JUS GENTIUM & THE ARAB AS *MUSELMÄNNER*

JUS GENTIUM & THE ARAB AS *MUSELMÄNNER*: THE "ISLAMIST WINTER" IS THE PRE-EMPTIVE (CREATIVE) CHAOS OF THE "ARAB SPRING" MULTIPLYING *NECROPOLISES*

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Title: *Jus Gentium* & the Arab as *Muselmänner*: The "Islamist Winter" is the Pre-Emptive (Creative) Chaos of the "Arab Spring" Multiplying *Necropolises*

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"*When did you start turning people into slaves when their mothers gave birth to them as free human beings?"* **— Caliph Umar Ibn Al-Khattab (d. 644)**

"…An art, which has an aim to achieve the beauty, is called a falsafa (philosophy) *or in the absolute sense it is named wisdom. A just city (Madina al-Fadila) should favor justice and the just, hate tyranny and injustice, and give them both their just deserts…We can achieve happiness only then when we have a beauty; and we have a beauty thanks to philosophy. The truth is that only because of philosophy we can achieve happiness."* **— Abū Nasr Al-Farabi (Lat. Alpharabius) (d. 950)**

"…If you advise someone on the condition that they have to accept it, then you are an oppressor"

— Abū Muḥammad Ibn-Hazm al-Andalusi (d. 1064)

"…Declare your jihad on thirteen enemies you cannot see – egoism, arrogance, conceit, selfishness, greed, lust, intolerance, anger, lying, cheating, gossiping and slandering. If you can master and destroy them, then you will be ready to fight the enemy you can see." **— Abū Hammid Al-Ghazali (Lat. Algazelus) (d. 1111)**

"…the purpose of theories of creation and emanation is to explain the fullness of a world bursting with God's presence in terms of a relation of ontological dependence between the world and God. That purpose is defeated if ontological dependence is equated with existential identity – or for that matter with the nonentity of either member. Unless things have being, a being of their own, enough in man's case allow moral freedom, God's gift is empty, meaningless. Even an asymmetrical relation must have more than one member. For the doctrinaire determinist, of course, the notion of self-determination is specious, useful perhaps, and phenomenologically impeccable, but objectively an illusion. All behaviour is externally determined since behavior itself is no more than the pattern of conditioned response."

— Abū Bakr Ibn-Tufail (d. 1185)

"…Since this Law [Sharia] is true and calls to the reflection leading to cognizance of the truth, we, the Muslim community, know firmly that demonstrative reflection does not lead to differing with what is set down in the Law. For truth does not contradict truth; rather, it agrees with it and bears witness to it."

—Abū Al-Walid Ibn-Rushd (Lat. Averroes) (d. 1198)

"It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death." **— Mūsā Ibn-Maimūn Al-Qurtabī (Lat. Moses Maimonides) (d.1204)**

"…The greatest and noblest pleasure we have in this world is to discover new truths, and the next is to shake off old prejudices... A man who seeks truth and loves it must be reckoned precious to any human society." **— Frederick II, Holy Roman Emperor (d. 1250)**

"Man was born free, and he is everywhere in chains. Those who think themselves the masters of others are indeed greater slaves than they…There is but one law which, from its nature, needs unanimous consent. This is the social compact; for civil association is the most voluntary of all acts. Every man being born free and his own master, no-one, under any pretext whatsoever, can make any man subject without his consent. To decide that the son of a slave is born a slave is to decide that he is not born a man."

— Jean-Jacques Rousseau (d. 1778)

"...Arabs have historically been very attracted to words. Because the words they used had always been filled with facts pulsating with life, the words they listened to were meant to be heard by the heart and not just the ears. They were supposed to evoke a response of the whole person, not only the tongue. Therefore, it has always been that for Arabs, words had a certain sense of holiness: to them they were similar to promises, linking life and actions, whether this life is that of the individual or of the group."

— Michel Aflaq (d.1989)

Abstract

While the (re)conquest of Arabia as manifest in 2003 Iraq, and 2006 Lebanon, were respectively Act I and II accenting sovereign figures exercising *necropower* by adjudicating (il)legal doctrines (i.e., pre-emptive defense strategy) legalizing extrajudicial techniques of violence founded on discursive technologies of racism, I argue that the "Islamist Winter" – temporarily dubbed the "Arab Spring" in 2011 – is Act III reifying similar legal doctrines (i.e., Bethlehem Legal Principles) and a (secular) linear temporal perception of time seeking to implement a New Middle East (NME) that is no longer "resistant to Latin-European modernity" but amenable to such *inclusive exclusion* historicist *telos*. The importance of "creative anarchy" as a positivist legal technique in producing chaotic developments such as carnage and a "crisis" or "emergency" of displacement – with sovereign members of *jus gentium* authorizing agents of terror (i.e., death squads/war-machines) – is that it reveals the deadly technologies of racism and relations of enmity inherent in sovereignty as a positivist juridical concept endowing sovereign figures with the power to formulate legal doctrines that ultimately subjugate Arab life to the power of death (*necropower*). Therefore, one of the main questions orbiting the writing of this dissertation is interested in deconstructing and critiquing *jus gentium* – by adopting a Third World Approach to International Law (TWAIL) in tandem with necropolitics and biopolitics as paradigms of analysis – to disclose that it is because *jus gentium* valorizes positivist jurisprudent scholastics postulating an unbridgeable cultural gap between an *Athenian* mode of *Being* as a universal sovereign subject, and a *Madīnian* mode of *Being* as the particular object *denied* sovereignty, that leads *ratiocinative* sovereign figures to legally exercise *necropower* on the Arab body. Therefore, the following chapters seek to go beyond the limited (post-colonial) idea asserting that the problem with international law is that it is primarily "Eurocentric" since the simple solution to such a claim would be to include the non-European body in International Law. Rather, the primary question constellating this monograph is: what are the experienced consequences of being temporally *included* and what are the experienced consequences of being temporally *excluded* from a legal regime (i.e., *jus gentium*) reifying a Latin-European philosophical theology universalizing a particular set of liberal-secular cultural mores as a "cultural benchmark" (i.e., purity-metric) in order to *be-come* imagined as temporally "inside" *jus gentium*?

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Contents

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To the martyrs of the Arab Ummah, and my brother, Tarek Ibn-Mahmoud Al-Kassimi (d.1989)

Introduction

"Their life is short, but their number is endless; they, the *Muselmänner*, the drowned, form the backbone of the camp, an anonymous mass, continually renewed and always identical, of non-men who march and labor in silence, the divine spark dead within them, already too empty to really suffer. One hesitates to call them living: one hesitates to call their *death* death, in the face of which they have no fear, as they are too tired to understand. They crowd my memory with their faceless presences, and if I could enclose all the evil of our time in one image, I would choose this image which is familiar to me: an emaciated man, with head dropped and shoulders curved, on whose face and in whose eyes not a trace of a thought is to be seen." – **Primo Levi (1947)**

"The colonial confrontation was not a confrontation between two sovereign states, but between a sovereign European state and a non-European state that, according to the positivist jurisprudence of the time, was lacking in sovereignty. Such a confrontation poses no conceptual difficulties for the positivist jurist who basically resolves the issue by arguing that the sovereign state can do as it wishes with regard to the non-sovereign entity, which lacks the legal personality to assert any legal opposition. Since the state is the central and most important actor in international law, sovereign statehood, as defined by European imperial powers, was the difference between freedom and the conquest and occupation of a people or society." – **Antony Anghie (1999)**

"The September 11 attacks on the United States have become the pretext for the renewal of a world order centered on...domination." – **Makau Mutua (2002)**

"…the history of the modern state can also be read as the history of race, bringing together the stories of two kinds of victims of European political modernity: the internal victims of state building and the external victims of imperial expansion..." – **Mahmood Mamdani (2004)**

"The European age of Enlightenment was essentially *schizophrenic* in the sense that while it was instrumental to the rise of 'implicit racism' the paradox was that many of the ideas with which the Enlightenment thinkers positively associated were directly transmitted from the East." **– John M. Hobson (2013)**

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The Arab World Requires "Creative Chaos" – An *Esoteric* Legal Concept Revealing the Urgent Need to Deconstruct and Reflect a Critique of *Jus Gentium*

When asked about her thoughts concerning the shock-and-awe induced on Iraq in the year 2003 by the Coalition of the Willing, and on Lebanon[1] by Israel in 2006, former U.S. Secretary of State Condoleezza Rice replied during a joint press conference with former Israeli Prime Minister Ehud Olmert in July 2006 that "whatever we do, we have to be certain that we're pushing forward to the *new Middle East,* not going back to the *old Middle East*" (Bransten, 2006; Karon, 2006, emphases added). It appears that a "New Middle East" (NME), after almost two decades, perceives the *death* and *displacement* of millions of Arab civilians from their *Ummah/Society of*

Communities (Ar. أمة)[2], and the effective destruction and humiliation of their endogenous civilizational ontologies informing (bureaucratic) governance (Ar. الدواوينية) as a *creative destruction*. A *destruction* founded on neo-Orientalist *ratiocinated* imaginaries perceiving *chaos* as an inevitable and necessary phase accenting Arabia while it attempts-and-fails to transition into *temporal* coordinates accenting the *telos* of history – Latin-European/Western modernity. The nomenclature "New Middle East" entails the replacement of an older project proposed by former U.S. president George W. Bush entitled the "Greater Middle East" introduced at the G-8 Summit in 2004. While the latter signifier included other majority Muslim countries such as Iran, Turkey, Afghanistan, and Pakistan, the NME – adhering to a neo-Orientalist mode of representation – strictly addressed countries situated in the Arab *Mashreq* (Ar. مَشْرق) and Arab *Maghreb* (Ar. المغرب)[3]. In this case, the U.S. administration identified with former Israeli Prime Minister Shimon Peres's suggestions elaborated in his 1993 book entitled *The New Middle East*, and more recently, the thesis of current Israeli Prime Minister Benjamin Netanyahu's entitled *A Durable Peace: Israel and its Place Among the Nations* released in the year 2000. Peres and Netanyahu emphasize that the reordering of Arab *geography, demography*, and the *redrawing* of colonial borders – referencing the *Société des Nations* (also known as the *League of Nations*) of the mandate era endowing France and Britain in 1923 with the "sacred trust of civilization" in partitioning Ottoman-Arabia and transferring Ottoman-Arab populations[4] (i.e., Sykes-Picot) – is imperative for the security and stability of *jus gentium* (Eng. International Law/Law of Nations) characterized exclusively by an *International Society of Nations* adhering to Judeo-Christian morality (Peres, 1993; Netanyahu, 2000; Goffman, 2002; Beckett, 2003; Akçam, 2012; Abou El Fadl, 2014)[5].

Past and current deterministic representations of Arabs founded on neo-Orientalist, culture talk, or race war discourses have been consistent in adopting logical fallacies associated with semantically "closely-related concepts such as reification or gross generalisation" (Herzfeld, 2010:248), perceiving Arabia as a monolithic space with "inhabitants", rather than "political subjects", and a "geographic area" rather than a "homeland" (Ar. الأرض/ وطن) with different civilizational and cultural-historical experiences than those temporally reified in *ratiocinated* Latin-European philosophical theology (Beckett, 2003; Al-Azmeh, 2009; Kerboua, 2016:11). The process of hypostatisation (i.e., generalization) informs culturally deterministic and essentialist reifications such as *Arabness* as a mode of *Being* or philosophical inquiry into the nature of human knowledge (epistemology) becoming clothed, containerized, and categorized as an ethno-religious

Westphalian protestant ontology of "Arabism" and "Islamism" (Kerboua, 2016). Abstractions such as the "degenerative Arab mind" imagined as inherently anti-modern, therefore *irrational*, transforms *Arabness* into a violent and terrorizing *body* receptive to genocide becoming an actual "cultural" reality. This hypostatisation is enabled with the simplification of the message being conveyed and the obliteration of a rational, objective, and most importantly, moral understanding of the (Arab) subject-now-object being *obliterated.* When Secretary Rice was asked in an interview with the *Washington Post* in April 2005 about her thoughts concerning the democratization process in the Near East and the volatility that ensued following the conquest of Iraq she stated that "chaos initially produced by democratization is creative chaos" that would "make things better in the end" (Nafaa, 2005; Bransten, 2006; Karon, 2006; Salt, 2014). Moreover, she added in 2005 concerning the proliferation of the "Islamist threat" – a dominant neo-Orientalist discourse constructing the aftermath of the Arab uprisings in 2011 – that "a regional order that produced an ideology so savage as the one we now confront is no longer serving any civilized interest" (Salt, 2014). Bracketing her ahistorical and culturally essentialist claims assuming that Arab space *a priori* produces *savage* ideologies because of their homogenous *Saracen* cultural and/or racial attributes, the importance of her disturbing claims is that the vision of a "New Middle East" welcomes, and can even be said to be contingent on exercising "creative chaos" thereby producing "constructive consequences" such as *en-masse* displacement and human carnage supposedly necessary to transform Arabs from "bad" to "good" Muslims (Mamdani, 2004).

While the Iraqi conquest in 2003, and Lebanon in 2006, were respectively Act I and II highlighting sovereign figures exercising *necropower* by adjudicating (il)legal doctrines (i.e., the Bush Doctrine) legalizing extrajudicial techniques of violence founded on discursive technologies of racism, I argue that the "Islamist Winter" – temporarily dubbed the "Arab Spring" in 2011 – is Act III reifying similar legal doctrines (i.e., Bethlehem Legal Principles) and a (secular) linear temporal perception of time seeking to implement a New Middle East that is no longer "resistant to Western modernity" but amenable to such *inclusive exclusion* historicist *telos*. The implementation of a NME was legally activated following the declaration of a war on terror in 2001, with the Bush administration advancing the legal strategy of pre-emptive defense (PEDS) – also known as the Bush Doctrine – as the means to foment necessary chaos for the democratization and *bodily purification* of the Arab world. The making of a "new" Middle East was borne out of the ruins of the "sacred" (colonial) old. The ruin was not accidental but deliberate since "chaos"

and "destruction" are simply – from a *realpolitik* perspective and *ratiocinated* mind – a means to an end. The importance of creative chaos – with other interlocutors using variants such as constructive chaos, creative destruction, or constructive anarchy – in dismantling the post-colonial bureaucratic state characterizing the Arab world is by no means a hyperbole since Michael Ledeen – a neoconservative historian advising George W. Bush and a prominent member of the Foundation for Defense of Democracies (FDD) – stated that the United States "is an awesome revolutionary force…for whom *creative destruction* is our middle name" (Levine, 2011; emphases added*;* Chican, 2013). As a matter of historical fact, Michael Ledeen proposed a project entitled the "Global Change in the Middle East" in 2003 conceptualizing "creative chaos" as a necessary "legal technique" in accordance with implementing a strategy that seeks the demolition of what *exists* and the reconstruction of "something new…on the ruins of the old" (Chican, 2013:5). Ledeen continues by stating that "destruction or positive destruction is our highest virtue…it's time for us to once again export the democratic revolution" (Chican, 2013:5).

In essence, the theory of constructive anarchy is similar to Samuel Huntington's idea of "stability vacuum" in that the average citizen perceives a gap/cleavage between what exists and what should exist (Huntington, 1968). However, depending on the dimensions of this cleavage, the instability or chaos will vary in magnitude and impact which cannot be eliminated by reforms, but only temporarily improved by "maintaining a variable margin of insecurity and instability" (Huntington, 1968; Chican, 2013:5). The solution proposed by Huntington, the author of influential political work entitled *Political Order in Changing Societies* (1968) and *The Clash of Civilizations and the Remaking of World Order (*1996), is that in order to avoid this vacuum of instability, the destruction of what exists and its replacement with (Western civilizational) cultural mores is necessarily unequivocal for (a modern) civilization. Theorists of "constructive anarchy" assert that since instability is "controlled" and anarchy is "creative or constructive", this will inevitably lead to building a new political system capable of ostensibly ensuring the security, prosperity, and freedom of the societies that are subject to this process. However, the moral issue with a perspective like Huntington's is that it *a priori* identifies and sources the idea of "bloody borders" in Arabia as being rooted in Arab-Islamic philosophical theology, thereby, deterministically becoming the necessary causal factor in demanding the initiation of a process of "creative anarchy" (Ar. الفوضى الخلاقة) since Arab epistemology (Ar. نظرية المعرفة العربية /الحضارة العربية) is imagined as inherently antagonistic to Latin-European modernity (Al-Jabri, 1994).

Nathan Sharansky and Ron Dermer, the authors of *The Case for Democracy: The Power of Freedom to Overcome Tyranny and Terror* (2006) adopted the theoretical foundations of "constructive anarchy" to argue that Islam is a vector of terrorism which threatens not only the only democracy in the Arab world – Israel, but also the entire Western world. Their remedy to such civilizational barbarism rooted in Islam particularly and Arab culture in general – since they (un)intentionally equate both – involves the use of force to halt the sources of terrorism and the destruction of "Arab-Muslim" governments promoting a "culture of hatred and Arabization". Other proponents of a "chaos that builds" are Robert Satloff – executive director of the Washington Institute for Near East Policy (WINEP) – and pentagon Professor Thomas Barnett who believe that a liberal humanitarian intervention by the United States of America is not only necessary, but the only way the region can be saved from Arab culture breeding fanatics embodying "Islamism" or "Islamist" tendencies (Satloff, 2000:33; Chican, 2013).

It should be clear that the combination of the adjective "constructive" with the noun "anarchy" is not random, but deliberate in the sense that it is meant to highlight that Arabia is not to experience anarchy in the absolute sense of the term *per se*, but a certain anarchic and chaotic condition that is deliberate, sustained, and controlled in an attempt towards fundamentally changing an existing "old" state and its replacement with a "new ordered" state. The confusion of such hermeneutic language is not unwarranted; combining an adjective with a noun complicates strategic discourses in that it makes agents of violence (i.e., death squads/war-machines) makers of chaos and the consequence of their chaos (i.e., displacement and carnage) also a form of constructive chaos. This paradoxical but careful selection of words is articulated by Secretary of State Rice when she says "there are views that *democracy generates anarchy*, terrorism, and conflict. The reality, however, is different, in that it is the *very anarchy* that *provides* the *programmatic foundation* to *implement* the American-inspired democracy…The *anarchy* that is created by the *process of democratic transformation* in the initial phase is a *constructive one* which can ultimately lead to a better situation than the one the Middle East is experiencing at the moment" (Chican, 2013:7; emphases added). Put differently, according to a *jus gentium* reifying positivist jurisprudent scholastics, creative anarchy is not about anarchy as a goal in itself but rather is an exogenous phase supposedly *required* to implement a NME conceived by its architects as an "anarchy that builds" (Chican, 2013). This is clear in Secretary Rice's statement when she describes the consequences produced by chaos – an Arab exodus of millions and millions of dead

bodies engulfing the Arab world – as representing the "birth pangs of a new middle east" (Bransten, 2006; Karon, 2006). In other words, while ambiguity, instability, and chaos are commonly thought of as possessing negative connotations, when instability becomes "controlled", ambiguity "constructive", and chaos "creative" they suddenly become more palatable for "legalizing" extrajudicial measures imagined as necessary practices to "aid" and "purify" Arab-Muslims "temporally stagnating" since the *telos* of history is Latin-European philosophical theology, or more specifically, a Judeo-Christian *rationalization* of law and (im)morality.

Therefore, I argue, that the concept and theory concerning "constructive anarchy" is not just another "machination" to cover the failure of U.S. hegemony in the Arab *Ummah*, but rather that anarchy can *only be* destructive as highlighted in the post-Islamist Winter period of 2011 (Chican, 2012:9). It becomes "creative" *only* to the extent that the destruction committed by the anarchy is constructive for the interests of those provoking and managing it (Bransten, 2006; Chican, 2013:9). I say this for three interrelated legal-historical developments. One, the Bush Doctrine of 2002 was reaffirmed through the Bethlehem Legal Principles of 2012 enabling and rejuvenating the development of legal doctrines adjudicating acts and policies involving extrajudicial practices (i.e., torture, carnage, and/or indiscriminate bombardment) by (re)formulating legal doctrinal laws informing *jus gentium* (i.e., pre-emptive war, immanent threat, and sovereignty). Two, it is quite "rational" and "constructive" to place the "Islamist Winter" of 2011 and the anarchy, chaos, and destruction it produced in the Arab world directly in relation to the theory of "chaos" that "destroys" in order to "build" since the whole narrative constructing the Arab uprising in 2011 as an "Islamist Winter" – according to neo-Orientalist analysts – is founded on the 9/11 *dictum* postulating that terrorism and Arab civilization are synonymous thus sourcing the descent of Arabia into chaos on its primitive temporal positionality mentally debilitating "Arab mind". Thirdly, and most importantly, the Arab uprisings of 2011 were translated in Western capitals as intrinsically connected to the "liberation" of Iraq in 2003. Kanan Makiya, a Brandeis professor and one of the main intellectual architects and proponents of the Iraqi invasion during the Bush administration stated quite frankly that "the Arab Spring started in Iraq" and that the attack "paved the way for young Arabs to imagine" the removal of despots (Majumdar, 2011; Makiya, 2013; Maas, 2013; Husain, 2013). Makiya's reductionist connection between 2011 and 2003 – amongst others such as Majumdar (2011) – perceive constructive chaos in Arabia as a means of positive stability to *redeem* Arabs from their barbaric *Self* thereby vindicating and

transforming the actions of "recognized sovereigns" from *conquerors* to *liberators* (Anghie, 2004; Mamdani, 2004). Makiya claims that "there was hardly any *war* to speak of in 2003"[6] thereby shifting the blame for Iraq's descent into *chaos* and *anarchy* as attached to Arab culture inherently being prone to "Islamist terrorism" (Maass, 2013; Makiya, 2013, emphases added).

