions. These critics make clear that militant liberalism, even if refusing to disavow violence, requires a different kind of disavowal that appears more regularly in the history of liberal empire: the disavowal of responsibility.[1] As we have seen, Berlin and Henkin surely provided nuanced and sophisticated accounts of why violence might be moral or necessary to confront illiberal enemies, but both in

[1] As Jeanne Morefield has put, "liberal imperialists [often] have their cake and eat it too: in their world visions, the imperial state is compelled to act imperially to save the world from illiberalism, and yet is never responsible for having created the conditions that require it to save the world in the first place because it was always, even when it was not, just being who it was." Morefield, *Empires Without Imperialism,* 3.

their own times and then in ours, such enemies always appeared as forces from elsewhere, imposing this dilemma upon them. For Berlin, the only totalitarians that need to be violently confronted existed in the Soviet Union and the Third World, both of whom threatened the universe of pluralistic values through adopting dangerous totalitarian ideas of self-mastery and self-assertion that would override their realistic moral senses. For Henkin, terrorism was never a phenomenon supported by the First World, and if the liberal legal order would need to adapt to deal with such horror, this was an absurdity imposed on it by necessity—because of the abuses of principles of sovereign autonomy and self-determination. With such narratives shaping it, militant liberalism therefore embraced, despite its uniqueness, a rather staple feature of the liberal tradition: methodological individualism. In appealing to 'reality' and 'necessity,' militant liberals 'fetishized' their enemies as analytic facts, as autonomous artifacts, that simply exist in the world without expressing concern for the broader social relations in which they were embedded.

Of course, the antiliberal critics sympathetic to Thirdworldism did not repeat this methodological mistake. If there is one great debate that has occurred across the thinkers of the dissertation, it is about whether to highlight the social relations structuring the interactions between liberalism and its alternatives. If totalitarianism was 'the other' of militant liberalism, Berlin argued that totalitarianism developed because of a wrong-headed idea: the idea of positive freedom as self-assertion. What allowed such self-assertion to proliferate, as Henkin further clarified, was the attempt of Thirdworldists to subvert the neutral and universal dimensions of international law-making, allowing the dangerous phenomena of terrorist violence to breed behind their sovereign borders, unchecked. But in contrast to these pictures, Fanon and Schmitt showed how wrong-headed it is to posit that the *idea* of positive freedom or the *idea* of sovereignty, abstracted from any kind of social context, explained the disasters arising from decolonization. If many of these

disasters have been traced to the romantic drive of revolutionary overcoming, Fanon's corpus showed how this drive was a temporary reaction to colonial violence, while the main disasters arising out decolonization, and especially the loss of its democratic alternatives, could be attributed to imperial meddling and forced liberalization. If many of these disasters have also been traced to the inviolability of state sovereignty, Schmitt's corpus showed how liberalism destroyed the viability of this organizing principle through embracing an interventionist logic in defense of its economic and humanitarian ethos, while further forcing those who valued the underlying spirit of sovereignty to seek the creation of territorial empires that could fend off imperial meddling.

What do these stories of disavowal tell us about the current war on terror? Schmitt certainly placed his hope in an inapposite force during the 1960s, hoping for the realization of an imperial vision whose only realistic iteration ever occurred with Nazi Germany. But with the slow destruction of the Thirdworldist project along Fanonian lines and Schmittian fears—that is, with the slow destruction of the Thirdworldist project due to the mixture of external intervention and expanding economic liberalization— the Schmittian political spirit, and its aggressive logic, achieved a deeper hold on the illiberal imagination.

First, there was the destruction. If both Schmitt and Fanon warned of the liberal attempt to subvert illiberal regimes through interventionist warfare, the United States repeatedly displayed the tendency to support such forces, especially right-wing political Islamists, to challenge the Soviet Union and Thirdworldism.[2] The United States funded the Muslim Brotherhood in Egypt, and then a coup d'état in Iran. It funded Wahhabi extremists in Saudi Arabia, claiming it as one of the few buffers against Thirdworldist socialist expansion. It created alliances with Pakistan and

[2] Political Islamism is not the same as Islam, a religion of almost 2 billion people. It rather a more recent political fabrication, often with many antithetical strands, that should be understood in tandem with the fall of Thirdworldism.

Sudan whose leaders came to power by their own armed insurrections, and it even supported the Iranian Revolution and Ayatollah Khomeini, at least in its early years, for embracing anti-communism. While each of these decisions would later cause trouble for the United States, none of them were as dire as its last decision—perhaps, the super power's greatest mistake. The United States spent billions of dollars funding the mujahedeen to counter the Soviet Union, and then after the end of the Cold War, it embraced the Taliban as a stabilizing force in a land wrecked by the conflicts it helped breed.[3]

But if violence weakened Thirdworldist states, the economic policies promoted by the United States hollowed them out. The Third World never achieved the new international economic order that they sought. As Thirdworldists grew their power in halls of the United Nations, the United States slowly withdrew from institutions with allocative authority, such as the ICJ and UNESCO, ensuring that their radical economic proposals would never reach reality. With increasing debts, Third World states also began to compete for First World resources and capital, which often arrived with strings attached: to institute liberal economic policies that their new foreign rulers promised would benefit them. But if benefits ever resulted from such policies, they certainly were not equally distributed: austerity and structural adjustment cut off many people from the social services and safety nets provided by the state, while Third World rulers would become increasingly isolated from those that they ruled, seeking legitimacy and support not from their own people but from foreign investors and political backers, transforming themselves into client states of the West.[4]

[3] See generally, Robert Dreyfuss, *Devil's Game: How the United States Helped Unleash Fundamentalist Islam* (Metropolitan Books, 2013).
[4] See generally Robert Malley, "Chapter 5" in *The Call from Algeria: Third Worldism, Revolution, and the Turn to Islam* (Berkeley: University of California Press, 1996).

