

# Necropolitical Law and the Justification of Violence in the War on Terror

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JOTHIE RAJAH. *Discounting Life: Necropolitical Law, Culture, and the Long War on Terror*. Cambridge, UK: Cambridge University Press, 2023.

This superb study investigates one fundamental question: how does the United States legally justify the killing of people around the world in the battles of the war on terror? By analyzing a series of selected and significant materials, Jothie Rajah shows how this process of justification involves a complex interaction of codified law and nonlegal texts, images, events, and perceptions. The validation of killing and of “discounting life” activates a system of “necropolitical law” that simultaneously defines a state operation, a legal process, a military strategy, a capitalist enterprise, the articulation of a salvific ideology, a quest for cultural hegemony, and a general form of neocolonial control. As a result of this combination of rationales, law is redefined “as a compound and relational fabric, with violence and sovereign power inevitably part of the weave” (5). This fabric expands beyond the conventional sphere of the law and is “discernible in sovereign power’s plural, everyday, and embodied expressions” (5). Rajah’s study is thus not a standard analysis of specific problems of the rule of law. Rather, she approaches necropolitical law as a type of “cultural text” (26) that describes the multiple discourses and relations tied in with the US war on terror.

## NECROPOLITICS AND STATE OF EXCEPTION

Achille Mbembe’s concept of necropolitics provides a productive space to account for the complexity of these discourses. Necropolitics theorizes the destructive obverse of the state’s regulation of biological life that Michel Foucault (1990) called biopolitics. While Foucault and later Giorgio Agamben presented the modern European state as the central site of creation of biopolitics, Mbembe detects an inverse governmentality of death in the colonial context. Indeed, the theorization of necropolitics emerges from the mixtures of direct violence, raw exploitation, and a-legal control that characterized the colonization of Africa. Building on this theorization, Rajah transposes necropolitics

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onto the war on terror and uses it to define the legal machinery of a global state of exception engineered by US power.

The logic of the exception advances through series of extraordinary measures and extrajudicial operations. Rajah claims that the war on terror produces a logic of exception different from the logic theorized by Carl Schmitt, Agamben, Jacques Derrida, or Mbembe. For these thinkers, the exception defines the paradoxical legal act of suspension of the law itself, whether in the form of war (as in Schmitt 2005), of production of naked life (as in Agamben 1998), of a groundless, mystical foundation (as in Derrida 2002), or of colonial lawlessness (Mbembe 2019). Rajah's theorization shows how the war on terror involves a different type of exception—not one that interrupts the law but one that amplifies it and intensifies it. The result of this expansive logic is a “hyperbolic and excessive legality” or “hyperlegality” (7) that repurposes the legal frame for the justification of violence.

In the constitution of necropolitical hyperlegality, a fascinating—and terrifying—paradox arises. The amplification of legality that pursues the justification of the casualties of war in fact ends up obstructing the possibility of any kind of legal reasoning. By means of categories and practices such as the dehumanization of terrorists, the excuse of collateral damage, the racialization of others, and the overall virtualization of combat, necropolitical law naturalizes civilian and military deaths and gets rid of the very sovereign imperative and moral necessity to justify the killings of war. Justification operates by means of undermining justification itself.

#### FOUR US PRESIDENTS, ONE PLANETARY MANHUNT

Rajah examines six primary materials that exemplify various modulations of the war on terror under four US presidents. Indeed, a great point of the book is the way in which it reveals that Presidents Bush, Obama, Trump, and Biden provide different rhetorical inflections to necropolitical law but invariably pursue the same process of justification of violence. Thus, the first primary text of the study is the foundational legal document of the war on terror: the Patriot Act drawn under President Bush in 2001. The national task of defending the homeland against terrorists is the basis of a paradoxical expansion of the homeland to the whole planet. The purpose to “deter and punish terrorist acts in the United States *and around the world*” (48) creates a “planetary jurisdiction” (48) that is both extrajudicial and binding, extraterritorial and legally effective. This contradiction corresponds to another paradox that Rajah masterfully dissects for us and which involves the illegibility of the actual text of the Patriot Act. The text that, as President Bush proclaimed, should “help counter a threat like no other our nation has ever faced” (71) is composed of a 132 pages of all-encompassing amendments on crime, immigration, surveillance, and banking. The profusion of other-referencing and fragmentation renders the text “effectively inaccessible” (79). Thus, against the rule-of-law principle that law should be clear and understandable, the illegibility of the Patriot Act contributes to enact the state of legal emergency required for the necropolitical discounting of life.