Rather than perceiving constructive chaos as some sort of Old Testament script where life and creation are born from the matrix of chaos, and that anarchy and disorder were the origins of the universe itself, Arabs were repelled rather than inspired by such *ungodly* "constructive anarchy". Former C.I.A officer and Middle East expert Paul Pillar criticizes the comparison of the conquest of Iraq in 2003 to the "Arab Spring" of 2011 by saying that "if the violence, disorder, and breakdown of public services in Iraq were the *birth pangs* of a *new Middle Eastern order*, most people in the region wanted nothing of it" (Maass, 2013; emphases added). In other words, the Iraq war became the blueprint – according to a positivist jurisprudence – for how transformation in the Arab world should and would take place with a series of inter-connected chaotic moments – such as the "Islamist Winter" of 2011 involving Arab capitals being ransacked by *death squads* – being interpreted, appropriated, and managed as simply another opportune constructive moment for Arab demographic and geographic *reconstruction*. Approaching the Arab world through a (neo)-Orientalist lens of "creative anarchy", I argue, is premised on the reductionist imaginary that the Arab world consists simply of a *geography* inhabited by Bedouin objects waiting to be "constructively engaged", rather than political spaces comprising political subjects with *different* civilizational values and experiences to that characterizing Latin-European philosophical theology. The extrajudicial consequences of such essentialist framing is given credence when we remember that former CIA director John Brennan (2013-2017) – one of the main advocates of Operation Timber Sycamore's creative destruction producing "modern Arab Dresdens" after 2011 – stated on February 2016 that the "Middle East…is racked by more instability and violence and inter-state conflict than we've seen certainly in the past 50 years…and the amount of bloodshed and humanitarian suffering is I think unprecedented. Its been five years now since the Arab Spring started to take root…Al Qaeda and terrorist organizations did not trigger that, but they've taken full advantage of it" (Engel, 2016; Allen, 2019)

The importance of creative anarchy producing chaotic developments such as carnage and a "crisis" or "emergency" of displacement – with members of *jus gentium* authorizing agents of terror (i.e., *death squads/war-machines*) – is that it reveals the *deadly* technologies of racism and

mechanisms of violence inherent in *sovereignty* as a positivist juridical concept endowing sovereign figures with the power to formulate legal doctrines that ultimately subjugate Arab life to the power of death (*necropower*) and decide that they "must die". Therefore, one of the main questions orbiting the writing of this dissertation is interested in deconstructing[7] and critiquing *jus gentium* – by adopting a Third World Approach to International Law (TWAIL) in tandem with necropolitics and biopolitics as paradigms of analysis – to disclose that it is because international law valorizes positivist jurisprudence postulating an unbridgeable cultural gap between Europe as a universal sovereign subject and the Arab as the particular object of sovereignty that leads sovereign figures to *legally* exercise *necropower on* the Arab body. This discloses the inherent *inclusive exclusion* ethos of sovereignty – therefore *jus gentium* – originally figuring Arab subjects as *homo sacer*/*muselmänner*[8] for the ontological coherence of a secular-liberal identity of belonging (i.e., citizenship) informing Latin-European philosophical theology.

That is, because an Arab mode of *Being* is perceived as culturally primitive and mentally incapacitated that leads *bio/necropower* to elevate the Arab (*Madīnian)* body to the exception – therefore banned from the social and juridical order – thus making *no-body* accountable for their death or exodus since their *exclusion* from *jus gentium* as objects rather than subjects of sovereignty is necessary for the *inclusionary* coherence of *jus gentium*. Therefore, a *muselmänner* is a body that is identified as inhabiting a *geography/abject space* rather than a political society, and a body that is killed with impunity because their life is deemed worthless. With the *telos* of history being Western modernity/civilization and since modernity and civilization are *willed* by sovereign-power informed by a positivist *jus gentium* then the need to produce creative chaos is related to sovereignty – therefore liberal-secular modernity as a project – demanding that for a universal society to *live* and remain *healthy* it needs its threatening opposite to define its *purity* in absolute difference to that particular "contaminated society" who "must die" or at least be "creatively quarantined". Sovereignty and its interrelated *teleological* narratives of development, modernization, and civilization valorizing positivist jurisprudence are therefore, I argue, *necro* narratives that involve technologies of racism and mechanisms of enmity that revitalize a ratiocinative (secular) mode of *Being* by needing to destroy, humiliate, and transform the Arab *Saracen* through the essentialization of their authentic mode of *Being* by perpetuating "race war" discourses. In other words, "creative chaos" is an *a priori* practice and consequence of an international law dominated by positivist scholastics which deduces that cultural/racial differences

between a "universal" subject and a "particular" object could be transformed into a *legal* issue that necessitates a "civilizing mission" ostensibly seeking to "temporally modernize" the degenerative Arab society.

Foucault alludes to "race war" discourses to highlight how since the 19th century, racism informed the "rationality" of sovereign governance with the state no longer being an instrument "that one race uses against another", but rather that "the state is, and must be, the protector of the integrity, the superiority, and the purity of the race" (2003:81). Therefore, with modernity being *willed* by a sovereign figure, and since sovereignty evolved into becoming *bio/necropolitical*[9], then modernity is a racialized project that in effect – when analysed through a necro/biopolitical paradigm of analysis – reveals the "ideological foundation for identifying, excluding, combating, and even murdering others, all in the name of improving life not of an individual but of life in general" (Lemke, Casper, and Moore, 2011:42). Therefore, deconstructing *jus gentium* using a bio/necropolitical paradigm highlights that the technologies of racism and mechanisms of enmity in tandem with techniques of domination and violence informing sovereignty as a positivist juridical concept makes *creative chaos* possible because racism – inscribed as sovereignty's inherent technology of power – imagines Arabs as the *living-dead* threatening the purity and health of a modern Western civil society.

It is racism that allows sovereignty to exercise its most extreme power (necropower) and produce its original activity (*muselmänner/homo sacer)* by subjugating life to the power of death since *death* is a necessary "creative chaos" needed to improve the quality of "living" *life* because Arabs are imagined as "ontologically dead" (Agathangelou, 2011). Sovereignty, therefore, deciding on the exception by exercising *necropower* delivers benevolent discourses that while appearing to derive from a genuine "humanitarian responsibility" ultimately leads to masking and sanitizing the murder of the Arab as abject-Other (Kristeva, 1982; Kelly, 2004; Mamdani, 2010). In other words, the act of creative chaos and its subsequent destructive developments accentuates that racism continues to animate *jus gentium* in that it acts as a "purity-metric" determining what legal doctrines need to be (re)formulated and developed to maintain and police the supposed unbridgeable cultural gap dictating "who can live" and "who must die". Motivated thus, adopting a hermeneutics of suspicion to deconstruct and critique *jus gentium* identifies the Bush Doctrine as playing a vital role after 9/11 and especially after 2011 in transforming Arab space into *spaces of exception* (Agamben, 1998); *abject-spaces* (Kristeva, 1982) and/or *death-worlds* (Mbembe,

2003) imagined as inhabited by *muselmänner*. Sovereignty – therefore *jus gentium* – inherently being bio/necropolitical directly promotes (re)producing the culturalist logic of sovereignty founded during the colonial encounter and inculcated in international law by making Arabs victims of Othering strategies sorting them as *things* less than human and a necessary evil for the constant refurbishment, (re)actualization, and permanence of (Western) modernity and its civilizational privileges (i.e., citizenship) (Nyers, 2006; Mamdani, 2010; Abou El Fadl, 2014).

Various intellectual commentators early on during the Arab uprisings in 2011 located in the U.S. such as Marc Lynch (2011, 2013), and France such as Bernard Henri-Lévy (2015), began using the neo-Orientalist term "Arab Spring"[10] and "New Middle East" by perpetuating reductionist thematic discourses such as "despotism" to denote the Arab world struggling to attain temporal coordinates accenting Latin-European philosophical theology informing liberal-secular democratic societies (Kerboua, 2016; Ventura, 2017). By late 2011, the Arab world supposedly experienced what neo-Orientalist scholars and hegemonic political stratums dubbed an "Islamist Winter". The "Arab Spring" – according to the reductionist discourses espoused by neo-Orientalist scholars – turned into an "Islamist Winter" because the (historicized) temporal positionality of an Arab mode of *Being* is inherently averse to *reason* but receptive to *terror*. Sovereign figures, therefore, transformed an ahistorical culturalist statement into a legal difference by (re)formulating legal doctrines situated in *jus gentium* as a means to depoliticize Arab inhabitants of the *Mashreq* and *Maghreb*. Sovereign figures adjudicated legal principles reminiscent of the colonial encounter in the 19th and 20th century by arming various warring *death squads* weaving an eternal web of foreign sponsored armed conflicts catalyzing human carnage and forced displacement (Thomson, 1996; Mamdani, 2004; Al-Kassimi, 2015). According to the United Nations High Commissioner for Refugees (UNHCR), the Arab Syrian Republic boasted an internally displaced population (IDPs) of around 8 million, and 5.6 million refugees as of the calendar year 2018-2019 (UNHCR, 2018a, and 2018b; UNHCR, 2019). If we were to add the human cost and displacement figures occurring across Arabia since 2001 – including Syria – such as Libya, Iraq, and Yemen, the overall displacement figure exceeds 20 million inhabitants, and human cost figures surpass 6 million dead Arab bodies.

The largest exodus in the 21st century was realized with the U.S., European allies, and local Arab *comprador* elites rewriting and rethinking international law (i.e., PEDS and Bethlehem Principles) after 9/11 in a way that reaffirmed the inherent *necropower* of sovereignty as a

positivist juridical concept that wills *jus gentium* into *being* thereby managing and manipulating Arab life by rendering it *bare-life*. Another important contribution that I seek to highlight is that displaced Arabs are being denied the capacity to speak and voice their opinions with sovereign powers subsuming their displacement problem within a liberal humanitarian order utilizing a technical-problem-solving vocabulary characterizing Arab displacement as a "crisis" or "emergency" (Nyers, 2006). The issue with a humanitarian discourse supposedly remedying the plight of Arab *abjectivity* is that it is sovereign logic that subsumes the solutions extended (i.e., the Regional Refugee Resilience Plan-3RP) using a positivist interpretation of *jus gentium* (Fiddian-Qasmiyeh, 2015; Khallaf, 2016; Jamal, 2016; Makdisi and Prashad, 2016, 2019). The danger in subsuming the displacement problem of Arabs using a positivist juridical interlocutor – a *ratiocinative* sovereign figure – risks not only masking and (re)affirming the inherent necropower of sovereignty needing to postulate an unbridgeable cultural gap between the *Athenian* and *Madīnian* mode of *Being* to continuously rejuvenate *jus gentium*, but also vindicates sovereign figures and local Arab *comprador* elites complicit in transforming Arabia into *necropolises* (Eng: cities of the dead) by exercising *necropower*.

Deconstructing *jus gentium* by adopting an anachronic and hermeneutically suspicious genealogical reading of legal-history highlights that *jus gentium* – especially since the adjudication of defensive imperialism in 2003 – requires the Arab body as an *inclusive exclusion* for the ontological security of *ratiocinated* Latin-European epistemology. The slaughter of Arabs evoking sovereign power deciding over death (necropower) – using war-machines – is *en-masse* because they are imagined as ontologically-dead bodies whose death is inconsequential but necessary for the "order of things". Adhering to the intellectual framework of TWAIL and necro/biopolitics to critique the inherent cultural relativism situated in *jus gentium* highlights how the (re)formulation, (re)affirmation, and proliferation of exceptional legal doctrines (Bush Doctrine and Bethlehem Principles), privatization of violence (*death squads*), and clandestine operations (Timber Sycamore) were not only central in multiplying and transforming Arab cities into *death-worlds* inhabited by the *living-dead*, but reveals the hidden solidarity between sovereignty and humanitarianism (Mbembe, 2003; Nyers, 2006; Mutimer, 2007; Mamdani, 2010). Sovereign figures implicated in the proliferation of "creative chaos" are cleansed from juridical accountability by appropriating the consequences of chaos (i.e., displacement and carnage) and subsuming it under a liberal humanitarian order upholding "human rights" seeming to *include* the

displaced Arab body in *jus gentium* but only to end up placing them under an apolitical category of "refugeeness" stripping them of their subjective consciousness. A liberal humanitarian order while seeming to *include* the Arab body as a *subject,* is quick to *exclude* them from the privileges endowed to subjects of *jus gentium* (i.e., citizenship) because (national) citizenship is only intelligible with its (positivist) binary opposite – the Arab as *refugee* – constructed as temporally primitive. An Arab mode of *Being*, therefore, is exclusively intelligible to Western modernity by *a priori* figuring the Arab body as *refugee* using Othering-strategies constructing them as embodying threatening cultural traits endangering the purity of a Westphalian "nation-state", and the most "civil" category of belonging (i.e., citizenship) accenting Latin-European modernity (Nyers, 2006; Perezalonso, 2010; Mamdani, 2010; Zembylas, 2011; Fiddian-Qasmiyeh, 2016, 2018).

Etiology of Third World Approaches to International Law (TWAIL) – A Reflexive Methodology Contouring Subsequent Chapters

Before I elaborate on the political and intellectual commitments of TWAIL as a scholarly movement, it is vital to succinctly elaborate on the formative legal and historical phases preceding the development of Third World Approaches to International Law (TWAIL) [11]. For over three decades, international legal scholarship has split into multiple competing factions with "mainstream" international law scholars valorizing and reifying a naturalist/positivist jurisprudence on one side, and critical (anachronic) legal-historical scholars advocating for new approaches to international law (NAIL) on the other. While it is demonstratively true that both approaches are concerned with the same subject matter that is *law*, both approaches are not simply different approaches to international law, but in many ways entirely separate disciplines with different perceptions – therefore objectives – of international law (Mutua, 2000; Anghie, 2004; Sunter, 2007; Reeves, 2009; Gathii, 2011; Eslava and Pahuja, 2012). Positivist legal scholars not only deny and ignore the contributions of alternative voices critiquing the dominant racialized discourses and jurisprudent schools engineering *jus gentium*, but when they are acknowledged they are deterministically categorized and treated as a homogenous group of scholars who characterize the "sins of post-modern theory" (Sunter, 2007:476). That is, they are described as being rhetorically colorful, programmatically vacuous, politically dysfunctional, inward-looking, and exceedingly subjective (Sunter, 2007). Unfortunately for methodological hubris, mainstream legal scholars overlook the fact that NAIL scholars are critical of contemporary international law and

the biases underpinning its various legal doctrines by being attentive to the work of mainstream international legal scholars which directly influenced the emergence of TWAIL. Before delving into TWAIL-ers intellectual and political movement including their normative commitments, a few words linking the influence of Critical Legal Studies (CLS) and NAIL in developing TWAIL is noted before elaborating on the variety of approaches *within* TWAIL scholarship.

CLS began in the mid-1970s when a group of American legal scholars began questioning the determinacy of positivist legal reasoning producing many *a priori* assumptions of mainstream legal thought. CLS scholars were inspired by the Critical Theory school – also known as the Frankfurt School – including social theorists such as Theodor Adorno, Jürgen Habermas, Herbert Marcuse, and Walter Benjamin who sought to critique the *telos* of history being a "modernity" founded on a positivist social theory[12] (Sunter, 2007). Critical Legal Scholars proceeded to deconstruct the positivist rationalist underpinnings of modern jurisprudence to "reveal their political and ideological underpinnings" which according to Kennedy (1986) and Sunter (2007) was inspired by theorists from the Frankfurt School being skeptical towards a (positivist) *rationalist* legal jurisprudence. For CLS scholars such as Hutchinson and Monahan (1984), *ratiocinated* law is "simply politics dressed in different garb; it neither operates in a historical vacuum nor does it exist independently of ideological struggles in society" (as cited in Sunter, 2007:484). By retaining their critical and deconstructionist methodology, CLS scholars in the 1990s began reflecting on developing a new stream of critical international law which became known as NAIL.

NAIL scholars endeavored to do research of and in international law by becoming methodologically reflexive "even if this meant concluding the international law itself was incoherent" (Sunter, 2007:484; Gathii, 2011; Eslava and Pahuja, 2012). With the main focus of their critical deconstruction involving a critique of the modern (secular) liberal foundations of international law as being "internally incoherent" (Purvis, 1991:92), NAIL legal scholars attempted to illustrate the multiple positivist ideological underpinnings of a "modern liberal secular" international legal order by casting doubt on the possibility of objectivity (Sunter, 2007). This meant that an international law accented by a positivist jurisprudent school projected a false sense of rationality, legitimacy, neutrality, and universality when in reality it reflected historically contingent political power and an unavoidably subjective choice between values (Sunter, 2007). This is evident, for example, with *jus gentium* unequivocally claiming that Westphalian

"sovereign-centric" conceptions of world order and nation-state ontologies of governance are most superior and *rational* civil ideas of political order that "fill" and "halt" political vacuums (Sunter, 2007). Even though David Kennedy decided to retire NAIL as an institutional project in 1998 at a conference entitled the "Fin de NAIL", it would be TWAIL – founded in 1997 at a conference at Harvard Law school – which would prove to not only be part of NAIL's larger project, but also share some institutional and methodological commitments with CLS and NAIL in critiquing and deconstructing international law because of their *suspicion* of mainstream (positivist) international law developing underdevelopment (Frank, 1998; Anghie and Chimni, 2003; Sunter, 2007; Al-Kassimi, 2018; Ramina, 2018)[13].

Considering the multiplicity of cultural differences forming the legal philosophical history of a "Third World" approach to international law, TWAIL was and continues to clearly attempt to distance itself as an approach from the dominant positivist legal doctrines informing *jus gentium*. TWAIL-ers do not reify the (post-colonial) idea claiming that knowledge production concerning the Third World should emanate primarily from the Global South[14], rather TWAIL scholarship seeks to intervene *within* the discourses of international law located in Oriental and Occidental capitals by emphasizing that any scholar regardless of their cartographic location are invited and encouraged to engage in such social intervention. As noted by Gathii (2011:35), North American based TWAIL-ers "are only part of a larger tradition of third world scholarship in international law that dates back decades". Therefore, anyone may become part of the TWAIL movement since there is no need to subscribe to a party program or an exclusive approach or methodology. Chimni (2011:17) notes that TWAIL is a "loose network of scholars whose work is animated with the concern to establish a truly universal international law that goes to promote a just global order". Therefore, no one "officially" joins TWAIL since one becomes a TWAIL-er by self-identifying with TWAIL's principles, commitments, and intellectual movement (Ramina, 2018). The central project of TWAIL consisting of challenging the hegemony of dominant discursive narratives of international law benefits from the fact that there is a diverse range of scholars adopting a variety of approaches and methodologies conducting TWAIL scholarship because unlike mainstream, and some critical movements, it is not characterized by "dominant" approaches, figures, and methods that set the boundaries of research inquiry (Gathii, 2011; Ramina, 2018). Rather, TWAIL as a political and intellectual movement with principled commitment consists of a "fluid architecture of many individuals who mix, reuse, and re-combine various TWAIL and non-TWAIL ideas and

themes…As a result there is no full knowledge of all the parts, or even anything remotely suggesting control" (Gathii, 2011:37).

This explains how TWAIL scholarship is capable of producing critical scholarly work that navigates differences along with many ideational factors such as race, class, gender, ethnicity, economics, and trade, together with a variety of inter-disciplinary behaviours including the social, theoretical, epistemological, and ontological. This variability explains the multiple strands in approaches and methodologies situated within TWAIL including Critical Theory, Post-Colonial Theory, Decolonial Theory, Post-Modern Theory, Latina Critical Theory (LatCrit), Critical Race Theory (CRT), Feminist Legal Theory (FLT), Black Critical Legal Theory – which are either in dialogue with CLS or are offshoots of contemporary CLS scholarship (Gathii, 2000, 2011; Sunter, 2007). Therefore, TWAIL research is methodologically eclectic and reflexive since it draws from a number of "different disciplines and represents a diverse range of theoretical leanings – postcolonial, Marxist, post-structuralist, and feminist", thus sharing the "political, ethical and academic commitment to look at the history, structure, and processes of international law and institutions from a particular standpoint: that of the peoples of the Third World" (Parmar, Odumosu, and Mickelson, 2008:351).

TWAIL's Political & Intellectual Commitments: A Naturalized Hermeneutically Suspicious Epistemological Inquiry – Counter-Hegemonic, Anachronic, and Anti-hierarchical

While TWAIL-ers emphasize their methodological eclectic diversity in approaches, they are clear that TWAIL is to be understood both as a "political and intellectual movement" that cannot be severed from its "political commitments" (Mutua, 2000; Anghie, 2004; Okafor, 2005; Sunter, 2007:487; Gathii, 2011; Eslava and Pahuja, 2012). Thus, while TWAIL-ers are not a homogenous intellectual group, they do share political commitments or a "checklist" of concerns consisting of themes and/or principles fundamental to a TWAIL approach. James Gathii (2000, 2011) for example claims that the central commitment of TWAIL is bringing the *problématique* of colonialism to the center when discussing international law by remaining cognizant of the fact that the colonial legacy of the 19th and 20th century continues to position a substantial constraint on former colonies to the benefit of their former colonial exploiter. Most if not all former colonial spaces have adopted the Westphalian ontology informing a "Western State" and continue to cherish legal structures that were instrumental in their "suspension from *jus gentium*" with former colonies still carrying "forward large elements of the inherited legal structures from their

metropole; culturally many have adopted as an official language the language of their former colonial powers; religious majorities in these former colonies with the exception of *middle eastern countries* have adopted Judeo-Christian morality like their former colonial powers" (Napoli, 1998; Sunter, 2007; Gathii, 2011:38, emphases added).

TWAIL scholars are committed to deconstructing the legal-historical developments occurring during different "cultural encounters" primarily from a temporal rather than the limited spatial frame (i.e., West versus East – *vice versa*). This commitment seeks to accentuate the immoral consequences of (positivist) legal formulations situated in *jus gentium* being characterized by a "purity-metric" separating *different* modes of *Being* using reductionist imaginaries temporally situating the Arab, for instance, *a priori* "outside law" since they are constructed as naturally desecrating (secular) "universal law" (Mickelson, 1998; Gathii, 2000, 2011; Sunter, 2007; Al-Kassimi, 2018). TWAIL scholars emphasize their willingness in wanting to be capable of selecting what they deem important to incorporate in their endogenous culture from exogenous Latin-European cultural mores (Gathii, 2000, 2011; Sunter, 2007). Also, they are committed to advocating an appreciation of the inherent interconnection between different areas of law – whether in the "Orient" or "Occident" – and that every culture has a particular jurisprudence that notices the limits of "universalism" (Mickelson, 1998; Sunter, 2007). TWAIL scholars also challenge the capability of an international law adhering to positivist jurisprudence in being capable of promoting justice, for instance, in Arabia, especially since positivist scholasticism makes a distinction between "morals" and "law" thus understanding legal doctrines informing *jus gentium* as being historically contingent on secularized Latin-European philosophical theology (Mickelson, 1998; Sunter, 2007; Gathii, 2011; Koskenniemi, 2002, 2011; Al-Kassimi, 2018).