The results of these changes are well-known, even if rarely acknowledged. The backing of Wahhabi ideology and the Taliban provided the resources and space for al-Qaeda to attack the United States. The horrific events of 9/11 then caused the world's superpower to feel more vulnerable than ever before, leading it to both invade Afghanistan and Iraq, further radicalizing Islamist forces. In addition, while the initial terrorist actions of al-Qaeda had little relevance to economic liberalization, the transformation of Thirdworldist economies created a state of affairs which allowed terrorist networks to recruit more members than they ever had previously. Indeed, once Third World states stopped providing resources to their peoples, individuals began to rely on ethnic, tribal, and religious modes of belonging to make up for this deficit. This shift from national consciousness to a more tribalist consciousness, as Robert Malley has noted, was not an escape from the trials of modernity or a harbinger of a clash of civilizations; this shift was a rational response to a world that had stripped peoples of their social protections.[5] In such a world, terrorist networks like al-Qaeda were better suited to recruit members to join their movement and help realize their alternative global vision. It is of no small note that even ISIL—a splinter group of al-Qaeda who eventually came to dominate Iraq—filled their ranks with over 30,000 foreign fighters from numerous states across the Third World.[6]

The political vision that often drew these recruits was also much darker than any idea proposed by the old Third World. While much has been made of the differences between al-Qaeda and ISIL, both groups subscribed to a deeply territorial conception of political freedom—one that stretched beyond the states of today and sought to recreate a mythical *umma* of the past that could dispel foreign meddling. Osama Bin Laden himself articulated numerous reasons for attacking the

[5] Malley, *The Call from Algeria,* XX.
[6] Ian Bremmer, "The Top 5 Countries Where ISIS Gets Its Foreign Recruits," *Time*, http://time.com/4739488/isis-iraq-syria-tunisia-saudi-arabia-russia.

United States along these lines: as a response to US attacks in Somalia, US support for "the Russian atrocities… in Chechnya," "the Indian oppression… in Kashmir," and "the Jewish aggression… in Lebanon," and then also because of the presence of US troops in Saudia Arabia and its broader support of Israel.[7] Of course, al-Qaeda had no realistic possibility of creating a territorial and economically self-sufficient empire like the one proposed by Carl Schmitt. But it did take seriously the lesson that Schmitt formalized: that the defensive partisan must act aggressively to challenge the onslaught of global liberalism. Even ISIL, which would come closest to creating a new state with some territorial autonomy, did not sit idly within its borders, seeking to protect its territorial gains defensively. Instead, its members traveled across the sea and committed attacks in Europe, bringing the battle against 'Western' liberalism to its own turf. If the viability of the new Islamist state was most recently dashed by the new American offensive, this does not mean the Schmitt incorrectly grasped the nature of the partisan of reaction. It merely means that Schmitt was wrong, and Fanon was right, about another lesson of the Spanish guerrillas: that irregular warriors do indeed make history, but not in the conditions of their choosing.

The implications of this broader story, where liberalism feeds terror and terror, along with militant liberalism, contributes to 'forever war,' should be neither overemphasized nor underestimated. On the one hand, it would be wrong to assume that the mere acknowledgment of the social and historical connections between militant liberalism and its discontents solves the problem of 'forever war.' The admission that the United States contributes to 'blowback' did not lead President Obama, as already mentioned, to disavow militant action. On the contrary, once the circle of violence was put into motion, the President often asserted that such a circle could not be simply willed away, especially when pressing threats made themselves known. Indeed, the story

[7] Bin Laden, Osama, "Full Text: Bin Laden's 'Letter to America,'" *The Guardian*, November 24, 2002, sec. World news, http://www.theguardian.com/world/2002/nov/24/theobserver.

that has been constructed has not been one of "blowback" at all—a story about how individual policy *choices* led to unanticipated consequences. Instead, it has been a story about how a broader structure of militant liberalism, one which has been long activated in defense of the liberal order, has led to the same violent consequences again and again. On the other hand, it should be made clear that emphasizing this social context does not underestimate the role of ideas, casting them as merely epiphenomenal. Indeed, the idea of "blowback" is also insufficient for reducing political reactions to policies alone, for underestimating how such reactions are always mediated by an ideological vision of an alternative social world. There are both progressive and reactionary version of anti-liberalism, and while social context surely makes the viability of such alternatives more or less realistic or desirable, the decision to pursue one over the other cannot be reduced to it. The overwhelming but futile attempt to find, once and for all, "the root cause" of global terrorism underestimates how terrorists are also driven by their interpretations of freedom and their decision to act upon them.

But what this broad context does make clear is that there was once a time when the idea of self-determination was widespread, when the opposition to empire meant much more than some formal end to colonialism. If the rise of global terrorism can be traced back to the liberal order and the dangerous ideas of territorial autonomy that it breeds, it can also be traced back to the destruction of alternative forms of political organization that sought to capture the spirit of collective freedom in a more democratic and less aggressive mode. Surely, Thirdworldist ideology had its own problems and weaknesses leading to its demise, but the added destruction caused by militant liberals only wrought forth new dangerous ideas of collective freedom that did not improve on the Thirdworldist formula. Because these new dangerous ideas cannot properly speak to the real human need for a political space that allows individuals to exercise autonomy and some

control over the direction of their lives, it should not be surprising to eventually find new movements seeking to change the world yet again—to find new movements seeking to provide the wretched of the earth, who have been left behind by the liberal order, with new outlets for furthering along their struggle for freedom. The success of such movements, of course, are contingent; they partly rest on the ability to surpass a 'forever war' which has structured our international times. But success, as Fanon would have put it, is never guaranteed.

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