The subsequent materials analyzed by Rajah are the rhetorical and visual discourses of Presidents Obama and Trump in relation to the war on terror. The hunt and killing

of bin Laden in Pakistan authorized by Obama in 2011 exemplified the legitimization of extrajudicial killings as acts of justice. Rajah remarks that the famous photograph of the Situation Room, which portrays the national security team watching an operation that we cannot see, perfectly represents the necropolitical logic. The picture “simultaneously reveals and conceals” (131) the killing and curates an image “designed to occlude the counterterror state’s violence, in part by representing the United States as removed from violence but proximate to liberal legality’s values, affects, and settings” (135).

Similarly, Trump used the killing of ISIS leader Abu Bakr al-Baghdadi in 2019 to stage a clear-cut opposition between the United States and foreign terrorist savages. (The killing was technically a suicide, as al-Baghdadi died after detonating his vest, blowing up himself and two of his children.) Rajah illustrates the spiteful, straight-talking rhetoric of Trump by recalling how he honored a military attack dog wounded during the operation. The subtext was evident: the well-being of an American dog was more important than the tragedy of the family of a terrorist. More generally, Rajah describes how any casualties of extrajudicial killings can be justified through the notion of collateral damage. In fact, the process of justification is even more troubling when the victims are children. Rajah quotes Lt. Col. Marion Carrington’s definition of the figure of “children with possible hostile intent” (153) to demonstrate how, even beyond the self-justifying label of “collateral damage,” accidental killings can be vindicated as positive forms of preemptive strike. Necropolitical law and the war on terror function as a seamless self-protective machine. In this respect, even if Obama sought to generate an “affective legitimacy” (111) through his prominent oratorical power and his recurrent reference to justice whereas Trump advocated for retaliation and expressed entitlement on oil and natural resources, necropolitical law has unfolded as an unremitting form of enactment of US power.

The film *Eye in the Sky* (2016), filled with action and fight scenes involving drone warfare, constitutes a representative example of what Rajah calls “necropolitical culture” (182). Rajah describes the plot—a military operation to capture a British woman turned terrorist—and genre features of the film. Her analysis shows how the movie constitutes an ideological document that contributes to naturalize the exceptional nature of legality and legitimacy in the war on terror.

Another object of analysis is the deployment in Afghanistan of the most powerful nonnuclear weapon, the Massive Air Ordinance Blast (MOAB), in 2017. The annihilation of civilians and ISIS militants, which quickly evoked the dropping of the atomic bombs in Japan in 1945, was a direct expression of the concept of “shock and awe.” Rajah highlights how the “shock and awe” doctrine, articulated by military theorists Harlan K. Ullman and James P. Wade in 1996 and largely implemented during the invasion of Iraq in 2003, pursues not only quick massive destruction but also “deception, confusion, misinformation, and disinformation” (233). Thus, similar to the Patriot Act, the plainness of the cliché “shock and awe” contrasts with the pursuit of incomprehensible chaos and indiscriminate killing.

The sixth and last text analyzed by Rajah is President Biden’s 2021 announcement of the withdrawal of US troops from Afghanistan. Biden’s strategy was to present Afghanistan as a failed country, a strategy that would “infantilize and denigrate Afghans

as somehow unteachable and lacking in moral fiber” (282). In Biden’s own words, “We gave them every chance to determine their own future. What we could not provide them was the will to fight for that future” (282). As we have seen after the complete withdrawal of troops in August of 2021, the departure of the United States did not contribute to the pacification of the country but merely changed the agents and rationales of the same reality of endless violence.

## HISTORICIZING A BOUNDLESS WAR

The seeming endlessness of the war on terror compels us to look back to the indeterminate origins of necropolitical law. Thus, in opposition to the state narrative that situates the beginning of the war on terror on 9/11, which subsequently becomes a temporal and spatial Ground Zero, Rajah speaks of the “necropolitical continuum” of the “long War on Terror” (16–17). This periodization includes the history of collaboration and combat between the United States and al-Qaeda and Osama bin Laden in the 1990s, as well as the Cold War battles for the destabilization and control of the Middle East.