Motivated thus, the "checklist" of a TWAIL methodology is driven by three purposeful objectives: 1) deconstruct the use of international law as a regime that includes legal doctrines that reify a particular philosophical theology creating and perpetuating a racialized (temporal) hierarchy of international norms and institutions; 2) instead of dismantling international law as a regime, it seeks to (re)construct and resist positivist legal concepts that perpetuate domination thereby suggesting the construction of an alternative legal edifice for international governance; and 3) it seeks to eradicate and emphasize the legal policies that continue to make the underdevelopment of non-European spaces possible (Mutua, 2000:35). Therefore, TWAIL's political commitments – discussed below as *counter-hegemonic*, *anachronic*, and *anti-*

hierarchical respectively – is committed to a *hermeneutics of suspicion* informed and characterized as a *naturalized epistemological inquiry* (Sunter, 2007). That is, TWAIL's stance towards international law is "one of hermeneutical suspicion" and not "post-modern skepticism" thereby engaging in the intellectual deconstruction of legal doctrines informing *jus gentium* thus maintaining hope for enlightened reconstruction (Sunter, 2007:476). Anghie and Chimni (2003:96) pledge for an approach to international law based on a hermeneutics of suspicion because it perceives "international law in terms of its history of complicity with colonialism, a complicity that continues now in various ways with the phenomenon of neo-colonialism, the identifiable and systematic pattern whereby the North seeks to assert and maintain its economic, military, and political superiority".

As a *naturalized epistemology*, TWAIL's methodology reflects on the *etiology* of doctrines continuously dominating international law, i.e., sovereignty, nation-state, secularism, free-market, citizenship, and the *realpolitik* structure of "international relations" (Anghie, 2004; Sunter, 2007; Eslava and Pahuja, 2012). TWAIL's political commitment adhere to a methodology that according to Leiter (2004:74) seeks a "naturalistically respected account of how we arrived at our current, conscious self-understandings" by critiquing, resisting, and deconstructing classical cannons and juridical concepts animating *jus gentium* – therefore Latin-European epistemology – which are in turn reified by mainstream legal scholars. Since epistemology is understood as a philosophical inquiry into the source, scope, and structure of knowledge or a philosophical inquiry into the nature of human knowledge, TWAIL's naturalized approach to epistemology is therefore concerned with the *causal factors* influencing knowledge claims (Quine, 1969; Kitcher, 1992; Pacherie, 2002).

This means that the inductive method adhered to by TWAIL scholars is critical of the deductive method promoted by a particular reading of "Aristotelian" and "Cartesian" *ratiocentric* thinking[15]. Naturalism questions the *fortuna* armchair approach to philosophy and its attempts at providing (culturalist) *a priori* solutions to philosophical problems[16]. As Pacherie (2002:299) puts it, "one should not take the label 'naturalistic epistemology' to be referring to a single, well-defined, doctrine. Rather, this label functions as an umbrella term covering a set of approaches that question in more or less radical ways the tenets of classical epistemology and insist on the relevance of empirical research to epistemological investigations". Therefore, TWAIL scholars are interested in importing the *posteriori* insights of the sciences into the philosophical arena, thereby bracketing or even replacing the immoral and unjust approach intrinsic to international

law as a legal regime which embodies a set of legal doctrines that maintain the idea that the *telos* of history is *a priori* the *universality* of liberal-secular modernity. TWAIL as a methodology rejects the *ratiocentric* foundationalist idea that *a priori* knowledge trumps a *posteriori* knowledge. This is not to say that TWAIL-ers reject the possibility of *a priori* knowledge outright; however, they are suspicious of "universal truths and creeds" and reject the argument that *a priori* knowledge is a "class of knowledge that is superior" and "immune from the critiques" of *posteriori* knowledge (Sunter, 2007:496).

TWAIL's naturalized epistemological inquiry being an intellectual deconstructive endeavor underlining the importance of unmasking and resisting the "legal consequences" inherent to (positivist) international law – stipulating an unbridgeable cultural gap between Arabia and Latin-Europe – inevitably makes TWAIL research committed to a "hermeneutics of suspicion". Leiter (1998:150-151, emphases added) declares the link between a naturalized philosophical inquiry into knowledge with a hermeneutics of suspicion by saying: "When one understands conscious life *naturalistically*, in terms of its *real causes*, one contributes at the same time to a *critique* of the contents of consciousness: that, in short, is the essence of a hermeneutics of suspicion". Similarly, Kitcher (1992) and Leiter (1998:192-193, emphases added) identify the (re)introduction of psychology into epistemology and a suspicion of the "a priori" as the central feature of a naturalized epistemological inquiry by saying that we should be "*suspicious* of the *epistemic* status of beliefs that have the wrong *causal etiology*…To be sure, beliefs with the wrong *causal etiology* might be *true*, but since they are *no longer* cases of knowledge, we have no reason to *presume* that to be the case". TWAIL's research methodology is then interested not primarily with the analytical critique of doctrinal claims of international law as much as with the etiology of those (suspicious) claims; that is, the historically contingent influences that lead to their rational institutionalization (Sunter, 2007). The task of a hermeneutic is to establish a criterion enabling researchers to begin distinguishing between true and false information thus engaging in an act that attempts to make the meaning of an expression intelligible by appealing to the act of interpretation and translation (Jasper, 2004). With hermeneutics understood as both the art and the philosophy of interpretation, it is then a systematic inquiry into "meaning according to a specific set of philosophically grounded principles" (Sunter, 2007:498).

According to Sunter (2007), while there are several ways of interpreting meaning – therefore several types of hermeneutics – TWAIL as a methodology is principally committed to

hermeneutics of suspicion. A hermeneutics of suspicion is an interpretive account that reads against the grain by attempting to expose hidden meaning from the expression-maker and not the expression itself because there often exists unexamined "causal forces that explain the real reasons that we make certain oral and written expressions" (Sunter, 2007:498). In other words, by understanding the causal factors influencing jurists, policymakers, politicians, journalists, and other speech actors, we are in a better position to evaluate the veracity and consequences of their written and spoken articulations[17]. Jean Paul Ricœur perceives interpretation as an exercise of suspicion by ascribing the development of a hermeneutics of suspicion to the philosophies of Nietzsche, Marx, and Freud whom he claims possessed a methodological aim of a hermeneutics that is "demystifying" or committed to the "reduction of the illusions and lies of consciousness" (Ricœur, 1970: 32)[18]. For TWAIL-ers, hermeneutics of suspicion is vital since it allows the researcher to engage in critical self-reflection by attempting to determine the true meaning of doctrines embodying *jus gentium* and whether they are founded on prejudice or justice. Motivated thus, TWAIL scholars do not claim that positivist scholars have "bad intentions", but instead contend that despite their "good intentions", mainstream scholars are insufficiently aware of their temporal Latin-European bias that underpins their socio-political claims in general, and jurisprudence in particular (Sunter, 2007:499). Needless to add then, TWAIL's hermeneutics of suspicion must surely be balanced by an equally strong hermeneutic of self-doubt.

Therefore, the commitment of TWAIL *countering-hegemonic* convictions is based on the analysis of historical and cultural evidences that point to international legal doctrines *a priori* identifying Latin-Europe as the exclusive qualified creator and sociable subject worthy of constructing, therefore, making history. TWAIL-ers – dedicated to countering political hegemony – emphasize that concepts and teleological narratives informing *jus gentium* are highly positivist since they adopt a non-reflexive problem-solving logic reifying quantitative approaches over qualitative approaches thus generalizing or universalizing endogenous cultural ideas and experiences onto to the "international" by objectifying its subject matter (Mutua, 2000; Anghie, 2004; Sunter, 2007; Ramina, 2018). That is to say, TWAIL-ers are suspicious of hegemonic narratives which are based on the idea that Latin-European knowledge structures are the exclusive and superior blueprint informing the *idea* of civilization and/or modernity (Sunter, 2007; Al-Kassimi, 2018). Cultural hegemonic ideas of anthropology and sociology influencing the legal

doctrines situated in *jus gentium* embody a hubristic conviction that Latin-European *ratiocinated* philosophical theology informs the natural temporal progression of *Being.*

A TWAIL belief linked to the commitment of countering hegemony is suspicious of making the particular history of Latin-Europe the general history of the world. According to mainstream positivist legal jurisprudence, cultural hegemonic narratives such as development and modernity are solely attained by peoples adopting liberal-secular cultural mores informing Latin-European civilization. It appears that "Western modernity" is the "blueprint; the holy writ of progress and without it, those 'uncivilized' countries would be helpless" (Al-Kassimi, 2018:2). A counter-hegemonic commitment is cognizant of the fact that the formulation of legal doctrines transforming cultural differences into legal differences was fundamental to the formulation of *jus gentium* by subordinating Arab societies, for instance, to *particular* secular ideas conceptualizing "modernity" and/or "civilization". It is for this reason that TWAIL-ers have generally viewed international law (i.e., *jus gentium*) as a hegemonic (legal) regime of *domination* disguised using humanitarian discourses of *liberation*. TWAIL-ers committed to a counter-hegemonic principle in deconstructing *jus gentium* are mindful that after the conclusion of the British and French mandate system in the Arab world after WWII, and the League of Nations ceasing operations in 1946, that "national independence" was largely illusory and that while formal colonialism ended, *post-colonial* spaces were still bonded economically, socially, and politically by hegemonic modalities of governance that perceived Latin-Europe as the sole zone worthy of knowledge production and imitation (Bedjaoui, 1985; Slater, 1995; Mutua, 2000; Al-Kassimi, 2018).

The new world order maintained and policed by the establishment of the United Nations in 1945 had two important "universal" legitimizing features: 1) declaring that newly (in)dependent spaces have the right to "self-determination", and 2) that they were to be governed by "human rights" (Mutua, 2000:34; Anghie, 2004). However, with almost a century nearing since the establishment of the UN in 1945, the primacy of the Security Council over the UN General Assembly during the 20th and 21st century made a "mockery of the notion of sovereign equality among states" (Mutua, 2000:34). This led critical legal scholars to claim that the use of the UN as a front by former colonial powers "simply changed the form of European hegemony, not its substance" (Sathirathai, 1984; Bedjaoui, 1985; Otto, 1996:337; Mutua, 2000; Anghie, 2004)[19]. It is important to remember that TWAIL's counter-hegemonic commitment should not be interpreted as observing the UN *a priori* as a hegemonic organization. The UN was and continues to be an

important organization voicing the concerns of the Global South – as made evident with the rise of the Group of 77, the UNCTAD, and UNRWA – however critical legal scholars suggest that Third World approaches to international law underscore the hegemony of the UNSC over the UN General Assembly by overlooking doctrines, policies, or concerns that are either explicitly or implicitly founded upon a "civilizational ladder" identifying Third World suggestions and contestations *a priori* as irrational.

TWAIL is suspicious of hegemony – legitimized and overlooked by the UN through the cloak of universality – refusing to call for a UNSC meeting regarding violations of international law and the selective use of UN organizational agencies to advance the foreign policies of Western powers (Slater, 1995; Mutua, 2000). The legal examples are numerous, but it suffices to mention how the U.S. and its European allies conquered Iraq in 2003 without UN approval, and more recently, the UNSC legally sanctioning in 2011 a "humanitarian intervention" in Libya[20] under the legal doctrine known as the *Responsibility to Protect* (R2P) without consulting or cooperating with the African Union (AU), or even confirming "on-the-ground" findings used to activate R2P (Anghie, 2004; Forte, 2013; Al-Kassimi, 2017). A counter-hegemonic political commitment, therefore, is dedicated to producing scholarly research and political action that is first and foremost concerned with the justice and fairness of institutions, processes, and practices in the international arena, and with a purpose of eliminating and exposing hegemonic policies seeking to keep an Arab philosophical theology voiceless and powerless (Bedjaoui, 1985; Al-Jabri, 1994; Abou El Fadl, 2014).

Another important commitment of TWAIL linked to its counter-hegemonic principle is concerned in resisting and contesting Latin-Europe's hegemony *over time* (i.e., temporal positionality) which *a priori* perceives the progression of history as being directed, structured, and based on a linear temporality based on knowledge coordinates situated in, and progressing towards, Latin-European *time-zones*. I argue that among all political commitments informing TWAIL as an intellectual and political movement that being *anachronic* when reading-to-deconstruct legal-history is perhaps the most important commitment to the whole project upholding TWAIL as a deconstructive, but also reconstructive, approach to international law. The reason is quite simple; positivist jurists and mainstream legal contextualist have adhered to the *temporal* idea that the *past* has no bearing on the *present* and that the *past* is not an important *causal factor* in explaining current injustices (Orford, 2012, 2013; Koskenniemi, 2012, 2013). This split in time limits

scholarship seeking to highlight a continuum in international law (re)formulating legal doctrines that sanction *sovereign-willed* practices of domination and exploitation whether during the *Age of Discovery* including the *Reconquista* and *Inquisition*, or more recently, the war on Arab-Muslims informing a "War on Terror" and an "Islamist Winter" in the 21st century. While positivist practitioners perceive time as a linear progression of disconnected moments with the present being the most *progressive* moment, an anachronic reading of history perceives time as an accumulation of moments and that the present condition of Arab inhabitants of the *Mashreq* and *Maghreb* is contingent on past practices adjudicated and continuously reaffirmed by secular legal doctrines *willed* by sovereign power.

Johannes Fabian (1983) describes the "*denial of coevalness*" or *denial of anachronism* within *ratiocinated* Latin-European philosophical theology as the "persistent and systematic tendency to place the referent of anthropology in a Time other than the present of the producer of anthropological discourse" (as cited in Helliwell and Hindess, 2013:71; Agathangelou and Killian, 2016). Thus, in Latin-European anthropological accounts of non-Western societies, a temporal difference is bounded to a violent dynamic classifying different cultures as "unsociable". Consequently, the contemporary Arab as *Saracen* is relegated as lacking dynamism to "progress in time" because they are imagined as embodying cultural mores temporally degenerative thus transmuted into *our* primitive past ancestor which is an essentialist and deterministic practice *par excellence* central to the formulation of *ratiocinated* Enlightened philosophies and jurisprudent scholastics (Helliwell and Hindess, 2013:71). The deniability of coevalness inflicted on the Third World persists to this day and can be located in the popular system of categorization describing an Arab mode of *Being* as *a priori* antithetical and antagonistic to the Latin-European liberal-secular *telos* maintained by *jus gentium*.

Essentialist categories such as "premodern" or "traditional" still prevail in *rationalist-positivist* legal taxonomy. The Arab subject being transmuted into the distant past is an anthropological condition that has infused naturalist and positivist legal history in that it developed a "firm belief in natural evolutionary time. It promoted a scheme in terms of which not only past cultures, but all living societies were irrevocably placed on a temporal slope, a stream of Time – some upstream, others downstream" (Helliwell and Hindess, 2013:72). Moreover, this inherent belief in Latin-Europe possessing exceptional *timeless* properties is precisely made possible by an imaginative process which develops a perception that there is an unbridgeable break between the

past and the present, whereby the non-Western subject is seen as inhabiting a time that *we* should not inhabit, that *we* should have moved on from, and that *we* should leave behind (Jones, 2003; Helliwell and Hindess, 2013).

The results of perceiving peoples as being temporally backward – therefore lacking civil-legal personality – can be deduced from Constantin Fasolt who suggests that "No state could be *sovereign* if its inhabitants *lacked* the ability to *change* a course of action adopted in the *past*…no citizen could be a *full member* of the *community* so long as she was tied to *ancestral traditions*" (Fasolt, 2004:7, emphases added). Arab subjects imagined as destined to remain stagnant in the past are perceived as bodies lacking not only "cultural dynamism", but more importantly, *denied sovereignty*, therefore, situated "outside" *jus gentium* as irrational bodies ruled by the past, whilst peoples imagined as *coeval* are perceived as individualized rational free agents naturally attaining the *telos* of history. Therefore, from a Kantian perspective, we can deduce that those who exist in the "present" are seen as agents of knowledge or knowing subjects with whom we cooperate and consult, whilst peoples who exist in the "past" are perceived as objects which are recipients of knowledge because they lack Western modernity's main protestant Liberal-Capitalist ethic of *individualism* (Weber, 1958; Al-Jabri, 1994; Helliwell and Hindess, 2013:76; Abou El Fadl, 2014).

This deterministic and historicist claim stipulating that Arab-Muslim societies are devoid of civilizational ideas and experiences constructing valuable social governing structures is fundamental in revealing the importance of TWAIL's methodology emphasizing the importance of an anachronic reading of legal-history to deconstruct international law. In Foucault's celebrated work entitled *The Order of Things: An Archaeology of the Human Sciences* he mentions the "categories of man" (Foucault, 1970; Helliwell and Hindess, 2013). These categories were a 19th-century deliberation by modern European rationalist thinkers mapping out what constitutes a *rational* man capable of *reason* informing the "modern episteme" (Foucault, 1970). He contends that according to Enlightenment philosophy there are individualistic (present) and non-individualistic (past) peoples with the former category including political subjects located in Western liberal spaces possessing self-knowledge enabling them to know individuals lagging in the past and therefore know what is best for them, while the latter category are apolitical objects deficient of self-knowledge because they lack the imaginative capability and rationality to know others thereby always requiring direction (Helliwell and Hindess, 2013; Abou El Fadl, 2014).

Foucault was highlighting a tradition that has its roots amongst Enlightenment thinkers who influenced positivist jurisprudence such as Mills, Comte, Durkheim, Le Bon and Maine who believed that the *European man* – from a positivist logic – held that the absence of *individuality* is an *a priori* condition that is situated in non-European races who hold on to *past* traditions thereby making them objects of international law with no legal personality – therefore "outside" the realm of *jus gentium* (Helliwell and Hindess, 2013; Abou El Fadl, 2014). An anachronic legal-historical reading of international law stresses a non-linear understanding of time and history by emphasizing the relationship between the past, present, and future. In other words, reading from an anachronic lens commits to the maxim "Time does not pass…it accumulates" (Baucom, 2005:34). Only by being anachronic is it possible to uncover the chaotic, anarchical, violent, deadly, and domineering continuum in past and present legal doctrines situated in *jus gentium* adjudicated to maintain and police the supposed *a priori* unbridgeable "cultural gap" between the sovereign Latin-European subject as universal, and the Arab object denied sovereignty as particular.

The past two decades have noticed a renewed interest in approaching "international legal history" anachronically because of the disbelief in *teleological* narratives such as modernity, progress, and development not "liberating" societies at home or abroad. According to Koskenniemi (2013:216), the disbelief in Latin-European narratives of progress and modernity that inform legal institutions in the 20th and 21st century is a disappointment that is reflected in the loss of legitimacy of "inherited narratives" characterizing the "liberal spirit" of *jus gentium* (Koskenniemi, 2015; Cunha and Afonso, 2017). The question of teleology in history figures in the evolution of *jus gentium* from a naturalist to a positivist school of jurisprudence informed by Renaissance and Enlightenment ideals that inspired the objective of history as being Latin-European modernity. The ideals of the Renaissance and Enlightenment are acknowledged as having influenced the formative formulations of legal doctrines informing international law and human rights as legal regimes thereby equipping *jus gentium* with a "sense of historical legitimacy and empowerment to produce a self-image" (Cunha and Afonso, 2017:203) demonstrating that "International Law's intrinsic virtue seems inextricable from its teleological character" (Koskenniemi, 2015:213).

This (a)historical Latin-European teleological register continues to present challenges for an anachronic reading interpreting canonical publications informing the discipline of International Law, including reified events (i.e., Valladolid debate, Treaty of Westphalia, Revolutions of 1848,

WWI and WWII) and juridical personalities (i.e., Vitoria, Austin, Lorimer, Westlake, and Wheaton) being confronted with methodologies from a range of philosophical, cultural, and anthropological influences (Koskenniemi, 2015; Cunha and Afonso, 2017). This challenge is based on critical legal jurists accentuating that legal jurisprudence in the 19th century, for instance, demonstrates that "peoples of the international realm occupy different categories in *evolutionary civilizational scales* amidst *teleologies* of progress and backed by *historicism's stage* where triumphant versions of the discipline are performed" (Koskenniemi, 2002; Cunha and Afonso, 2017:198, emphases added). With historicism influencing generations of legal historians by claiming to produce rationalist scientific understandings concerning the "complexities surrounding historical register, time and methodology" (Kennedy, 1999; Cunha and Afonso, 2017:198), it is no wonder that non-mainstream legal-historians have emphasized the danger of distinguishing *law* and *history* as two separate disciplines by endorsing the relevance of the past, in critiquing the violent formation and continuing terrorizing practices accenting *jus gentium.*

Anne Orford[21] defends the commitment of critical legal historians being anachronic to "grasp legal meaning" by accessing a "broader historical archive", in contrast to mainstream legal contextualist historians, by stressing that "international law is inherently genealogical, depending as it does upon the transmission of concepts, languages and norms across time and space. The past, far from being gone, is constantly being retrieved as a source of rationalization of present obligation" (2013:175). TWAIL-ers committed to deconstructing *jus gentium* by being anachronic legal-historians, contribute in critiquing the role played by history in legal theory by adopting a hermeneutics of suspicion that is particularly concerned with interpreting the historical register concerned with the "placement of imperial and colonial relations at the heart of legal norms and institutions" (Cunha and Afonso, 2017:199). For instance, the standpoint of TWAILs committed stance in being anachronic legal historiographers prioritizes engaging the origins of a given process, that is, *jus gentium* as a "universalized" legal regime containing legal doctrines that are (re)formulated to maintain a mythical cultural gap between Arabia and Latin-Europe thereby (re)actualizing the ahistorical *teleology* claiming Latin-European philosophical theology as the exclusive "world-view" leading to political subjecthood.

To tackle this reductionist belief, Anne Orford suggests that the "task of international lawyers is to think about how concepts *move across* time and space. The *past*…may be a source of *present* obligations. Similarly, legal concepts and practices that were developed in the *age of*

formal empire may *continue* to shape international law in the post-colonial era" (2012:16, emphases added). The *telos* of history being maintained and guarded by an international legal regime that valorizes Latin-European cultural mores seeking to transform nonconforming Arab bodies through violence has resumed more explicitly since 9/11, and more recently after the "Islamist Winter" in 2011. The importance in aligning with an approach and principles expressed by TWAIL is especially salient when considering that sovereign figures who are members of *jus gentium* (re)formulated legal doctrines in the wake of 9/11 – discussed in chapter II as the Bush Doctrine or pre-emptive defense strategy (PEDS) – and the Arab uprising in 2011 – discussed in chapter IV as the Obama Doctrine and the Bethlehem Principles – by authorizing redemptive terror measures and operations – discussed in chapter IV as Timber Sycamore – all in the name of aiding Arabs to transition into a non-degenerative temporal present. According to a neo-Orientalist discourse claiming that the Arab uprisings would inevitably metamorphosize into an "Islamist Winter", the Arab uprisings did not remain a *Spring* but rather became a "fundamentalist winter" because Arabs were identified *a priori* as embodying a primitive culture denying them coevalness with Latin-Europe thus inherently "rationally" incapable of attaining the *telos* of history. Okafor (2005:190) claims that the humanitarian agitation of former colonizers in the wake of 9/11 equating Arabia with terrorism demands a suspicious stance by "carefully unpacking and resisting the sophisticated and complex process of denial and myth-making that have enabled this deceptive posture of innocence to be maintained".

Therefore, as a TWAIL-er, the research methodology contouring the chapters of this manuscript is committed to deconstructing the history of (naturalist and positivist) legal-history using an approach that conceives time cumulatively rather than a linear manner thus when we study the present, we understand it is a product of the past. Committing to being anachronic reveals how *jus gentium* – dominated by positivist scholastics – perceives non-European bodies as objects of sovereignty, denied subjectivity, and inhabiting "zones of silence" devoid of civil knowledge systems. Also, this exacerbates European schizophrenia – as highlighted in the introductory quote – by distinguishing the "East" as always requiring "external articulations" from the "West" to "integrate" and "make sense" of their historical progression (Slater, 1995). TWAIL's anachronic stance accentuates the idea that Latin-European modernity is not simply "Self-Made" but "Other-Made", and any other essentialist articulation forces critical legal scholars to continue being suspicious of the tendency of a positivist international law emphasizing a *present* that perceives

Arabs as *abject-Other* figuring a necessary *threatening* body for Latin-European ontological security.

Finally, in relation to TWAILs *anti-hierarchical commitment*, TWAIL-ers contend that a certain degree of *a priori* or *universality* is inevitable, and even desirable; however, TWAIL scholarship – being *counter-hegemonic* and *anachronic* – resists, contests, and is suspicious of attempts to confer universality on norms and practices that are based on local historical conditions endogenous to Latin-European temporal-spatial evolution. TWAIL does not adhere to the idea that free-market, private property, or democracy are superior to, or automatically trump other human values, but rather emphasizes that a "distillation of universal values may be possible in certain cases, but how that process is conducted makes all the difference. Otherwise, powerful economic and military interests are able to force their views on the rest of the world and freeze them as eternal, inflexible truths" (Mutua, 2000:37-38). As stated bluntly by Mutua (2000:37), it is particularly concerning when universal norms and creeds become *a priori* especially when such norms are "given the sanction of international law, and therefore become a requirement for non-European societies" to become *coeval* with, therefore a member of, *jus gentium*. TWAIL scholars adhering to a hermeneutics of suspicion and a naturalized epistemological inquiry are aware that mainstream international law is unambiguous about its claim in being universal – its founders have unambiguously asserted its "European and Christian origins" (Mutua, 2000:33). Similarly, Koskenniemi (2011:152) declares that "the histories of *jus gentium*, natural law, and the law of nations…are situated in Europe". As a matter of legal-history, the "father" of international law – Hugo Grotius – traced the historical legal history of *jus gentium* to Francisco de Vitoria, a Roman Catholic philosopher, theologian, and jurist in the 16th century known for being one of the founders of the Salamanca scholastic school of jurisprudence developing naturalist jurisprudence.

Mohammed Bedjaoui, an Arab Algerian jurist, highlights the *universality* or *hierarchy* of liberal-secular *jus gentium* by stating that naturalist and positivist jurisprudent schools "consisted of a set of rules, with a geographical bias (it was a European law), a religious-ethical aspiration (it was a Christian law), an economic motivation (it was a mercantilist law), and political aims (it was an imperialist law)" (Bedjaoui, 1985:153)[22]. While there are several *ratiocinated* juridical concepts that expose the hierarchical nature of international law which is the subject of chapter I (i.e., society, just war theory, and civilization), sovereignty as a liberal-secular juridical concept is by far the most important concept revealing such essentialist tropes especially when we remember

that *jus gentium* developed through the encounter between a Latin-European mode of *Being* declared sovereign, and a non-European mode of *Being* denied sovereignty. The naturalist and positivist juridical concept of sovereignty was key in justifying, managing, and legitimatizing subjugating inhabitants of Arabia embodying Arab civilizational life-world experiences.

With statehood being territorially *willed* and *recognized* by a sovereign figure who is the sole actor who possesses such *will-to-power*, the legal doctrine known as "sovereign recognition" – as mentioned by Anghie in the introductory quote – was the difference between freedom and the conquest of a supposed inferior people (Mutua 2000; Anghie, 2004; Gathii, 2011). According to Mutua (2000:33), since non-European spaces were denied sovereignty according to a "universal international law", the colonialization of "independent, non-European lands by Europeans was therefore justified, whether it was through military conquest, fraud, or intimidation. Since colonization was part of the manifest destiny of Europeans and 'good' for non-Europeans…any method deployed in its pursuit was *morally and legally just*. Brutal force, including the most barbaric actions imaginable, was applied by Europeans in the furtherance of colonialism". Since international law has been driven by a complex emphasizing a "cultural dynamic of difference" transforming cultural differences into legal differences, dominant jurisprudent schools characterizing *jus gentium* – naturalism and positivism – were and continue to adjucate legal doctrines endowing sovereign figures the duty to civilize, transform, and control the non-European body.

Therefore, TWAIL-ers *anti-hierarchical* commitment assumes the "moral equivalency of cultures" and rejects strategies of "othering" cultures dissimilar to Europe or the "creation of dumb copies of the original" (Mutua, 2000:36). Also, they recant the "universalization" of cultures under the guise of promoting modernity, humanitarianism, development, peace, and global order (Mutua, 2000). Instead, a TWAIL approach demands a dialogical maneuver across cultures to establish the "content of universally acceptable norms" (Mutua, 2000:36). TWAIL is committed to international law and deems it necessary and important; however, it sees the current mainstream school of jurisprudence as illegitimate because not only does it reify and privilege Latin-European cultural experiences, but requires the fabrication of a reductionist imaginary constructing Arab epistemology as embodying "unsociable" and "unaccultured" bodies for Western epistemological *coherence*. TWAIL-ers believe that such "epistemic violence" informing a hierarchical "race war" discourse situated in *jus gentium* ultimately fails because it denigrates rather than affirms the full

richness of a multicultural world and "universal" law. *Jus gentium* claiming that a natural distinction exists between law and morality inevitably fails at delivering the "promise of universality" since the development of legal doctrines moralizing extrajudicial measures when translated on the Arab body, remind us that the privileges and inviolability of *jus gentium* is contingent on temporal positionality (Bedjaoui, 1985; Beckett, 2003; Gathii, 2011; Eslava and Pahuja, 2012; Orford, 2012).

TWAIL is a historically "aware methodology" that challenges the simplistic post-colonial scholarly vision of an "innocent" Global South and "supremacist" Global North (Mutua, 2000; Sunter, 2007; Gathii, 2011; Eslava and Pahuja, 2012; Al-Kassimi, 2018). Instead, scholars adhering to TWAIL have produced a vibrant "chorus of voices"[23] located in the Global North and Global South committed to ongoing debates concerned with critiquing the (im)morality of an international law dominated by positivist jurisprudence seeking to continuously transform cultural differences into legal differences thus revitalizing injustices managed, maintained, and manipulated by legal formulations situated in *jus gentium* (Dirlik, 1994; Mickelson, 1998; Mutua, 2000)[24]. Mickelson (1998:360) highlights that Third World perspectives to international law occupy "a historically constituted, alternative and oppositional stance" to the dominant positivist school of international law, by including multiple "chorus of voices that blend, though not always harmoniously, in attempting to make heard a common set of concerns". Likewise, Mutua (2000:31) describes TWAIL scholars as including a "broad dialectic of opposition to international law" united in "their broad opposition to the unjust global order" (Mutua, 2000:36). As a distinctive oppositional and dialectic way of thinking of international law using a variety of interlocutors situated in the Occident and Orient, TWAIL-ers consider possibilities for egalitarian change in multiple issues relating to society, politics, identity, and economics with an underlying commitment to justice by considering relations between and within the "East" and the "West".

In so doing, the methodology of TWAIL proceeds from the assumption that it is not only impossible to isolate "modern forms of domination such as governmentality, from the continuation of older modes of domination" (Gathii, 2011:26), but most importantly I argue, it seeks to go beyond the limited (post-colonial) idea asserting that the problem with international law is that it is primarily "Eurocentric" (Beckett, 2003; Attar, 2007)[25]. The answer to the problem of *jus gentium* can no longer simply be, and should have never simply been that it is "Eurocentric" since the simple solution to such a claim would be to *include* the non-European body *in* International Law.

Rather, as the chapters informing this manuscript will reveal, the question to the moral issue characterizing the legal regime identified as *jus gentium* should be: what are the experienced consequences of being temporally *included* and what are the experienced consequences of being temporally *excluded* from a legal regime (i.e., *jus gentium*) reifying a Latin-European philosophical theology universalizing a particular set of liberal-secular cultural mores as a "cultural benchmark" (i.e., purity-metric) in order to be-come imagined as temporally "inside" *jus gentium*? (Agamben, 1998a; Mbembe, 2003; Anghie, 2004; Koskenniemi, 2002, 2012; Al-Kassimi, 2018).

As a political and intellectual movement, TWAIL provides an acerbic critique of how the current international legal regime demonstrates that the formative legal doctrines constituting *jus gentium* during the *Age of Discovery* and *Age of Reason* continue to be adopted and/or (re)formulated into legal doctrines that are reminiscent of doctrines adopted to adjudicate a *just war* (*bellum justum*) legalizing extrajudicial practices on the Arab-Muslim body since the 11th century. The pre-emptive defense laws formulated after 9/11 by the Bush administration dubbed the "Bush Doctrine" or "Bush Chaos Theory", and the Bethlehem legal principles adopted during Obama's administration in 2012 and upheld during Trump's administration, continue to be doctrines reifying a "cultural dynamic of difference" founded on a *ratiocentric* idea claiming that there exists an unbridgeable cultural gap between Arabia and the Latin-Europe (as discussed in chapter II). The remedy to such a gap – according to neo-Orientalist proponents – is situated in Arabs adopting the values maintained by *jus gentium* – therefore Latin-European modernity – thereby silencing their life-world experiences and civilizational values. This philosophical-theological hubris or schism – as thoroughly discussed in the concluding remarks of this manuscript – has dominated the legal-historical processes of law-making in Latin-Europe with the establishment of *jus gentium* in the 15th century secularizing "civil" *law* by excessively rationalizing revealed *Law* (Guénon, 1924,1931; Beckett, 2003; Abou El Fadl, 2014).

While it is accurate to claim that the first academic conference of TWAIL took place at Harvard Law School in March of 1997, Third World perspectives of international law can be said to date back to the Bandung Afro-Asian solidarity conference of 1955 which is remembered – through its *communiqué* – to have pleaded former colonial powers and their local *comprador* collaborators to *reconstruct* rather than *abolish* the international legal system by injecting the voice of reason, morality, and spirituality into world affairs regardless of cultural and racial *differences*

(Mutua, 2000; Hunter, 2007; Al-Kassimi, 2018). Mutua (2000:31) declares how the conference was the "birthplace of TWAIL" because it is "reactive in the sense that it responds to international law as an imperial project" and also "proactive because it seeks the internal transformation of conditions in the Third World". It is for this reason that TWAIL as a political and intellectual movement is fuelled by strong *anti-imperial, anti-hierarchical, and counter-hegemonic* sentiments with scholars aligning with TWAIL emphasizing their explicit reaction to historical processes of colonization and decolonization influencing the making and development of *jus gentium* as we currently observe it (Mutua, 2000; Anghie, 2004; Sunter, 2007; Eslava and Pahuja, 2012; Al-Kassimi, 2018).

While many mainstream (positivist) scholars of international law perceive international law as a channel for rights-protection and socio-economic development, TWAIL-ers lament contemporary international law and its projected legal doctrines as being an oppressive instrument of power rather than an ameliorative instrument of peace and justice by declaring that international law is a "regime and discourse of domination and subordination" rather than "resistance and liberation" (Mutua, 2000:31). Furthermore, as a political and intellectual movement that seeks to go beyond the limited post-colonial argument claiming that the issue with international law is that it is Eurocentric, TWAIL-ers emphasize that while international law guarantees sovereign equality and self-determination to all peoples regardless of culture and race, legal doctrines formulated in the 20th and 21st century[26] continue to legalize conquest by carrying forward a legacy of terror that is highly reminiscent of the legal doctrines formulated during the formative phases of *jus gentium* legally sanctioning a destructive civilizing mission because of "cultural differences" (Anghie, 2004; Gathii, 2011). Antony Anghie argues in his authoritative TWAIL text entitled *Imperialism, Sovereignty and the Making of International Law* that doctrinal and institutional developments relating to international law cannot be understood as "logical elaborations of a stable, philosophically conceived sovereignty doctrine…[but rather] as being generated by problems relating to colonial order" (Anghie, 2004:6).

That is to say, one cannot separate colonialism from the formation of *jus gentium* since the enduring issues of "racial discrimination, economic exploitation, and cultural subordination" (Gathii, 2011:31) are to be understood by (re)examining the central relationship between *jus gentium* and the "dynamic of cultural difference". Sovereignty as a rational concept denotes the endless process of separating cultures by demarcating some as qualified discursive life and others

as unqualified pre-discursive dead-lives. This rational legal separation proceeds to bridge the "cultural gap" by developing and formulating legal doctrines charged with technologies of racism and mechanisms of enmity that subjugate Arab life to the power of death (necropower) by elevating their body to the exception thus banning them from the juridical and social order (Agamben, 1998a; Mbembe, 2003; Anghie, 2004; Mutimer, 2007; Shetty, 2011; Ramina, 2018). The dynamic of cultural difference between an *Athenian* and *Madīnian* mode of *Being* continues to be transformed into a legal benchmark generating some of the defining hierarchical doctrinal problems of international law with Gathii tersely stating that "the dynamic of difference preceded the public-private distinction" and "the sovereign-non-sovereign distinction" (2011:31).

TWAIL seeks *Transformation* Rather than *Abandonment* of International Law – *Resisting* and *Reforming* the *A Priori* Cultural "Universalism" in *Jus Gentium*

TWAILs approach to international law is committed to deconstruct positivist legal-history and its reified teleological narratives associated with a linear historicist perspective of temporality distorting actual first-hand living cultural experiences of Arabs. By adopting an anachronic reading of legal-history in tandem with a hermeneutics of suspicion, TWAIL – as a virtual site where scholars and activists from the South and the North converge voices – also becomes defined as a political and intellectual movement that is committed to *resisting* and *reconstructing/reforming* international law. As a political movement it refuses to treat as sacred any "norm, process, or institution of either domestic or international law. All factors that create, foster, legitimize, and maintain harmful hierarchies and oppressions must be revisited and changed" (Mutua, 2000:38; Gathii, 2011). The multiplicity of critical voices informing TWAIL do not *a priori* pursue the abandonment of international law but rather seek to reconstruct and "transform international law from being a language of oppression to a language of emancipation – a body of rules and practices that reflect and embody the struggles and aspirations of Third World peoples and which, thereby, promotes truly global justice" (Anghie and Chimni, 2003:79).

By bringing to the forefront the immoral consequences ensuing from the transformation of cultural differences into legal differences accompanying the "universalization" of *jus gentium*, TWAIL has successfully consolidated and institutionalized a political avenue that argues for the engagement and improvement of international law by going beyond the limiting spatial "Eurocentric" argument emphasized in "post-colonial" scholarship (Mutua, 2000; Beckett, 2003; Attar, 2007; Gathii, 2011; Eslava and Pahuja, 2012:199). While dogmatic Marxists would claim

that a "world structured around international law cannot but be one of imperialist violence" (Miéville, 2005:319), TWAIL scholars more generally declare that international law can offer a space in which claims about justice and morality can be voiced and heard (Anghie, 2004; Gathii, 2011; Eslava and Pahuja, 2012). *Resistance* and *reconstruction* form an emancipatory compound of *deconstruction* rather than *destruction* to overcome international law's inclusive exclusion *dispositif*, while remaining committed to the idea that South-North relationships based on an international normative regime founded on mutually agreed upon structures reflecting moral and ethical norms is possible. The prioritized course of action adhered to by TWAIL is to not remain within the reformist agenda, nor by committing to the chauvinistic idea of completely resisting and imagining a world without *jus gentium*, but rather insisting that a systematic engagement and commitment to *resisting* the "negative aspects of international law *must be* accompanied with continuous claims for reform" (Gathii, 2011; Eslava and Pahuja, 2012:209; emphases added).

TWAIL scholar's willingness to make international legal history a vital part of their scholarship empowers them to accentuate the limits of a positivist *jus gentium* and the areas in need of reform. Deconstructing secular juridical concepts provides reasons to resist legal doctrines situated in *jus gentium* adhering to positivist scholastics such as *sovereignty*, *society*, *citizenship*, or *just war*, since their application on the Arab subject reaffirms that sovereignty is *necropolitical*. Put differently, suspiciously reading the legal-history engineering *jus gentium* highlights the importance of resisting liberal-secular modernity as a *telos* of history since it requires the fabrication of the Arab-Muslim as a "threshold body" (i.e., *homo sacer*, *musulmanner*) using technologies of racism elevating them to a state of exception thus making their *death* inconsequential, but necessary for the *coherence* of Latin-European philosophical theology (Beckett, 2003; Mbembe, 2003; Al-Azmeh, 2009; Abou El Fadl, 2014). TWAIL has the advantage of highlighting the difficulties of the "long standing idea that bias against the third world is the discernible and determinate outcome of doctrines and institutions of international law" (Gathii, 2011:42) by not regarding international law as simply an "apology masking the raw power and philosophical commitments of its western progenitors" (Gathii, 2011:39). While TWAIL resists the false notion of Third World "innocence/victimhood" and First World "white/guilt supremacy", it is however unambiguously clear in articulating the requisite in considering the legal-historical fact that international law has not been de-colonized or cleansed from its imperial legacy. That is, the maintenance of the colonial matrix continues to animate post-colonial spaces even after

"formal independence" was granted by sovereign members situated "inside" *jus gentium* after WWI and WWII (Beckett, 2003; Al-Azmeh, 2009; Gathii, 2011; Abou El Fadl, 2014; Al-Kassimi, 2018). TWAIL scholars resist the hierarchical and hegemonic evolution of *jus gentium* whereby a specific vocabulary of "progress" and "modernity" along with the idea of "humanity" and "civilization" became the pillars of a culturalist international legal order seeking to categorize Arab subjects "beyond the pale of civilization" (Bowden, 2007, 2009; Beckett, 2003; Al-Azmeh, 2009; Eslava and Pahuja, 2012; Abou El Fadl, 2014).

This Latin-European *ethos* of hierarchy and hegemony – maintained by a racialized international law informing concepts of sovereignty, nation-state, and self-determination – highlights that these foundational concepts and distinctions residing at the core of *jus gentium* are rooted in a history that is clearly pointing to "European experiences and conceptualizations" ensuring that "even if postcolonialism has now become international law's official ethos", Europe continues to rule "as the silent referent of historical knowledge" (Koskenniemi, 2012). For Beckett (2003), Al-Azmeh (2009), Koskenniemi (2012), and Eslava and Pahuja (2012:197), mythologies of the non-European as temporally degenerative continues to inform legal doctrines situated in *jus gentium* with culturally reductionist categories forming a "historical" terrain over which *jus gentium* moves and "divisions and narratives that international law has helped both to create (in the colonial expansion) and to perpetuate (in the postcolonial world) through its own spatial, economic, cultural and political biases". TWAIL's commitment to resist and reform *jus gentium* pays close attention to the "dynamic of cultural differences" informing universal claims of international law and suggests that overlooking their cumulative effects on the regulation of life risks misunderstanding the various functional regimes of international law and their biases which work together to shape constantly and normatively the ways we organize and imagine global politics (Eslava and Pahuja, 2012). Overlooking the "dynamic of cultural difference" or "race war discourse" informing distinct functional concepts institutionalized in regimes informed by positivist law – such as trade, development, or human rights – also risks overlooking the effects they have on the way international law shapes the world especially since regimes are potent discursive transmitters of particular modes of *Being* (Orford, 2003; Beckett, 2003; Koskenniemi, 2011; Eslava and Pahuja, 2012).

A "particular" (Western) form of cultural social life made "universal" informs international legal regimes thereby cleansing it of "contradictions and assumes that social life should be

calibrated in a particular way" (Eslava and Pahuja, 2012:202). The regulatory mechanisms inherent in international law – which makes the particular history of Latin-Europe the general history of the world – are therefore intrinsically linked to the *universality* residing at the core of a "modern" internationally institutionalized legal project. Therefore, TWAIL-ers who resist the bias and prejudice inherent in juridical concepts informing regimes of rights, trade, and development are not interested in the "sterile debate over 'universal' and 'relative' values" at the heart of *jus gentium*, but rather, by prioritizing *reconstruction* they think it more important to think about "what kind of *universality* we want to *embrace* and what *kind* of *universality* we should *resist*" (Eslava and Pahuja, 2012:202, emphases added).