But Rajah proposes another, somewhat secondary historicization of necropolitical law as she establishes connections between the war on terror and the US internal history of white supremacy, slavery, and land theft. While these connections can be illuminating and useful to understand the evolution of US imperialism and racism, they often have the effect of compressing multiple historical violences into a general condemnation of the United States as a necropolitical nation. Without denying this atrocious history, the differences between, for example, the “extirpative violence” (160) against indigenous peoples and drone warfare in Afghanistan are too significant to be only attributed to the destructive core of US power. In fact, if we put too much emphasis on the representation of the United States as a single national project of destruction, then we run the risk of losing one of the key distinctions of Rajah’s study, namely the historical shift from the modern liberal rule of law to the necropolitical law of the global war on terror.

Another premise that needs explanation is the US-centric character of necropolitical law. Rajah’s approach may be interpreted as a regression from, for instance, Michael Hardt and Antonio Negri’s analysis of global war and power in terms of poststatal empire. Let us recall that, for Hardt and Negri, the United States in the twenty-first century no longer behaves like a classic imperial power of colonization; rather, it plays a hegemonic role in a global order without metropolitan center or stable *nomos*. Rajah returns us to the national framework, but this is a productive and even necessary return: the focus on US power helps us understand how necropolitical law operates globally but is produced nationally. Thus, rather than regression, Rajah’s study brings forth a fruitful counterpart to the dominant representation of globalization as a poststatal or anomic order. After all, as Gilles Deleuze and Félix Guattari (1987) taught us, all social and historical orders are composed of forces of deterritorialization and forces of reterritorialization. We may say that, while Hardt and Negri (2000) focused on the deterritorializing tendencies of

globalization, Rajah reterritorializes power by examining the concrete legitimations of a war on terror that virtually determines every conflict of the world.

## WHAT IS THE WAR ON TERROR GOOD FOR?

One further question that the reader may have: what is the ultimate driving cause of necropolitical law? Rajah occasionally alludes to the economic motive, as the evident interest in oil of the Middle East constitutes a key feature of an “imperial commerce” (173). But she also hints at another distressing effect of necropolitical law, namely the dissolution of a last instance or *ultima ratio* of war and power. In her description of the “shock and awe” doctrine formulated by Ullman and Wade, Rajah observes how in this program “war/security/American interests (the terms are used interchangeably) are abstracted from the present and from material realities, then invariably re-situated in a future constructed as risk-ridden and fearful” (255). Here we encounter one of the most perplexing consequences of global necropolitical law. The nebulousness of the goals of the war on terror is both the cause and the effect of the very situation of permanent war. In other words, the global scope of a war that is supposed to defend American interests and the US homeland dissolves the concreteness of the war effort and extends it both temporally and spatially so that nobody knows the actual reasons for fighting anymore.

This expansion of warfare raises another difficult question: is it possible to resist the omnipresence and apparent indestructibility of necropolitical law? Rajah observes with dismay that a *New York Times* investigation of the killing of innocents in drone warfare in Afghanistan did not have any political or public consequences. Even if arguably many US citizens are not happy with drone warfare, the effort to resist seems uncertain and futile. For the victims of collateral damage, there is simply no chance of obtaining justice. Let us recall that, as Schmitt explained, the category of the war victim, that is, of the civilian who participates in warfare as a passive sufferer of violence, appeared with the development of air bombing in the total wars of the twentieth century (2006, 320). The justification of the discounting of life through the category of “collateral damage” has taken the logic of the victim to an even further extreme. What are the deaths of the war on terror good for? The casualties of air bombing in the twentieth century could still be used to pressure an enemy to surrender, like Japan after the atomic bombs. Yet the collateral damage of twenty-first-century war is narrativized as an unfortunate but inevitable harm, bearing no political meaning or social significance.

A final remark about the present. One wonders how the recent rise of violent authoritarianism in Russia and China relates to US necropolitical law. A displacement seems to be taking place from the hyperlegality of US power to the more unmediated martial rule of Putin and Xi. How must we interpret this shift? Does it represent a new phase of the collapse of the liberal horizon, that is, a variation of the necropolitical impulse? Or, alternatively, is it a reaction to the necropolitical operativity of law in the US-dominated West? Rajah ends with a positive note, as she hopes that critical engagements with the law “might contribute to an end to the discounting of life” (291). Another less positive but perhaps more likely possibility is that the US hyperlegality will end, not because peace will have arrived, but because the renewed enmity with other states will prompt the law to find different justificatory mechanisms.

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