Since *jus gentium* contains a reservoir of law's ostensibly highlighting the universal character of *jus gentium* as a legal regime, TWAIL-ers are aware that *jus gentium* valorizes the particularities of Latin-European culture over other cultures. Eslava and Pahuja (2012:210), using the work of Anghie (2004) highlight that the importance of resisting the "dynamic of difference" inherent in *jus gentium* is observed when we notice that civilizations who did not furnish a culture reminiscent of "universalized" categories dictated by *jus gentium* were subordinated and forced "to transform their own way of being, or their particularity, into another culture's way of being". Put simply, it is vital to resist the dynamic of cultural difference since it is generated when one set of particular values is able to cast itself as universal, while societies who do not fit within this particular idea of *universality* are generalized as "lacking something" (Eslava and Pahuja, 2012:211). According to Eslava and Pahuja (2012:211), non-Europeans imagined as "lacking something" are then figured as expressions of "just another particularity" whose practices and societies make necessary a cultural gap – maintained by *jus gentium* – to police the particular (or the relative) from the universal (or the predominant particular of the time). Therefore, while *jus gentium* seems to be an *inclusive* legal regime, it is more accurately described as an *inclusive exclusion* regime since the supposed "inclusion" of the not-yet-modern Arab is only temporarily intelligible to the Latin-Europe because international law is informed by positivist jurisprudent scholastics reifying a dynamic of cultural difference.

The legacy of a "dynamic of cultural difference" transforming cultural differences into legal differences by sanctioning a "civilizing", "democratizing", or "humanitarian" mission is not a "thing of the past". This is manifest in the first half of the 20th century when international legal innovations spearheaded by the League of Nations endowed Britain and France with the "sacred

trust of civilizing" Arabia by forcibly displacing and fragmentating Arab communities, and similarly, in the 21st century with the war on terror seeking to "obscure its colonial origins, its connections with inequalities and exploitation inherent in the colonial encounter" (Anghie, 2004:117; Beckett, 2003; Mamdani, 2004; Al-Azmeh, 2009)[27]. Therefore, the contemporary edifice of international law – while guaranteeing equality of all states whether in the North or South – not only continues to carry a legacy of colonial disempowerment and subjugation in the rules relating to international economic institutions (World Bank or International Monetary Fund), but also regimes informing human rights and the use of force (Orford, 2003; Anghie, 2004; Beckett, 2003; Gathii, 2011). According to Mutua (2000:36-37), even the "international order" known as "human rights" is rooted in cultural relativist rhetoric and corpus which "privileges knowledge and things" European. As a matter of fact, international human rights law and a humanitarian order are almost ubiquitous targets of TWAIL scholarship – as I argue in chapter V – because they mask and reaffirm the immoral consequences inherent in sovereignty as a positivist concept characterized by an *inclusive exclusion*. In other words, figuring the plight of Arabs under the "modern" category of "refugee" masks the original activity of sovereignty needing to subjugate Arab life to the power of death (necropolitics) since the figure of the Arab as *refugee* is none other than the figure of *homo sacer* or *muselmänner*. Therefore, rather than focusing on the ontological possibility or practical efficacy of a universal human rights, or adopting a skeptical or pessimistic approach to human rights, TWAIL scholars embrace a suspicious stance towards arguments advocating the "universal applicability of a particular set of human rights norms" (Nesiah, 2003; Sunter, 2007:503).

TWAIL's suspicious stance of human rights as a regime maintained by *jus gentium* is based on the problematic causal etiology of a human rights discourse. While most TWAIL-ers do not reject the possibility of an effective and equitable legal regime for human rights protection, they do however advocate to "unmask the biases that underpin the current regime" (Sunter, 2007:503). Most TWAIL-ers, including myself, emphasise that lawyers and scholars who advocate for a liberal humanitarian intervention using a "crisis" and "emergency" problem-solving or technocratic vocabulary to "save" Arabs are essentially rejuvenating and promoting a "civilizing mission" whose violence and domination is reminiscent to the formative phases of *jus gentium* attempting to "universalize" liberal-secular law while situating Arab epistemology (Ar. نظرية المعرفة العربية/الحضارة العربية) as inherently inferior to Latin-European philosophical theology

(Beckett, 2003; Attar, 2007; Al-Azmeh, 2009). According to Mutua (2001:204), international human rights law is a continuation of the Latin-European civilizing mission and he contends that the "human rights corpus, though well-meaning, is fundamentally Eurocentric, and suffers from several basic and interdependent flaws". The structure of human rights law – maintained by a positivist *jus gentium* – he continues is "ultimately a set of culturally based norms and practices that inhere in liberal thought and philosophy" thereby falling "within the historical continuum of the Eurocentric colonial project, in which actors are cast into superior and subordinate positions" (Mutua, 2001:204).

Similarly, Vasuki Nesiah – a feminist TWAIL-er – emphasizes the paradox present at the core of human rights by highlighting how "human rights" are treated as a set of "secular norms" that are universally applicable. Accordingly, "secular-universalism" is a concept reflective of specific cultures and is not universally applicable since the specific causal etiological factors founding *jus gentium* are based on a rationalized Latin-European history of "French nation building", "protestant Christianity", and "enlightenment feminism" (Nesiah, 2003:139). This led Nesiah (2003:140; emphases added) to declare that "human rights aspires to be a set of *universalist* norms defined in contrast to culturally *specific* norms, even while universalism emerges as a vocabulary that is constitutive of the very notion of 'culture' itself". In other words, TWAIL-ers do not discount the possibility of universal human rights, however they make salient that there is a striking difference between the universalization *of* human rights and the universalism *in* human rights.

The regime of human rights as it stands continues to be characterized by a philosophical and theological bias that puts into question the "veracity of claims…advocating its universal applicability" (Mutua, 2001; Nesiah, 2003; Anghie, 2004; Sunter, 2007: 505; Eslava and Pahuja, 2012). In its humanitarian guise, the universal and the particular are "constituted in the interpretive gesture of international law's application" (Eslava and Pahuja, 2012:220). For this reason, TWAIL scholars, committed to a naturalized epistemological inquiry are interested in the causes of belief-claims prioritizing etiological examination over substantive analytical critique (Sunter, 2007). TWAIL scholars prioritize *a posteriori* cultural evidence since the "*a priori*" conceptions adopted by positivist legal-jurists preserve *jus gentium* at all cost by grounding their "rational engagement" with Arabia on historicist information lacking real cultural-historical evidence (Mutua, 1998; Beckett, 2003; Sunter, 2007; Gathii, 2011; Koskenniemi, 2011; Eslava and Pahuja, 2012). TWAIL

then, as a methodologically eclectic and polycentric network of political activists, seeks to *resist* and *reform* – therefore *transform* – international law by deconstructing and reading against the grain canonical texts and philosophical treaties, political speech acts and academic manuscripts, with a view to build on and transform the egalitarians aspects of international law[28].

Chapter I

Naturalist and Positivist Jurisprudence: The (Latin-European) Culturalist Essence of International Law & its Inter-Related Juridical Concepts of Sovereignty, Society, Art of War, and Civilization

"Is there a uniform law of nations? There certainly is not the same one for all the nations and states of the world. The public law, with slight exceptions, has always been, and still is, limited to the civilized and Christian people of Europe or to those of European origin" **– Henry Wheaton (1836) in *Elements of International Law with a Sketch of the History of the Subject (Volume 2)***

"International Law regards states as political units possessed of proprietary rights over definite portions of the earth's surface. So entirely is its conception of a state bound up with the notion of territorial possession that it would be impossible for a nomadic tribe, even if highly organized and civilized, to come under its provisions" **– Thomas Lawrence (1884) in the *Principles of International Law***

"No theorist on law who is pleased to imagine a state of nature independent of human institutions can introduce into his picture a difference between civilized and uncivilized man, because it is just in the presence or absence of certain institutions or in their greater or less perfection, that that difference consists for the lawyer" **– John Westlake (1894) in *Chapters on the Principles of International Law***

"Premodern peoples are said to have no creative ability and anti-modern fundamentalists are said to have a profound ability to be destructive. The destruction is taken as proof that they have no appreciation for human life, including their own." – **Mahmood Mamdani (2004)**

"A just war (*bellum justum*) …is not thought to be sacred, merely moral. There is no pretence of having divine approval, rather merely good reasons (like self-defence) for fighting a war" **– Brian Orend (2006) in *The Morality of War***

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Introduction

The importance in deconstructing the immoral consequences of a "dynamic of cultural difference" – perceived as an indispensable "dynamic process of violent separation" in the formation and endurance of international law (IL) and international relations (IR) – has been obscured and misconstrued as a result of a persistent and deep-seated *ratiocinated* positivist jurisprudence that has in the past, and continues into the present, to structure both subjects as valorizing a Latin-European philosophical theology (Anghie, 2004, 2006; Koskenniemi, 2011). The Latin-European philosophical theology upholding these structures has limited our understanding in noticing the intimate (chaotic) relationship between a "dynamic of cultural difference" and *jus gentium* and/or coloniality and modernity as a liberal-secular *telos* (Koskenniemi, 2002, 2011; Anghie, 2004; Orford, 2003; Mamdani, 2004; Jouannet, 2013; Al-Kassimi, 2018). Therefore, the purpose of this chapter – which presents most legal doctrines and concepts informing the rest of this manuscript – is to analyze and deconstruct the genealogy of

formative jurisprudent schools of International Law – Naturalism and Positivism – thereby revealing the constant desire of jurists to (re)develop and/or (re)formulate correlated legal concepts relating to the arts of war, society, civilization, and sovereignty. This hermeneutically suspicious deconstruction suggests that *jus gentium* was, and remains, animated by a sustained desire to identify and transform cultural differences into legal arguments thus maintaining the supposed unbridgeable cultural gap between a *particular* (degenerative) personality as *object* of sovereignty, and a *universal* (progressive) personality as sovereign *subject*. This statement suggests that *jus gentium* not only continues to be animated by a civilizing mission that entails a necessary violent transformation of non-European bodies to provide Latin-Europe epistemological security, but more importantly, it also reveals that *jus gentium's* promise of, and respect for "universal natural law" is premised on the "temporal positionality" of each encountered *different* culture. Therefore, rather than primarily discussing antecedents in legal-history revealing the supposed "natural" antagonistic relationship between Latin-Europe and the Arab *Mashreq* and *Maghreb*, I emphasize the legalization of human carnage and forced displacement resulting from Latin-European sovereign figures authorizing *conquistadors* during the development of Latin-European scholasticism in the Medieval era. This emphasis is deliberate since this chapter attempts to accentuate a historical continuum and *reconnaissance* in that most, if not all cultures that did not adhere to a Judeo-Christian (temporal) morality informing Latin-European philosophical theology suffered from "creative chaos", and as a matter of legal-historical fact, were instrumental in the formulation of legal doctrines situated in *jus gentium*.

To highlight how cultural differences were transformed into legal difference – thereby adjudicating *extra judicium* treatment vis-à-vis subjects constructed as temporally "outside" *jus gentium* – I will begin by discussing 16th century Latin-European legal philosophy formulated by a distinct group of Iberian scholastics belonging to the School of Salamanca which reformulated – using the works of Thomas Aquinas, Anselm of Canterbury, Augustine of Hippo, and John of Damascus – the juridical concept known as natural law and the jurisprudence school known as naturalism. Prominent Salamanca philosophical theologians discussed in this section will include Dominican friars such as Francisco de Vitoria and Bartolomé de las Casas, including a brief contrast with Spanish Aristotelian philosopher Juan Ginés de Sepúlveda. This is followed by introducing the legal-history of positivist jurisprudence in the 17th century which complemented rather than supplanted the naturalist school, and continues to be the dominant juridical school

informing the methodology and means of acquiring rational knowledge in the disciplines of International Law and International Relations. By referring to renowned positivist jurists such as John Austin, John Westlake, Thomas Lawrence, James Lorimer, and Henry Wheaton, the section will highlight that the legal doctrines and techniques developed and adjudicated by naturalist jurisprudence to solve the encountered problem of "cultural difference" continues to permeate and (re)inform modern present day legal-historical jurisprudent developments. Both jurisprudent schools stress a "dynamic of cultural difference" as constituting a primary legal influence in (re)formulating supposed neutral legal concepts thereby masking not the "Eurocentricity" of international law, but more importantly, that *jus gentium* was, and continues to be, animated by an *inclusive exclusion* temporal *dispositif* naturalizing an endless civilizing mission with a *telos* seeking to transform the non-European *biological* body into a rational *political* body personifying a liberal-secular *ethos*.

The Latin-European, or more specifically, Judeo-Christian "origin" of *jus gentium* is asserted by J.H.W. Verzijl (1968:435) when he declares: "now there is one truth that is not open to denial or even to doubt, namely that the actual body of International Law, as it stands today, not only is the product of the conscious activity of the European mind, but also draws its vital essence from a common source of beliefs, and in both these aspects it is mainly of Western European origin" (also cited in Anghie, 2006:740). Similarly, Buzan and Hansen (2009:1) highlight that International Relations like International Security Studies (ISS) is mainly a Western subject, largely done in North America, Europe, and Australia with "all of the Western-centrism that this entails." In this view, international law consists of a series of doctrines and principles that have their roots in Western geographical spaces, that emerged out of Latin-European psyche and historical experiences, and were then rolled out to the non-European world which existed "outside" the realm of *jus gentium* because non-Europeans did not possess a philosophical theology that according to recognized (Latin-European) sovereigns allowed them membership in International Society (Anghie, 2004). For instance, the concept of sovereignty that emerged out of the 1648 Treaty of Westphalia stipulated that all sovereigns are equal and that sovereign states have absolute power over their territory. However, a major critique of literature concerning sovereignty and *jus gentium* is that it overlooks that the "doctrine of sovereign recognition" as a whole was in its inception, and currently remains, exclusionary. Although the legal framework of sovereignty continues to play a significant role in international legal thinking, the relationship between

sovereignty and the non-European world cannot be adequately understood *within it* (Anghie, 2004). The interaction between European and non-European societies during the colonial encounter is not a contact between equal sovereign states, but rather an encounter between sovereign European states and non-European states denied sovereignty (Anghie, 2004; Al-Kassimi, 2018).

Therefore, the primary legal framework governing the discipline precluded *a priori* any examination of non-European societies and how the exclusion of the non-European Other was necessary to shape the inclusionary components of civilization, society, and sovereignty engineering *jus gentium* as a rational legal regime. While there are several distinctive styles of jurisprudence flourishing from the 16th century to the 18th century such as Pragmatism accenting that IL is to be found in nature, ascertained through reason, and that it is a transcendent law that is binding on all states, it is positivist jurisprudence that became the dominant jurisprudent school formulating legal-history engineering overlapping "scientific" disciplines such as International Law, International Relations, and International Political Economy. For instance, the positivist doctrine extended by John Austin declaring "how is order to be created among sovereign states" prevents exploring the "dynamic of cultural difference" as being one of the primary reasons for denying sovereign status to non-European societies. Because sovereignty is a status reserved to Latin-European philosophical theology, then the problem of "order among sovereign states" arises only in the context of "Western states", and the transformation of this into the central theoretical dilemma of the discipline systematically overlooks the studying of questions relating for instance to how and why it was decided that non-European societies were *denied* sovereign status in the first place (Anghie, 2004).

By including imperialism[29] as a vital sovereign-willed practice into the discussion which produced international law and its intimate legal concept of sovereignty, we dispense with the traditional view of sovereignty being an inclusionary Latin-European legal concept that was "rolled out" through diplomacy into the non-European world that was somehow naturally non-sovereign. Therefore, I argue, similar to Anghie (2004, 2006), Nyers, (2006), Koskenniemi (2002, 2011), Orford (2003, 2011), and Jouannet (2009, 2013) that sovereignty as a juridical legal concept of "ordering" among states consists of mechanisms of exclusion which expel different (epistemic) modes of *Being* from the realm of *jus gentium* thereby becoming a *raison d'être* for the grand redeeming project of bestowing sovereignty and law – therefore civilization – to the wretched

cultures of earth. Once the initial cultural differentiation was determined and accepted – that cultures designated as temporally "outside" *jus gentium* were not sovereign – the discipline was then capable of creating for itself – by presenting it as inevitable and natural – the grand redeeming project of bringing periphery peoples into the realm of sovereignty by civilizing the uncivilized in tandem with developing juridical techniques and doctrines necessary for sanctioning a "civilizing mission" (Guénon, 1932; Anghie, 2004). Put differently, the doctrine of sovereign recognition expels the "exotic desert dweller" from its realm and then proceeds to "legitimize" imperial practices that are deemed necessary to incorporate the non-European world into the system of international law. This cultural relativist project – made possible with naturalist and then positivist jurisprudence – is evident with the philosophy of Latin-European historicism being based on a linear temporality assuming that the history of the colonial world comprises merely the history of the civilizing mission (Guénon, 1932; Benjamin, 1942; Anghie, 2003). The civilizing mission constituting international law then assumes that the colonized were not simply passive agents of history, but rather, did not have a history until they encountered Latin-European rationalism (Guénon, 1924, 1927; Wolf, 1982; Schmidt, 2006).

Accordingly, the following sections will be concerned with making salient how naturalist and positivist juridical doctrines came to be accepted in fact as *Law* by arguing that the evolution of international law, and the role of non-European societies within this process, is better understood and illuminated when considering the "dynamic of cultural difference" as the main *causal difference* in founding international law (Guénon, 1924; Anghie, 2006). International Law will then be discussed as an attempt to establish a "universal" system of order among entities reifying a Latin-European mode of *Being* imagined as the most temporally progressive. International law is therefore conceptualized as being animated by a civilizing mission that posits an unbridgeable "culturalist" gap. This mythical gap transforming cultural differences into legal differences between the "West" and the "East" then formulates doctrines that are designed to efface this cultural fissure by bringing the uncivilized/irrational peoples into the realm of civilization which is administered by a *jus gentium* that reifies the idea that the *telos* of history is Latin-European philosophical theology.

The relativist cultural dynamic of difference distinguishing between civilized and uncivilized entities is crucial to the formulation and maintenance of the legal doctrine known as "sovereign recognition" since it continues to inform political relations between Arabia and Latin-

Europe by providing certain cultures with all the privileging powers and rights of sovereignty, while (naturally) excluding others as temporally stagnant – therefore lack reason – at being recognized as sovereign. Therefore, the colonial encounter is not – as suggested by naturalist and positivist jurisprudence – inconsequential to developing and maintaining international law, but rather as I will argue, central to its formation and its continued revitalization. As Anghie (2006:742) notes "it was only because of colonialism that international law became universal; and the dynamic of difference, the civilizing mission, that produced this result, continues into the present."

1. Naturalist Jurisprudence: The Legal-History of a "Dynamic of Cultural Difference" Informing the Formative Genealogy of *Jus Gentium*

Within fifty years of Columbus's colonial encounter with the inhabitants of the Americas, for many philosophical theologians – who were also, by and large, the jurists of the Renaissance period in the 16th century – the great question of the New World was beyond all doubt the most important in Cartesian cartography. Bartolomé de la Vega stated at the time that "what is at stake is nothing less than the salvation or loss of both the bodies and souls of all the inhabitants of that recently discovered world" (Bowden, 2013a:153). Also, as observed in the ethnographic research of Mesoamerican peoples conducted by Spanish Franciscan friar Bernardino de Sahagún entitled *The Universal History of the Things of New Spain*[30] in the 16th century, peoples of different cultures who came into regular contact with Latin-European explorers and settlers either "adopted European ways and assimilated, or risked perishing" (Anghie, 2004; Bowden, 2013a:153). At the very beginning of Columbus's encounter, we notice this process of seeming to accommodate and include outsiders within the system of *jus gentium* while at the same time suppressing and excluding their voice. This is noted in Columbus's letter concerning his first voyage to the New World which he dedicated to the *Rex Catholicissimus* Sovereigns of the Spanish Monarchy – Isabella I of Castile and King Ferdinand II of Aragon – where he says:

> Since I know that you will be pleased at the great victory with which Our Lord has crowned my voyage, I write this to you, from which you will learn how in thirty-three days I passed from the Canary Islands to the Indies, with the fleet which the most illustrious King and Queen, our Sovereigns, gave to me. There I found very many islands, filled with innumerable people, and I have taken possession of them all for their Highnesses, done by proclamation and with the royal standard unfurled, *and no opposition was offered to me*. To the first island which I found, I gave

> the name ‘San Salvador,’ in remembrance of the Divine Majesty, Who had marvellously bestowed all this; the Indians call it *‘Guanahani*.’To the second, I gave the name the island of ‘Santa Maria de Concepcion,’ to the third, ‘Fernandina,’ to the fourth, ‘Isabella,’ to the fifth island, ‘Juana,’ and so each received from me a new name (as cited in Anghie, 2004:13, emphases added)

What is obvious in the correspondence between Columbus and the Spanish monarchy is the central significance of law to the whole colonial enterprise exhibited by Columbus by firstly describing how the voyage is ordained by the Sovereign appointed by God and secondly by relating his discovery of various undefined islands and peoples which are no sooner described than taken possession of by means of a legal ceremony that essentially disregards endogenous knowledge structures experienced and cherished by local inhabitants (Anghie, 2004). The importance of this passage is that it raises several enduring issues concerning the connection between law and imperialism in that the “civilizing mission” while seeming to provide a voice to the colonized by stating “no opposition was offered to me” and that the “Indians call it Guanahani”, the voice of resistance and the life-world experiences expressed by the encountered are silenced to further the exhibition. This is made evident when we read Columbus’s description of the “Indians”[31] residing in the New World as they “all go naked, men and women, as their mothers bore them…They have no iron or steel or weapons, nor are they fitted to use them” (Todorov, 1984; Bowden, 2013a:153). In fact, he thought them to be “the most timorous people in the world…cowardly to an excessive degree”. But they were generous to a fault, he continues, “refusing nothing that they possess, if it be asked of them; on the contrary, they invite any one to share it and display as much love as if they would give their hearts (Bowden, 2013a:153). This “irrational” form of generosity, explained Columbus, made them accept “even pieces of the broken hoops of the wine barrels and, like savages, gave what they had” (Bowden, 2013a:153).

On the whole, he thought that inhabitants of the New World, apparently lacking any form of civilized personality, would not only do well to embrace a Judeo-Christian morality and the personality of Spanish Latin-Europeans, but would welcome the imposition of such measures regardless of the means. Motivated thus, the practice of imperial policies were rational measures to drive indigenous peoples from their land or to enslave and work them to death. And concerning the remaining indigenous peoples identified as “more advanced” and/or “less stubborn”, they were to be “absorbed into the lower reaches of civilization by varying measures of compulsion, periods of discipline, training and/or tutelage in the ways of civilized Europeans” (Bowden, 2013a:154).

Regardless of their "progress" in approximating temporal coordinates informing Latin-European philosophical theology, they would continuously fall short of perfect civilization and thus occupy the bottom rung in "social" hierarchy and would "generally be limited to living on the fringes of the *society* into which they were being absorbed and assimilated" (Bowden, 2013a:154, emphases added).

These colonial cultural presumptions evident in the formative phases of *jus gentium* led Todorov (1984:5) to state that the 16th century "perpetrated the greatest genocide in human history". Therefore, Columbus effectively outlines the basic legal principles that would determine the future of Latin-European encounters and relations with non-Europeans for over 500 years – much of it under the legal guise of what was known as the "sacred trust of civilization" (Beckett, 2003; Anghie, 2004; Bowden, 2009; 2013a). However, as elaborated below, jurists of the time such as Las Casas and Vitoria were not content with the legal justifications provided by the Spanish Monarch in justifying the actions of their private mercenary army known as the *conquistadors* in the New World. Both theological jurists went on to become important founding figures of the discipline of International Law by deliberating that it is the violation of natural law instead of divine law that should adjudicate the *jus ad bellum* – regardless of the consequences induced on the local inhabitants of the New World.

1.2 Naturalist Jurisprudence: The Racialized Origins of Concepts Relating to Sovereignty, Civilization, and (Just) War

King Charles V of Spain in 1542 was informed that the Spanish *conquistadors* in the New World were committing atrocities against local inhabitants by perpetuating a form of "communal slavery" and/or an imposed labor system known as *encomienda* (Eng: to entrust) (Galeano, 1973; Lockhard and Schwartz, 1983). Prior to the practice making its way to the New World, it was familiar to Arab-Muslims from the *Maghreb* identified as Moors and/or Saracens after the Spanish *Reconquista* of Cordoba in Andalusia and capitulations in 1492 (Galeano, 1973; Beckett, 2003). The *encomienda* institution was a sovereign state economic practice that pursued non-Europeans to "entrust" authorized Crown privateers and/or mercenaries known as *Los Adelantados* (Eng: "advanced" title in service of the Crown) in extracting tribute from the colonized (Lockhart and Schwartz, 1983). The *encomienda* system traveled to the Americas as a result of Castilian law over the territory enforced by King Ferdinand II of Aragon and Queen Isabella I of Castile in 1503 (Galeano, 1973). In the case of the New World, the colonial *encomienda* system is manifest in the

geographical (re)making which displaced, denigrated, and segregated indigenous communities from their family units and cultural experiences (Gibson, 1964; Galeano, 1973). The severity of the *encomienda* is evident, for instance, when we notice that the indigenous people of Mexico – in the wake of Latin-European conquest – witnessed an epidemic between 1519 to 1520 resulting between 5 to 8 million people perishing (Acuna-Soto, Stahle, Cleaveland, Therrel, 2002: 360).

Furthermore, the catastrophic epidemics that began in 1545 and 1576 also resulted in an additional 7 to 17 million people in the highlands of Mexico losing their lives to Latin-European imperialism (Galeano, 1973; Acuna-Soto, Stahle, Cleaveland, Therrel, 2002). Under the advisement of "men from every expert and learned council," Charles – the grandson of Ferdinand and Isabella – issued a ban on slavery and directed that all such enslaved natives be freed. While some rebelled against King Charles's orders by continuing to profit from plundering the Americas, other dissident voices reverted to seeking learned men who could attack the "imperial laws with solid legal arguments" in the hope that the sovereign might be convinced to reverse his decision (Bowden, 2013a:155). It was none other than Royal historian Juan Ginés de Sepúlveda who took it upon himself – as revealed in his work *On the Reasons for the Just War among the Indians* – to defend the *encomienda* by launching a defense of Spanish conquest on indigenous groups as highlighted in Las Casas' work entitled *In Defense of the Indians*. Sepúlveda's three main justifications for *just war (bellum justum)* against particular "Indians" of a different culture to that of Latin-Europe were as follows: 1) their natural condition is the reason they are *soulless* and incapable to rule themselves thereby it was the responsibility of the Spanish to act as their masters; 2) Spaniards were entitled to prevent cannibalism as a crime against nature and the same went for human sacrifice; and, 3) it was vital for the salvation of the "Indian" that they convert to Christianity (Losada, 1971; Galeano, 1973; Hanke, 1974; Hernandez, 2001).

Sepúlveda's primary argument was that local inhabitants in the New World, for instance the *Haudenosaunee*, are "barbaric, uninstructed in letters and the art of government, and completely ignorant, unreasoning, and totally incapable of learning anything by the mechanical arts" (Bowden, 2013a:156). He further says that "they are sunk in vice, are cruel, and are of such character that, as nature teaches, they are to be governed by the will of others." By calling on the authority of Augustine, he insists that "for their own welfare, natural law demands that the Indians obey those who are outstanding in virtue and character". In line with the benevolent narrative of the "sacred trust of civilization," Sepúlveda exclaims that if the Amerindians "refuse to obey this

legitimate *sovereignty*; they can be forced to do so for their own welfare by recourse to the *terrors of war*" (Bowden, 2013a:156, emphases added). To back up such terrorizing imperial venture, Sepúlveda cites Thomas Aquinas who asserted that a "transformational war" is "just both by civil and natural law" (Orend, 2006; Bowden, 2013a:156). This is similar to the logic adhered to by Augustine who saw it as just to force someone to do something against their own will if it is in their best interest, and is a similar reason given by Augustine to approve Roman subjugation of other nations as just and proper (Bowden, 2013a:156). Sepúlveda concluded his "moral defense" of Spanish conquest in the renowned *Valladolid* controversy (1550-1551) commissioned by King Charles V by asserting that "it is totally just, as well as most beneficial to these barbarians, that they be conquered and brought under the control of the Spaniards, who are the worshipers of Christ" (Bowden, 2013a:156). Bartolomé de Las Casas was also present at the Valladolid debate and is remembered for advocating for the natural rights of the "Indians" by stating that the words of Sepúlveda are "poisons disguised with honey." He further judges Sepúlveda by stating that his arguments are partly "foolish, partly false, and partly of the kind that have the least force" (Bowden, 2013a:156). He charged Sepúlveda with making "certain counterfeit arguments that favour the greediest cravings of tyrants by twisting texts from the sacred books and the doctrines of the holiest and wisest fathers and philosophers" (Las Casas, [1550]1974:8). Las Casas further pleads to the King's Council of the Indies at the debate that God did not despise the "Indians" such "that he willed them to lack reason and made them like brute animals, so that they should be called barbarians, savages, wild men, and brutes…On the contrary, they are of such gentleness and decency that they are supremely fitted and prepared to abandon the worship of idols and to accept the word of God and the preaching of the truth" (Bowden, 2013a).

The last point is significant in that it still gave legal coverage for conquering the Indians for the sake of "saving their soul and cultivate civilization on their soil" even though they possessed reason – a vital point discussed below when recalling Vitoria's argument legalizing colonialism. Las Casas ([1550] 1974:26) further mentions that despite "the fact that the Indians are barbarians it does not necessarily follow that they are incapable of government and have to be ruled by others, except to be taught the Catholic faith and to be admitted to the holy sacraments." He was convinced that they were neither ignorant, nor inhuman because "long before they heard the word Spaniard they had *properly organized states*, wisely ordered by excellent laws, religion, and custom" (Las Casas, [1550]1972:42, emphases added; Bowden, 2013a). It is however important to note that

while Las Casas is celebrated as the *Protectoría de los Indios* (Protector of the Indians) against colonial exploitation, Las Casas was not *against* colonialism *per se* (Anghie, 2004; Guyatt and Hesse, 2007; Bowden, 2013a). During the Valladolid debate, Las Casas admits that Indians possess some sort of reason; however, they are to use their rationality to become Christian and save their souls instead of the crown perceiving them as natural slaves and/or used as forced labourers (Anghie, 2004; Orend, 2006; Guyatt and Hesse, 2007). Las Casas as the "Protector of the Indians" *legally* addressed the morality of the colonial policy practiced by the Spanish Crown by suggesting an alternative benevolent policy namely that the "Indian" would be under the "protectorate" of the Spanish crown (Anghie, 2004; Guyatt and Hesse, 2007). While the Spanish crown did modify the *encomienda* slave laws by 1542 prohibiting the use of "Indian slaves", Las Casas is remembered to have highlighted that the labour shortage could be replaced by African slaves (Guyatt and Hesse, 2007). Regardless of intent, the Valladolid controversy is a key moment in so far as the reflection into the formative phases of a "universal" legal system that produces and uses race to adjudicate a "civilizing mission" thus transforming cultural differences into legal differences. TWAIL legal jurist Antony Anghie (2017) summarizes Las Casas's naturalist jurisprudent logic imagining the Indian during the Valladolid controversy by stating that "these people are like us, but inferior, and because they are like us we have a role to play to make them more like us". Therefore, while the jurisprudent logic exercised by both jurists, Las Casas and Sepúlveda is exoterically different, it still adjudicates a civilizing mission using different legal techniques in tandem with deterministic discourses vital in producing a culturally centric *jus gentium* (Anghie, 2004, 2017; Guyatt and Hesse, 2007). This is evident in the next two centuries informing the period known as the *Inquisition* up until the 20th century since the primary legacy of the Valladolid debate is noted in that it is one of the first philosophical theological debates attempting to develop *laws* that would rationalize colonization as being *morally* acceptable (Anghie, 2004, 2017; Guyatt and Hesse, 2007).

Sepúlveda adopted a secular approach in comparison to Las Casas in the Valladolid debate by arguing that Aristotle and the humanist tradition highlights that Indians were subject to enslavement due to their inability to govern themselves and could be forcibly transformed by war if resistance persisted (Losada, 1971; Hanke, 1974; Brading, 1991, Bowden, 2013a). Las Casas, on the other hand, objected by arguing that Aristotle's definition of barbarian and natural slave did not apply to the Indians since they were capable of some sort of reason – thus capable of being

brought to Christianity without force or coercion (Losada, 1971; Hanke, 1974; Brading, 1991). Though the assemblies noted theologians, jurists, and philosophers did not fully reverse the situation, the laws deliberated at the debate reflected a concern for morality and justice in 16th-century Spain that only (re)surfaced as a point of contention amongst other colonial powers and jurists centuries later when they encountered more sophisticated civilizations (i.e., the Osmanli Caliphate) (Hernandez, 2001; Goffman, 2002; Beckett, 2003; Anghie, 2004; Akçam, 2012). It was Francisco de Vitoria – the topic of concern below – who had a greater legal-historical impact on the establishment of laws regulating the nature of conduct of Latin-Europeans who decided to "sojourn" in territories "outside" the realm of *jus gentium*.

As Latin-European presence "outside" the temporal and cartographic realm of *jus gentium* intensified from the 15th to the 17th century, legal doctrines reifying a "cultural dynamic of difference" were developed to manage complex forms of interactions which were then extended to account for the legal acquisition of sovereignty over non-European peoples. The initial sign of a legal jurist dedicated to developing a legal framework to manage these complex colonial differences is illustrated by examining the works of Francisco de Vitoria, a Salamanca jurist credited in producing one of the first texts of modern (Western) international law[32]. It should be noted that while Hugo Grotius is regarded as the forerunner of modern international law, historians of the discipline trace its embryonic origin to the works of Francisco de Vitoria (Koskenniemi, 2002; Anghie, 2004). Vitoria's lectures are primarily concerned with the legal problems that arose from Spanish claims to sovereignty over the Americas following Columbus' voyage. Since the central theme of both lectures is colonialism, it is important to note how Vitoria's naturalist jurisprudence is constructed around his attempts to resolve the unique legal problems arising from the discovery of, and encounter with, *different* cultures embodied by Amerindians (Anghie, 2004, 2006; Bowden, 2009; Koskenniemi, 2011; Orford, 2011, 2013).

Vitoria's jurisprudence drew on previous and/or invented new doctrines to conceptualize the colonial encounter since international law was created out of the unique and particular cultural differences witnessed between a "universal" Latin-European mode of *Being* and a "particular" non-European who simply needed to conform or risk perishing. In dealing with these encountered legal complexities, Vitoria focuses on the social and cultural practices of both parties by assessing and formulating the rights and duties of the inhabitants of the Americas. Motivated thus, the problem being addressed by Vitoria was not the problem of "order among sovereign states", but

rather the problem of producing and "creating a system of law to account for relations between societies which he understood to belong to *two very different cultural orders*, each with its own ideas of propriety and governance" (Anghie, 2004:16, emphases added). In other words, the initial sign of a formulation of "sovereignty doctrine" hinted at in the 16th century was through the attempt to address and account for the problem of "cultural differences" – now demanding a legal explanation – because of the momentous traffic of different encountered cultures.

The traditional jurisprudence opposed by Vitoria asserted that human relations were primarily governed by divine law instead of human and/or natural law and that the Pope exercised universal jurisdiction by virtue of being the Vicar of Christ. Vitoria denied these assertions by developing a new system of international law which essentially displaced divine law and its administrator – the Pope – with a natural law administered by a secular sovereign. Thus, drawing on the naturalist and theological jurisprudence of the period, Vitoria argued that all peoples, including non-Europeans, were governed by a basic secular natural law which was announced to be the basis of this new international law which would resolve the problem of "legal status" concerning the "Indian". For instance, rather than adopt the traditional divine law argument that dismissed non-Europeans because of their *Saracenesque* status, Vitoria (1532:120) in *De Indis* tackles the relationship between divine, natural, and human by highlighting that "unbelief does not destroy either natural law or human law, but ownership and dominion are based either on natural law or human law; therefore they are not destroyed by want of faith". Vitoria articulates the main break with divine law by accentuating the new legal fact that divine law does not apply to questions of ownership or title; thus, the Indian cannot be deprived of his land merely by virtue of their heretic eschatological belief.

Instead, Vitoria emphasizes that issues relating to property and acquisition are to be decided by secular systems of law whether natural or human – both laws diminishing the influence of judicial vicars in adjudicating law since secular systems of *law* were now administered by a civil rather than divine sovereign. One should not hasten to interpret Vitoria as stating that the Spanish and the "Indians" are bound by a single universal overarching system – quite the contrary. Vitoria highlights that both parties belong to different orders and he interprets the cultural gap between the colonized and colonizer in terms of the juridical problem of jurisdiction (Anghie, 2004). Both inter-related legal techniques used by Vitoria to address the issue of jurisdiction include 1) his elaboration of a new jurisprudence consisting of universal natural law, and 2) the

personality of the Indians (Anghie, 2004:19). Concerning the first technique, while jurists such as Sepúlveda characterized Indians as analogous to Saracens, heathens, and/or animals by lacking competency and cognition, Vitoria (1532:127, emphases added) repudiates these claims by humanely asserting that:

> the true state of the case is that they are not of unsound mind, but have according to their kind, *the use of reason*. This is clear, because there is a certain method in their affairs, for they have politics which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the *use of reason*: they also have a kind of religion. Further, they make no error in matters which are self-evident to others: this is witness to their *use of reason*.

For Vitoria, the "Indians" not only established their own versions of many institutions he noticed and engaged in Spain but were also capable of determining moral questions. Thus, Vitoria's characterization of the "Indian" as reason-able becomes crucial to his resolution of the problem of jurisdiction as made clear in his statement which declares that "what natural reason has established among all nations is called *jus gentium*" (Vitoria, 1532:151, emphases added). Conversely, and most significantly, it is precisely because they possess reason that they are bound by *jus gentium*. The *Lex Divina* administered by the Pope is (ex)changed by a universal natural law system of *jus gentium* whose rules may be ascertained by *reason* and *willed* by secular sovereign power (Anghie, 2004). In other words, natural law administered by a secular civilian sovereign rather than a divinely appointed vicar becomes the source of international law governing Latin-Europe and areas identified as "outside" the realm of *jus gentium*.

The natural law solving the problem of jurisdiction is based on something similar to a secular state of nature existing at the "beginning of the world" which naturalizes and legitimates a Latin-European system of commerce and penetration into the New World for the reason that Spanish socio-economic practices and institutions are all-encompassing because they are ostensibly supported by doctrines prescribed by Vitoria's *jus gentium* (Anghie, 2004:21). In this way, the gap between both cultures ceases to exist with the development of a "common/universal" legal framework idealizing Latin-European cultural mores *a priori* assuming universal status as a result of naturally appearing to derive from the sphere of natural law. This is made evident when Vitoria (1532:161, emphases added) mentions that while there is an apparent order in "Indian

affairs", it is a deficient order because it fails to meet the universal criteria established by Latin-European natural law. He says:

> Although the aborigines in question are *not wholly unintelligent,* yet they are *little short of that condition,* and so are *unfit to found or administer a lawful State up* to the *standard required* by *human* and *civil claims.* Accordingly, they have *no proper laws nor magistrates,* and are *not even capable* of *controlling* their *family affairs*

In this passage, Vitoria suggests that proper government must be established over the Indians by the Spanish who must govern as "trustees of civilization" over "non-conforming" bodies inhabiting the New World. That is to say that while Vitoria's "novel" jurisprudence appears to promote notions of equality and justice between Europeans and non-Europeans, Vitoria's jurisprudence endorses and legitimizes endless Spanish conquests into American spaces. Vitoria's jurisprudence must be analyzed in context of the realities enforced by the Spanish *conquistadors*. The immoral character of this natural law is made salient when Vitoria mentions that the Spanish have the right under *jus gentium* to travel and sojourn in the New World. He says, "The Spaniards have a right to travel to the lands of the Indians and to sojourn there, so long as they do no harm, and they cannot be prevented by the Indians" (Vitoria, 1532:150). As highlighted by Anghie (2004:21), Vitoria's "innocuous enunciation of a right to travel and sojourn extends finally to the creation of a comprehensive, indeed inescapable system of norms which are inevitably violated by the Indians." This is further made clear by Vitoria when he asserts that "to keep certain people out of the city or province as being enemies, or to expel them when already there, are acts of war" (1532:151). Therefore, any "Indian" resistance to Spanish conquest would amount to an act of aggression that justifies Spaniards using force in self-defense since the "Indian" showcased that they are not "wholly rational" in knowing "what is best for their development".

The second technique complementing the first technique to solve the juridical problem of jurisdiction relies explicitly on cultural differences which creates a gap between the ontologically universal Latin-European and the historically particular non-European which can only be remedied by the intervention of Latin-European interlocutors who are the architects, authors, and subjects of universal natural law. Vitoria's second technique endorses Latin-European rule over "Indians" by specifically relying on cultural differences discerned between both groups of people as a judicial argument legalizing conquest. The personality of the non-European according to Vitoria is very different from the Latin-European because the Indian's specific social and cultural practices are at

odds with the practices required by *jus gentium* – which in effect valorizes Latin-European epistemic and ontological beliefs of *Being*. As highlighted by Anghie (2004:22), the Indian is "schizophrenic, both alike and unlike the Spaniard. The gap described by Vitoria between the Indian and the Spaniard being primarily in cultural is internalized with the 'ideal' universal Indian possessing the capacity of reason and therefore the potential to achieve perfection". The incongruity between the "universal" and the "particular" is thus remedied by engaging in necessary imperial practices to initiate and effect the transformation since "Indian *will* regarding the desirability of such a transformation is irrelevant: the universal norms Vitoria enunciates regulate behavior" (Anghie, 2004:22, emphases added). Therefore, the Spanish acquire extraordinary power by having "the right to intervene" for the sake of saving the "Indian from their self." It could be said that Vitoria was one of the first naturalist jurists to advocate for a "humanitarian intervention" when he claims that the Spanish may act on behalf of the Indian people seen as victims of "Indian rituals" by saying it is "immaterial that all the Indians assent to rules and sacrifices of this kind and do not wish the Spaniards to champion them" (Vitoria, 1532:159). Motivated thus, a Latin-European mode of *Being* is projected as universal in that it is both externalized as the basis for the norms of *jus gentium*, and internalized as it represented the authentic identity of the non-European (Anghie, 2004).

Exclaiming that peoples embodying different modes of *Being* to that of Latin-Europe are not "wholly unintelligent" highlights that these jurists claimed that every individual is in fact governed by a universal law which governs natural law and it is by being endowed with "reason" that we come to find out what law is. It follows that because the conquered are capable of reason, it is acceptable to hold them to be bound by a natural law informing *jus gentium*. Thus, the colonized were included in a universal order and yet at the same time they were excluded from it because they possess an unfit personality to found, organize, and administer a lawful sovereign state. Here, for Vitoria, the doctrine of sovereignty emerges through his attempts to address the problem of cultural difference and sketches the nascent genealogical contours of the legal concept known as "sovereignty" *à la* Westphalia in tandem with "social organization" gradually becoming the principal "civilizational marker" essential in recognizing whether non-Europeans are sovereign civilized law-abiding citizens located in society, or uncivilized barbarians stuck in a lawless state of nature lacking sovereignty. As will be discussed in chapter 2, achieving "sovereign recognition" by assessing "political organization" becomes a marker of "cultural difference" adopted by

positivist jurists of the 18th and 19th century to solidify the gap between civilized and uncivilized cultures. Political organization becomes intrinsically connected with the idea of "citizenship" informing a "state of societal civility" while uncivilized peoples are identified as stuck in a Hobbesian "state of nature" in need of guardianship, tutelage, or more cynically, a defensive imperial war to transition from a "state of war" to "civil society".

1.3 War is Necessary for Cultural Transformation: Revealing the Early Culturally Reductionist Features of *Jus Gentium*

As we have mentioned earlier, violence naturally arises in Vitoria's novel naturalist jurisprudence through the non-Europeans' inevitable violation of the natural law that bounds them. War is the central theme of his lecture entitled *On the Law of War Made by the Spaniards on the Barbarians*, and it is prominently reverted to in comprehending the totality of his jurisprudence. More to the point, wars of conquest as means for rational transformation is noted as necessary for "temporal transition" since it is through exercising violence that is perceived as "constructive" that the transformation of the non-European is achieved. Also, in relation to war, the Vitorian concept of sovereignty is developed in terms of the sovereign's right to wage a *just war* facing a *particular* and/or *different* culture imagined as threatening universal (Latin-European) natural law (Orford, 2003; Koskenniemi, 2002, 2011; Bowden, 2009; Pahuja, 2011). It is through war that the aberrant non-European personality is effaced not in the name of divine law but rather secular natural law. As argued previously, while natural law diminishes the power of the Pope, the power of Vitoria's secular *jus gentium* is administered and consolidated through the authority of the sovereign where he re-introduces Latin-European cultural mores as "universal". This is made clear with Vitoria (1532:156) claiming that "ambassadors are by the law of nations inviolable and the Spaniards are the ambassadors of the Christian peoples. Therefore, the native Indians are bound to give them, at least, a friendly hearing and not to repel them".

Therefore, whatever Vitoria dismissed earlier as being inapplicable to non-Europeans because of divine jurisprudence, is now reintroduced into his system of *jus gentium* as universal natural law. In other words, Indian resistance to adopting European culture is a cause for war not because it violates divine law, but because it violates the *jus gentium* administered by a secular Latin-European sovereign. As cited by Anghie (2004:23), evangelizing under the jurisprudence of Vitoria is authorized not by divine law "but the law of nations, and may be likened now to the secular activities of traveling and trading." Vitoria's discussion of sovereignty is directly linked to

his analysis of the laws of war since it is the sovereign who declares and exercises rights endowed to him by such declaration. War against the non-European possesses a different character from war waged against a civilized adversary, and this point is made clear when Vitoria (1532:181) reverts to arguments developed during the crusades to make his legal, juridical claim. He says:

> And so, when the war is at that pass that the indiscriminate spoliation of all enemy-subjects alike and the seizure of all their goods is justifiable, then it is also justifiable to carry all enemy-subjects off into captivity, whether they be guilty or guiltless. And inasmuch as war with pagans is of this type, seeing that it is perpetual and that they can never make amends for the wrongs and damages they have wrought, it is indubitably lawful to carry off both the children and the women of the Saracens into captivity and slavery.

Vitoria then bases the violation of the laws of war on the fact that Indians are pagan thus resorting to the same reasoning which he previously refuted because it had divine law as its judicial reference instead of natural law. Vitoria rejects the subjective belief in the justness of a war as being enough to render it truly just when he says "were it otherwise, even Turks and Saracens might wage just wars against Christians for they think they are thus rendering God service" (Vitoria, 1532:173). Therefore, by ignoring the issues of subjective belief, Vitoria arrives at his conclusion by establishing an *a priori* proposition that non-Europeans are inherently incapable of waging a just war. According to his jurisprudence then, only Europeans have the inherent personality to wage a just war, and since the prerogative of waging war is in the power of the sovereign then it logically follows that non-Europeans can never truly be sovereign because their cultural dynamics deny them the ability to engage in a civilized, organized, and responsible war. This might seem at odds with his previous lecture; however, it is consistent in that he mentions that Indians who inevitably and invariably violate *jus gentium* are denied the status of the all-powerful sovereign who administers this law (Anghie, 2004:29). To be clear, in Vitoria's earlier passages I quoted he highlights that non-Europeans possess a form of rulership and polities that are organized; however, in his lecture on war he insists that it is only European subjects that recognize the arts and laws of war and ensures that Indians are excluded from the realm of sovereignty by existing simply as objects where sovereignty can exercise its power and dominance to wage war (Anghie, 2004).

This is clear in the passage above where Vitoria legalizes taking possession of non-Europeans as captives – violating the laws of just war – thus adjudicating that non-Europeans are

by definition incapable of waging a just war thereby only exist according to naturalist jurisprudence as violators of the principles of war and more specifically *jus gentium*. The barbaric non-European exists beyond the rules of law, and war against a space lacking sovereignty is perpetual. While being bounded by the law and yet outside of its protection, the non-European becomes the object of the most virulent terrorizing aspects of sovereignty. Vitoria seems to contradict his earlier admissions in previous lectures when he says in *De Indis* that "I personally have no doubt that the Spaniards were bound to employ force and arms in order to continue their work there"; however, he continues "I fear measures were adopted in excess of what is allowed by human and divine law" (1532:158). This contradiction becomes more apparent when we read in his lecture under the heading of *On the Law of War* that "sometimes it is lawful and expedient to kill all the guilty….and this is especially the case against the unbeliever, from whom it is useless ever to hope for a just peace on any terms. And as the only remedy is to destroy all of them who can bear arms against us, provided they have already been in fault" (Vitoria, 1532:186). While a certain respect is to be extended between wars between sovereign (European) powers as highlighted by Vitoria when he says the "overthrow of the enemy's sovereignty and the deposition of lawful and natural princes are utterly savage and inhumane measures", in the case of a war between European identity and the aberrant non-European identity, war acquires a "meta-legal status" where "collateral damage" is not simply legal and permissible, but necessary in order to transform, purify, and ultimately civilize the non-European object because their uncivilized war-like ways naturally violate *jus gentium* (Ōnuma, 1993; Anghie, 2004:27; Bowden, 2013a).

This meta-legal status bounded by cultural differences reifying a *particular* race is most apparent when we notice for instance that "cultural distinctions" legally sanctioned a biological attack to target indigenous groups during the 16th century by conquistador Francisco Pizarro González – famous for leading the Spanish conquest marking the fall of the Inca civilization[33]. Pizarro, during the Renaissance period, is said to have presented peoples of the Americas with variola contaminated clothing in the 16th century (Riedler, 2004). Similarly, Professor Peter d'Errico, describes that during the French-Indian War of the 18th century at the height of Enlightenment, Sir Jeffrey Amherst, the commander of the British forces in North America, proposed to his generals that they would do "well to try to inoculate the Indians by means of blankets, as well as to try every other method that serve to extirpate this execrable race" (Gill, 2017). On June 24th, 1763, one of Amherst's officers known as Captain Ecuyer, provided the

indigenous group with smallpox-laden blankets. This was made clear in Ecuyer's journal where he says responding to Amherst "I hope it will have the desired effect" (Riedler, 2004). Here we notice the inclusive exclusion *dispositif* as a legal-historical fact continuously animating *jus gentium* in that the legal power extended to a sovereign figure legalizes the use of extrajudicial practices on "different cultures" seeking to transform or kill uncivil bodies whether during Pizarro's "naturalist" and/or Amherst's "positivist" juridically backed "civilizing mission".

The idea that war between Europeans being civilized, moral, and just affords legal backing for Europeans to engage in extrajudicial practices of terrorism towards non-Europeans because of their inferior personality and cultural differences continues to play a vital role in legalizing defensive imperial wars to the extent that Latin-European powers are permitted to violate international law to save international law. The "military horizon" is a figurative historicized line drawn in the sand distinguishing civilized Latin-European warfare as embodying qualities of being organized, constrained, and chivalrous from the chaotic nature of the undisciplined and opportunistic primitive warfare practiced by non-European barbarians (Bowden, 2007, 2009). As cited by American anthropologist Harry Holbert Turney-High the "military horizon depends not upon the adequacy of weapons but the adequacy of teamwork, organization, and command" ([1949] 1971: 21). The argument discussed earlier by Vitoria is evident here. Because a perceived temporal primitiveness characterizes modes of *Being* "outside" *jus gentium*, their lack of organization and cooperation as evidenced in their "face painting and sporadic butchery" makes them, according to naturalist jurists, fall short of the "military horizon" (Bowden, 2007:7). Echoing the lecture *on War* by Vitoria, Turney-High mentions that non-Europeans are "not soldiers" and have personalities that are vacant of "the rudiments of the arts of war" ([1949] 1971: 23). This characterization also echoes the words of José de Acosta ([1590], 2002:359) who in his work entitled *Natural and Moral History of the Indies* wrote that "three governments and styles of life have been found among the Indians." The first one is the "chief kind, and the best has been the realm of monarchy, as was that of the Incas and of Moctezuma." The second system of social organization is identified as "free associations or communities where the people are governed by the advice of many, and are like councils. In times of war these elect a captain who is obeyed by a whole tribe or province". The third type of government described by Acosta is "absolutely barbarous, and these are Indians who have neither laws nor king nor fixed dwellings but go in herds like wild animals and savages". It is the third type of government that was generalized as

embodying the whole culture of indigenous peoples in the New World thus justifying a "civilizing mission".

Vitoria's work demonstrates the intrinsic relation between international law and colonialism with his jurisprudence reifying cultural differences thus developing a "secular" distinction between legality and morality. This distinction rationalized revealed law to the extent that the moralization of conquest using secular law became *legal* in explicit violation of revealed law (Anghie, 2004; Orend, 2006; Bowden, 2013a; Abou El Fadl, 2014). This is evident with 17th-century jurist Juan de Solórzano Pereira citing Sepúlveda and Vitoria's *De Indis* to legally sanction a war of dispossession and exploitation against non-Europeans (Anghie, 2004; Bowden, 2013a:159). Non-Europeans would then be beneficiaries of a generous and superior benefactor who under the guise of a "sacred trust in civilization" supposedly prioritizes the well-being of the non-European. Also, Vitoria's jurisprudence demonstrates the centrality of commerce to international law and how a benevolent approach that seeks to include the aberrant non-European within jus gentium is then used as the basis for sanctioning imperial practices to civilize the non-European.

To operationalize this benevolent discourse the practices of the European is identified as liberating, transforming, and humanitarian because of the inferior social mores of the non-European. My argument is that Vitoria is concerned with developing a jurisprudence that can address the problem of order of societies belonging to different cultural systems. As mentioned, he solves this issue by assessing non-European cultures in terms of a universal law of jus gentium which valorizes European personality and demonstrates that the non-European – while endowed with reason – is naturally in breach of international law since their particular history is inferior and naturally clashes with the exclusive universal history informing *jus gentium*. The non-European being endowed with reason yet imagined as temporally degenerative or primitive makes them subject to war and sanctions because of their failure to reach and comply with (liberal-secular) universal standards. It is precisely the different particularities of the non-European peoples that justify the disciplinary (terror) measures of warfare which are aimed at silencing and/or erasing non-European identity and replacing it with a universal identity adhering to Latin-European epistemology. Vitoria's jurisprudence commits to making the particular history of Latin-Europe the general history of the world by decreeing (liberal-secular) culture as "universal" thereby enjoying the full rights of sovereignty and perpetual peace. However, cultural practices located in

non-European spaces are temporally condemned to perpetual legal warfare by being identified as stagnating in a primitive past, therefore, imagined as inhabiting objects temporally positioned as "culturally suitable" to suffer the consequences of redemptive measures (i.e., human carnage and forced displacement) adjudicated by *sovereign-will* purportedly necessary for "temporal liberation".

My argument in this section is that in the works of naturalist jurists we notice crucial juridical themes and issues that continue to preoccupy the discipline of international law. Vitoria reverts to a natural conception of law to characterize the Indian as primitive and therefore lacking in full legal personality. This lack in personality is then utilized as the foundation developing doctrinal legal principles based on natural law to justify European intervention with the objective of civilizing the non-European. The work of Vitoria is important in that it highlights the importance of cultural difference as playing a vital role from the beginning of the discipline of international law in "organizing" and "ordering" races. While Vitoria is perceived as a champion of the rights of the Indians, his work is rarely read as being a particularly insidious justification of their conquest because it is presented in the language of liberation and equality (Anghie, 2004:28). Therefore, Vitoria is not concerned with the issue of "order among sovereign states" but with the "problem of order among societies belonging to two different cultural systems" (Anghie, 2004:28). Vitoria resolves the issue of cultural differences between Europeans and non-Europeans by assessing each society in terms of a universal natural law, then proceeds to demonstrate that the Indians violate universal natural law. Cultural difference plays a crucial role in the work of Vitoria and directly structures the notions of personality and sovereignty. In the case of the former, it was highlighted that a "natural" difference concerning social practices and customs of each society is postulated between the Indian and the Spanish. By claiming that Indians have reason he formulates the system of jus gentium which the Indians – being reasonable – would be bound by and comprehend. However, with Vitoria emphasizing that Indians are uncivilized and represent a backward culture, he proceeds to legalize conquest because their personality naturally violates universal law.

In other words, it is whatever denotes the "Indian" as being different which justifies the disciplinary measures of war which has an objective of erasing and silencing non-European identity and replacing it with the universal identity of the European. In the case of denying non-Europeans sovereignty and how order was to be created among sovereign states, Vitoria develops several concepts and relationships regarding law, sovereignty, and culture which he then

constitutes into a jurisprudence that executes a series of maneuvers by which an idealized European culture becomes universally binding. These maneuvers elaborate a legal framework which lends itself to a peculiar imperialist version of the discipline as it prevents any inquiry into the history of the colonial world which was explicitly banned from the juridical and social order (Anghie, 2004; Koskenniemi, 2002, 2011, 2012; Bowden, 2009). The universalization of European personality, therefore, denies non-Europeans sovereignty by transforming their resistance into legal aggression thereby justifying European powers waging a limitless war on behalf of protecting Latin-European sovereignty. The interactions Vitoria analyses between the Europeans and the non-Europeans makes salient that it was not an interaction among equal sovereign powers, but between sovereign European powers and non-Europeans denied sovereignty. Once the determination that non-Europeans were not sovereign was accepted, naturalist jurisprudence proceeded to present itself – by recycling or formulating novel juridical techniques – as the grand redeeming project of bringing marginalized cultures into the realm of sovereignty. It is here, in this naturalist framework, that the history of the encountered non-European world would simply comprise the history of the civilizing mission.

2. Positivist Jurisprudence: Legal-Historical Concepts founded on a "Dynamic of Cultural Difference" Continue to Inform *Jus Gentium*

The universalization of an international law maintaining the superiority of Latin-European philosophical theology took place at the end of the "long nineteenth century" (Hobsbawm, 1987; Frank, 1998; Anghie, 2004; Bowden, 2009; Koskenniemi, 2012). Celebrated historian Eric Hobsbawm termed this period of conquest as the *Age of Empire* which resulted in the forced transformation and assimilation of all non-European peoples into a system of law authored by and derived from (rational) liberal-secular ideas of governance and sociability. Therefore, the 19th century was a familiar history to *jus gentium* in that while positivism replaced naturalism as the principal jurisprudent school, it included jurists that continued to emphasize existing laws and/or reformulated new legal principles in order to deal with the *problématique* of maintaining the "unbridgeable" cultural gap between the Occident as subject of (Latin-European) modernity, and the Oriental as object attempting to modernize. This section is interested in examining the legal-history informing the jurisprudence of positivism elaborated by jurists to manage the expansion of Latin-European epistemology and the various peoples and societies it dispossessed, subjugated, and transformed during such sacred "civilizing mission". Thus, I seek to highlight the symbiotic

relationship between colonialism and positivism and the continued significance of such relationship on the discipline as a whole since the central theoretical inquiry generated by positivist scholars was/and continues to be: how is order created and maintained among recognized sovereign societies?

According to Anghie (2004:34), the issue of denying non-Europeans sovereignty poses no "conceptual difficulties for the positivist jurist who basically resolves the issue by arguing that the sovereign state can do as it wishes with regard to the non-sovereign entity which lacks the legal personality to assert any legal opposition." Scholars critical of positivist law exclusively informing the discipline of IR and IL highlight that the salient mark of positivist jurisprudence on the discipline is that it effectively legalized sovereign Latin-European powers subjugating and (under)developing peoples of the Third World thus revealing the symbiotic relationship between modernity as a (rational) liberal-secular *telos* and coloniality (Alexandrowicz, 1967; Elias, 1972; Escobar, 1995; Grovogui, 1996; Frank, 1998; Koskenniemi, 2002; Anghie, 2004; Mamdani, 2004; Quijano, 2007; Mignolo, 2013; Al-Kassimi, 2018). Positivist jurists developed laws relating to how order is to be created among entities characterized as belonging to different cultural systems while postulating a gap that is principally understood in terms of a "dynamic of cultural difference" between the civilized European as subject of sovereignty and the uncivilized non-European world denied sovereignty. With the gap established, positivist jurists devised a series of legal techniques attempting to bridge the gap between the two "different" temporal worlds thereby highlighting a hierarchical relationship between cultural mores and sovereignty becoming identified with a specific set of cultural practices to the exclusion of others.

In other words, while sovereignty is traditionally understood as a comprehensive 'modern' Enlightened Latin-European idea which rolled out into the darkest parts of the world whether, in Asia, Africa, or the Americas, I seek to highlight how sovereignty – the intellectual brainchild of positivism – was shaped by the colonial confrontation. That is to say that we cannot account for how sovereignty became and continues to be the legal political referent object *du jour* without analyzing the constitutive effect of colonialism on sovereignty. Colonialism, according to TWAIL "was not an example of the application of sovereignty; rather, sovereignty was constituted through colonialism" because of the normative demands of the sacred "ideal of civilization" (Anghie, 2004:38)[34]. French linguist Jean Starobinski (1993:31) mentions that "as a value, civilization constitutes a political and moral norm. It is the criterion against which barbarity, or non-

civilization, is judged and condemned". Similarly, Pagden argues that civilization "describes a state, social, political, cultural, aesthetic – even moral and physical - which is held to be the optimum condition for all [hu]mankind, and this involves the implicit claim that only the civilized can know what it is to be civilized" (1988:33). The argument stipulating that only a particular mode of *Being* recognizes what it is to be "civilized" points to the intrinsic link between sovereignty and colonialism, but also marks the advent of Latin-European "self-reflection, the emergence of consciousness that thinks it understands the nature of its own activity" (Starobinski, 1993:32). However, Elias ([1939], 2000:5) reminds us that it is not a case of Western civilization as just "one among equals, for the very concept of civilization expresses the self-consciousness of the West…It sums up everything in which Western society of the last two or three centuries believes itself superior to earlier societies or 'more primitive' contemporary ones" (Bowden, 2016:5).

Included in this civilizational teleological hubris is the art and ethics of war mentioned earlier. Since the time of naturalist jurisprudence, Latin-European philosophical theology laid claim to a monopoly on the moral high ground when it comes to questions of *jus ad bellum* (causes of war) and *jus in bello* (laws governing the conduct of war). The teleological narrative of a "standard of civilization" is therefore important to deconstruct since the abstract noun of "civilization" – meaning "civilized condition" – only entered legal scholastics in the 18th century with jurists influenced by anthropology and ethnology using "civilization" as a legal discursive teleological means to draw a distinction between temporally progressive and temporally primitive entities engaging in war (Gong, 1984; Bowden, 2007). One of the most important markers of whether a society is civilized – therefore "inside" *jus gentium* – is their conduct in war. For instance, Mill ([1836] 1962:55) makes it clear that one of the issues why non-European are uncivilized is because they are incapable of "acting in concert" especially in a theatre of war. Mill states "look even at war, the most serious business of a barbarous people; see what a figure rude nations, or semi-civilized and enslaved nations, have made against civilized ones, from Marathon downwards. Why? Because discipline is more powerful than numbers and discipline that is, perfect co-operation, is an attribute of civilization…see how incapable half-savages are of co-operation" ([1836] 1962:55).

A more contemporary legal-historical event making salient how laws of war are said to not apply to non-civilized peoples, especially Arabs, arose not even a century ago by American jurist

Quincy Wright on October 1925. In the wake of French bombardment of Damascus, Wright asked: "does international law require the application of laws of war to people of a different civilization?" (1926:266). Elbridge Colby, a captain in the U.S. army, replied:

> the distinction exists…it is based on a difference in methods of waging war and on different doctrines of decency in war. When combatants are practically identical among a people, and savage or semi-savage people take advantage of this identity to effect ruses, surprises, and massacres on the 'regular' enemies, commanders must attack their problems in an entirely different way from those in which they proceed against Western peoples. When a war is between 'regular' troops and what are termed 'irregular' troops the mind must approach differently all matter of strategy and tactic, and, necessarily also, matters of rules of war (as cited in Bowden, 2007:10).

Wright equated the practices adopted by the British and French mandate in Arabia as "a policy of terrorism" (Wright, 1926:273). Admitting that the policies are terrorizing further solidifies the argument advanced by positivist legal deductions claiming that uncivilized peoples cannot be dealt with using *just war* doctrine or the "military horizon" because they are "outside" law, therefore, extrajudicial practices are *legally* sanctioned since those are the only methods they are allegedly familiar with. In support of this argument, Colby drew on a range of naturalist and positivist jurists, including military authorities, to demonstrate that Arabs could not be defeated otherwise. Colonel Fuller of the British army in 1923 wrote in *The Reformation of War* that in "small wars against uncivilized nations, the form of warfare to be adopted must tone with the *shade of culture* existing in the land, by which I mean that against peoples possessing a low civilization war must be more brutal in type" (1923:191, emphases added). Colby (1927:280) further argues by quoting the famous 1914 *British Manual of Military Law* that the "rules of international law apply only to warfare between civilized nations, where both parties understand them and are prepared to carry them out. They do not apply in wars with uncivilized States and tribes". Colby concludes by highlighting that "the real essence of the matter is that devastation and annihilation is the principal method of warfare that savage tribes know" (Colby, 1927:285). This highlights how mythical cultural differences were transformed into legal differences thus legally extending Western powers the right to practice extrajudicial measures *on* the Arab body since the objective of redemptive measures are adjudicated to transform and purify the personality of the Oriental desert-dweller into a civilized Latin-European personality.

The aforementioned legal-historical statements adjudicating "different" forms of violence by conditioning the "extent of violence" on the subject's temporal placement on the "spectrum of civilization" is intrinsically related to the *ratiocinated* legal doctrine known as "sovereign recognition" and "order among nations." This becomes apparent when we notice the racialized vocabulary extended by positivist jurists to denigrate non-European people thereby presenting them as suitable objects for conquest for the furtherance of the civilizing mission – the discharge of the white man's burden (Anghie, 2004, 2007; Bowden, 2009). The analytical tools and juridical doctrines elaborated by jurists transforming cultural differences into legal doctrines emphasizes the idea that the issue of *race* and *culture* is central to the very conceptualization and project of positivist jurisprudence. Further to the point, positivists dealt with different cultural encounters by inventing doctrines and techniques that could legally and coherently subordinate and exclude the non-European inferior personality since the colonial encounter posed a significant and insuperable set of challenges to the self-image of international law, but more specifically the self-image of the new jurisprudence identified as positivism (Schmidt, 1998; Anghie, 2004; Koskenniemi, 2012).

In the naturalist framework of jurisprudence, the sovereign administered a system of natural law by which it was bound, in contrast, positivism asserted not only that the sovereign manages and enforces the law, but that law itself is the creation and manifestation of *sovereign-will* (Anghie, 2004:41). The naturalist jurist of international law in the 16th and 17th century asserted that a *jus gentium* deriving from human reason applied to all peoples, whether European or non-European. However, positivist international law distinguished between civilized and non-civilized states and asserted that international law applies only to sovereign states which comprised the civilized "family of nations" (Beckett, 2003; Koskenniemi, 2002, 2012; Anghie, 2004; Bowden, 2009). Therefore, with the sovereign being the foundation of positivist jurisprudence, positivist lawyers established a new legal framework that dealt with international socio-economic issues by producing a vocabulary, a set of constraints, and ahistorical considerations which shaped and were shaped by an entirely newly (re)constructed *systema jus gentium* based on the doctrine of sovereignty.

Early jurists such as Vitoria made a distinction between natural law and human law. The former consisted of a set of transcendental principles which could be identified through the use of natural human reason (Anghie, 2004:10). The latter, in contrast, was created by civil political administration, and it was this "*de facto*" secularization of law that positivism adopted to extend

and elaborate its legal jurisprudent framework. Naturalists identified with the principles of justice and the notion that all human activity was bound by an overarching morality – therefore sovereign states in a naturalist framework were bound by the principles of natural law (Tuck, 1999; Anghie, 2004). A gradual ontological shift towards positivism became evident with the work of Vattel in 1758 entitled *The Law of Nations* – while paying homage to naturalist cannons – emphasizing the power and authority of the sovereign by raising doubts whether international law could bind the sovereign or that there was a law higher than sovereign law[35] (Jouannet, 2009). Overall, however, the most influential jurists I will be referring to over the 18th and 19th century (i.e., Wheaton, Westlake, Lorimer, and Austin) are exclusively positivist in that they reconstituted the entire legal system to fit the newly developed Latin-European jurisprudent law claiming that the sovereign state is the foundation of the entire juridical system. Positivist jurists thought it to be *passé* and "on the wrong side of law" to ascertain that sovereign states were bound by an overarching natural law guided by a higher morality. In other words, the rules of (a Latin-European) international law – according to positivists – were to be discovered not by speculative inquiries into the nature of justice but by studying the actual behavior of states and laws which they created (Anghie, 2004:43).

It should be evident that positivist jurists who follow a legal tradition claiming that the sovereign is the ultimate source where all power resides, laws derive, and security guaranteed, are adhering to a Hobbesian philosophical tradition claiming that for a society to be-come, individuals would need to enter in a social contract by relinquishing their "natural freedom"[36]. By leaving their state of nature, they enter a "civil society" where the sovereign state assures their security, freedom, and liberty. Jurists like John Austin (1954:133) held that "laws properly so called are a species of commands. But, being a command, every law properly so called flows from a determinate source". Therefore, to Austin like Hobbes, that determinate organizational source was the sovereign[37]. Austin's positivist jurisprudence explicitly highlights the distinction between law and morality which international positivist lawyers took pride in having rid the discipline of with insupportable arguments regarding natural law and its associated idea of higher morality (Anghie, 2004:44). Another important racialized concept developed by positivist jurists alongside sovereignty is the concept of *society*. Society is the central concept used by virtually all international lawyers in the period of the 18th century – arguably until this day – in their efforts to suggest the existence of

rules observed and protected by a sovereign supreme authority. Westlake (1894:1-2) proclaims that:

> international law is the body of rules prevailing between states. States form a society, the members of which claim from each other the observance of certain lines of conduct, capable of being expressed in general terms as rules and hold themselves justified in mutually compelling such observance, by force if necessary; also that in such society the lines of conduct in question are observed with more or less regularity, either as the result of compulsion or in accordance with the sentiments which would support compulsion in case of need.

This positivist explanation of international law posits that *sovereignty* is important inasmuch as society since *society* is constituted by sovereign states. Put differently, it is because sovereign states exist *in society* that a *jus gentium* can claim to be law. This is cited by Westlake (1894:3) when he says "Without society no law, without law no society. When we assert that there is such thing as international law, we assert that there is a society of states: when we recognize that there is a society of states, we recognize that there is international law". Therefore, "society", "family", and "community" of nations became fundamental "civil" signifiers along with sovereignty in constructing a legal definitional framework informing positivist jurisprudence stipulating an unbridgeable cultural gap between a rational mode of *Being* deemed temporally progressive, in contrast to an irrational mode of *Being* denied sovereignty. Society then provides the matrix of ideas which "allied with sovereignty establish a positivist international law order" (Anghie, 2004:48). It is important to note that the idea of society assumes membership and membership assumes that states can only be accepted as part of *society* if they agree and abide by specific cultural and political norms (Anghie, 2004). It is then the concept of society with its cultural relativist tendencies which enabled the formulation and elaboration of the doctrine known as "sovereign recognition" which takes into consideration various ahistorical cultural distinctions that *a priori* rejects non-European membership in the "family of nations" maintained by *jus gentium*. Non-Europeans were deemed to be "outside" society because they were inept in following and/or developing "civil laws" – thus denied sovereignty. Oppenheim's remarks on sovereignty being a status arrogated to Latin-European society has had an enduring significance on the discipline especially since he is of the opinion that non-European spaces are "not-full Sovereign States" (Oppenheim, 1912:154). More specifically, he says concerning sovereignty that "[I]t will be seen that there exists perhaps no conception, the meaning of which is more

controversial than that of sovereignty. It is an indisputable fact that this conception from the moment when it was introduced into political science until the present day, has never had a meaning which was *universally* agreed upon" (Oppenheim,1912:129, emphases added).

The positivist scientific legal inquiry elaborated by positivist jurists made legally possible the classification and categorization of different cultures as civilized and non-civilized thus proceeding to legally sanction extrajudicial measures ostensibly necessary for temporally stagnant non-Europeans to reach the *telos* of history – Latin-European civilization. While jurists aligned with the idea that jurisprudence could not achieve the same results as the "natural sciences", positivist jurists proceeded to engage in what they called a "scientific inquiry" to redefine their discipline in ways which appeared compatible with the scientific framework (Anghie, 2004:49). That is to say that while international law is concerned with the human sciences and could not be studied in the same way as natural sciences, it consistently identified itself as a science with Westlake, similar to Oppenheim considering international law as being a science "among other sciences" (Westlake, 1894:vi). This is compatible with the continued reference made by international jurists of the time referring to international law as a "science" (Sugarman, 1991; Schmidt, 1998; Anghie, 2004). Therefore, the "scientific" self-image of *jus gentium* is based on a secular philosophical inquiry consisting of a "rigorous" and "rational" quantitative research method elaborating the development of positivist jurisprudence.

The scientific self-image of positivist jurists provided lawyers with problem-solving techniques to identify and interpret relevant forms of non-European state behavior in an anthropological judgement that denied them coevalness. In the 18th and 19th century, denying coevalness represented the studied object – the non-European in this case – being perceived as stuck in a "state of nature" with only the expert, the Latin-European anthropologist, knowing how to order, progress, and civilize the informant. This linear conceptualization of time hastened the scientific image of international law being a science because of the wide range of cultural encounters during the 18th and 19th century which according to Anghie (2004:49) created "a general flux and confusion of international relations" thus requiring an elaboration of new scientific doctrines to "legally" categorize and classify different cultures. Here we notice a continuum between naturalism and positivism with the latter developing a methodology that created racial and cultural categories to classify non-European cultures. This methodology later became associated with producing "scientifically racist" and/or "culturally relativist" legal claims

to justify colonial interventions. The scientific stature of international law was proclaimed by Lawrence when he said that international lawyers of the 19th century "produced order from chaos, and made International Law into a science, instead of a shapeless mass of undigested and sometimes inconsistent rules" (1895:94)[38]. The scientific image adhered to by positivists becomes clear with Lawrence mentioning that order could be established through classification, in both the legal phenomena of state behavior, and of the rules of international law itself.

Therefore, with law being concerned with "the classification of institutions and facts", and since possessing law is the legal channel to achieve "order" and a "sovereign society", then "scientific facts" are elaborated by positivist jurists with the broader task to classify and arrange these facts in an effort to develop a hierarchical, coherent, and overarching international system of law (Anghie, 2004; Agathangelou and Killian, 2016). The scientific methodology developed by positivists favored a move towards abstraction preferring a propensity to rely on the formulation of categories and their systematic exposition as a means of preserving the already-developed "order among (Latin-European) sovereign states" thereby arriving at the accurate and precise legal "technical solution" to any non-European scientific (cultural) problem.

2.2 Positivist Jurists Define, Classify, & Exclude Non-European People as *Temporally* "Outside" *Jus Gentium*

The legal-historical concepts and classifications positivist jurists employed to "order" non-European histories, cultures, and societies was one of the central features operationalizing the binary between civilized and uncivilized peoples (Anghie, 2004:52, 2009; Bowden, 2009). With positivists repudiating the naturalist assumption that a universal natural law governs Europeans and non-Europeans alike, 19th century jurists such as Wheaton claimed that international law was the exclusive province of civilized societies. Wheaton declares that the "law of nations is that which is observed, in accordance with the light of reason, between nations, if not among all, at least certainly among the greater part, and those the most civilized" (1863:17). While Vitoria highlighted that a universal law governed all peoples in contrast to positivist jurists, both jurisprudent schools asserted a cultural gap maintaining Latin-European civilization as temporally progressive, while non-Europeans are temporally primitive. For positivists, this "reductionist *chronos* gap" was to be bridged by explicitly imposing Latin-European philosophical theology – therefore a particular civilization – on temporally primitive cultures identified as positioned "outside" the realm of *jus gentium*. It was asserted that since civilization is chronologically and

spatially situated in Latin-European "things, ideas, and experiences", this cultural judgement (pre)destined "modern secular law" as being the exclusive "universal" *nomos*. With law being arrogated to the *Occidental*, the *Oriental/Indian* was naturally excluded from the realm of law and deprived of reason-ability to assert any rights or constraints cognizable as legally binding. In its most extreme form, positivist jurists asserted that relations between Europeans and non-Europeans occurred "outside" the realm of law (Anghie, 2004, 2009; Beckett, 2003; Bowden, 2009, 2013). As a matter of "scientific fact," positivists were vexed with naturalist legal assumptions precisely because they failed to classify and distinguish between European civility and non-European incivility. Westlake claims that "No theorist on law who is pleased to imagine a state of nature independent of human institutions can introduce into his picture a difference between civilized and uncivilized man, because it is just in the presence or absence of certain institutions or in their greater or less perfection, that that difference consists for the lawyer" (1894:137).

The importance of a temporal "civil distinction" was crucial for positivist jurisprudence to the point that the Hobbesian concept of the "state of nature" became epistemologically lacking in rigor and precision because it lacked this explicit central cultural distinction. Put bluntly, naturalists believed in the "secularization" of law revealed in scriptures by valorizing *reason*, while positivists believed that by reifying reason over revelation, law would be enforced by societies and institutions that are perceived as scientifically non-transcendental (Guénon, 1927, 1932; Abou El Fadl, 2014). Once the connection between law and the cultural *qualité* embodying institutions had been established "it followed from this premise that jurists could focus on the *character* of institutions, a shift which facilitated the *racialization* of law by delimiting the notion of law to very *specific* European institutions" (Anghie 2004:55, emphases added). As for the political implications following this distinction, positivists devised a series of formal doctrines that extended explicit racial and cultural mores to decree certain states civilized, and therefore sovereign, and other states as uncivilized and therefore denied sovereignty. With non-European subjects imagined as lacking legal personality, these "non-societies" were powerless in advancing any legally observed objection to their dispossession and were reduced to objects in need of civil tutelage. The classification between civilized and uncivilized peoples legitimized conquest as legal and decreed that lands inhabited by peoples regarded as temporally backward consists of "geographies" or "lawless lands" (i.e., *terrae nullius*). Paradoxically, these doctrines highlight how

"unscientific" positivist jurisprudence is because Latin-European powers continued to engage in commercial ventures with non-Europeans yet still denying them legal status.

Likewise, positivist jurists such as Wheaton, Oppenheim, and Westlake identified "protected" non-Europeans as "quasi-sovereign" or "not-fully sovereign" to enable them to transfer property (Albaharna, 1968:79). According to Oppenheim, "independence" as a civilized trait has two main elements, "internal sovereignty and external sovereignty", and it is also a contingent legal status based on the cultural *qualité* of the "international personality" (as cited in Albaharna, 1968:79). According to Holland and Oppenheim, if an "international personality" is recognized as not fully sovereign then it is a "protected state" identified as an "inferior state…recognized as an *international unit*, though of an imperfect type" (as cited in Albaharna, 1968:79, emphases added). This is a racialized discourse familiar to naturalist jurisprudence stating that non-European personality is not wholly unintelligent and that they do have reason; but such "reason" is recognized so that the non-European may be bound by an international law for the acquisition of property. It was not only the "style" of cultivation of land adopted by non-Europeans that was a legal pretext for intervention by Latin-Europeans but also because of the "sacred trust of civilization." Lorimer (1883:28) insisted that "colonisation, and the reclamation of barbarians and savages, if possible in point of fact, are duties morally and jurally inevitable; and where circumstances demand the application of physical force, they fall within necessary objects of war." Then, the test of civilization was adhering to Latin-European universalized standards and the failure to do so denoted a lack of civilization on the part of non-European subjects. This cultural gap justified "humanitarian intervention" for the sake of civilizing and transforming non-European peoples as international lawyers of the late 19th century were accorded the title of the "Gentle civilizers" and had no doubt about the superiority of European culture over alternative ways of life thus regularly supporting colonial subjugation and plunder (Beckett, 2003; Anghie, 2004; Bowden, 2009; Koskenniemi, 2016:415).

The juridical idea maintained by *jus gentium* stipulating that internally and externally recognized sovereigns – adhering to Latin-European civilization – have a *just war* advantage over peoples imagined as temporally degenerative has a long history when it comes to matters of conquest (Orend, 2006; Bowden, 2013a). G.W.F. Hegel wrote that "it arises above all in the Iliad where the Greeks take the field against the Asiatic and thereby fight in the first epic battles in the tremendous opposition that led to the wars which constitute in Greek history a turning point in

world history" (1975:1061). Hegel highlights that the epics of the past describe the triumph of the West over the East; the triumph of European civilization and the individual beauty of reason that sets limits to itself (Hegel, 1975; Bowden, 2013a). Hegel (1975:1061) makes this clear when he says that the "inner dialectic" of a civilized society drives it "to push beyond its own limits and seeks markets" (1975:1061), while spaces "generally backward in industry" (Hegel, 1958:246) generate the "colonizing activity to which the mature civil society is driven" (Hegel, 1958:247). The encounter between Europeans and non-Europeans being violent and domineering is largely seen as a natural and inevitable series of events that conforms to patterns of a particular world history reifying a dynamic of cultural difference enforcing a *telos* of Latin-European civilization. Krieken (1999:309) cites that international law is intimately related to a civilizing process that works in tandem with practicing all kinds of violence since the process seeks to eliminate "the threat they pose to the fragility of the achievements of civilization…it is this aggression which then underlies the associated civilizing offensives."

Extrajudicial violence was legally exercised on groups perceived as "alien" or "foreign" to the prevailing "recognized personality" informing the "standard of civilization". This echoes not only Kant and other positivist jurists, but J.S. Mill ([1859] 1962:407) who is cited to have said that a "civilized government cannot help having barbarous neighbors" and when it does "it either finds itself obliged to conquer them or to assert so much authority over them" because "barbarians have no rights as a nation". As a result of this dynamic of cultural difference requiring "benevolent empire", Mill mentions that the criticisms brought against French and British colonial practices are based "on a wrong principle" ([1859] 1962:407). It was often the case that European conquerors believed that they knew the exotic-other better than the people inhabiting "exotic land" therefore they were "best equipped to act as their overseers" (Bowden, 2013a:163). This idea was articulated in the 20th century by Arthur Balfour in the British House of Commons when he said "we know the civilization of Egypt better than we know the civilization of any other country. We know it farther back; we know it more intimately; we know more about it" (Bowden, 2013a:163). The idea that non-Europeans – especially Arabs – need guardians, tutelage, and lessons in civilization was further highlighted with Balfour stating that "western nations as soon as they emerge into history show the beginning of those capacities for self-government" (Bowden, 2013a:163), however beyond Europe he exclaims "one may look through the whole history of the Orientals…and you never find traces of self-government…Conqueror has succeeded conqueror;

one domination has followed another; but never in all the revolutions of fate and fortune have you seen one of those nations of its own motion establish what we, from a Western point of view, call self-government. That is the fact" (Bowden, 2013a:163).

This Latin-European schizophrenia[39] is most accurately identified in Lorimer's work on the law of nations which provides a hierarchical view of human communities as an indispensable aspect of positivist jurisprudence. Lorimer is explicit in identifying any culture that is different to Europe as an existential threat to Europe. This atomistic racial methodology of causation espoused by positivist jurists reveals their inclinations at times to flirt with natural evolutionary science to operationalize their jurisprudence. Lorimer is not shy in vehemently classifying cultures of "Semitic races" such as Jews and Arabs as a mode of *Being* naturally threatening Latin-European philosophical theology (Lorimer, 1883). According to Lorimer, Europe ruled the world, and this was because of what he termed the "Aryan races" and "European state form" (Koskenniemi, 2016:416). Positive law according to him was important above all because it was declaratory of something real. He says "there can be no more two positive laws than there can be two straight lines between the same points" (Lorimer, 1883:16; Koskenniemi, 2016). Lorimer attains this legal judgment by elaborating the "*de facto*" principle and the "doctrine of recognition". In the case of the former, he highlights that facts do not declare their own value but must be taken cognizance of and then be recognized as expressions of some essence or tendency by other states. This is carried out in a scientific fashion in knowing that recognition is not simply the expression of an opinion on some fact but is based on the fact that the "*de facto* existence of the nation being given, its *de jure* recognition by other states becomes a right inherent in it, and a duty incumbent upon them" (Lorimer, 1883:24; Koskenniemi, 2016:420, emphases added). In addition, Lorimer's doctrine of recognition identifies Latin-Europe's temporal position and cartographic coordinates as including societies of the highest moral tones and that only opinions deliberated and experiences practiced adhering to Latin-European philosophical theology should be *legally* taken into account. In the *Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities*, Lorimer enlisted anthropologically charged racial categories to classify and characterize non-Europeans as lesser in value. He says "for our purposes, the single life of Socrates is of greater value than the whole existence of the Negro race" (Lorimer, 1883:53).

Lorimer elaborated three types of "recognitions" based on three levels of human society: civilized, barbarian, and savage. Civilized status was accorded to Latin-European societies and

settler colonialists by extending them titles and the freedom to sojourn and engage in trade since their identities represented civilized political society (Lorimer, 1883:103; Koskenniemi, 2016:421). In its particular application to uncivilized states, William Edward Hall declares similar to Lorimer that recognition takes place when as "a state is brought by increasing civilization within the realm of law" (Hall, 1884:83). However, until that stage is reached non-Europeans are *de facto* excluded from the just application of the doctrine as it operates in the European realm which is classified as internally and externally sovereign. Lorimer also makes this clear when he says "the right of undeveloped races, like the right of undeveloped individuals, is a right not to recognition as to what they are not, but to guardianship – that is, to guidance – in becoming that to which they are capable, in realizing their special ideals" (1883:157). Similarly, the "test of civilization" articulated by John Westlake in 1894 while holding the Whewell Professorship of International Law at the University of Cambridge declares that:

> when people of European race come into contact with American or African tribes, the prime necessity is a government under the protection of which the former may carry on the complex life to which they have been accustomed in their homes, which may prevent that life from being disturbed by contests between different European powers for supremacy on the same soil, and which may protect the natives in the enjoyment of a security and well being at least not less than they had enjoyed before the arrival of the strangers. *Can the native furnish such a government, or can it be looked for from the European alone? In the answer to that question lies, for international law, the difference between civilization and the want of it* (1894:141, emphases added).

Westlake is highlighting that Latin-European Enlightenment denotes the right of a state to establish its own system of government within its territory; however, and most importantly, in the case of the non-European "unit", its "internal" system had to comply with the "external" Latin-European standard of civilization that in effect presupposed a European presence within that polity. That is to say, non-European spaces had to shed away their supposed inferior civilization which created a contaminated "society" and instead furnish European modalities of governance, economics, and sociology to be identified as civilized and "inside" international law. It is here that we begin noticing the importance of the concept of *society* as being integral to the definition of sovereignty. The task of defining sovereignty was as fundamental to positivist jurists as it was to define what *qualité* of people are rational to comprise, and develop a society[40].

Westlake makes a distinction between European and non-European cultural personalities by (de)valuing non-European societies using scientific atomizing analogies. He says, "Our *international society* exercises the right of admitting outside states to parts of its international law without necessary admitting them to the whole of it" (Westlake, 1894:82; emphases added). Jurists such as Westlake and Lorimer argued that the legal capacity of an entity was pre-determined by the degree of civilization it had attained which led Westlake (1894:145, emphases added), similar to Lorimer and Oppenheim, to highlight that sovereignty was acquired not "in treaties with natives, but in the nature of the case and compliance with conditions *recognized* by the civilized world". That is to say, non-Europeans having cultural personalities at odds with Latin-Europe denied them sovereign recognition and sociable capabilities even though European commercial ventures were being conducted. Lawrence – perhaps unaware that he is highlighting the limit of positivist methodology – asserted when discussing the question on how an entity is to be admitted into *international society* that "a certain degree of civilization is necessary, although it is difficult to define the exact amount" (1894:58). And concerning whether it would suffice for a non-European society to simply claim that it wants to be "bound by international law" to become a member of *jus gentium* (i.e., international society) he said "in matters of this kind, no general rule can be laid down" (1894:59).

Cultural differences being vital for passing the "test of civilization" is most apparent when Westlake argues that Asiatic empires such as the great Osmanli Caliphate were capable of "passing" the test only if Europeans sojourning in the empire are subject to the jurisdiction of a European consul rather than subjects to (Osmanli) local laws. According to Westlake (1894:170; Anghie, 2004), this destined that *jus gentium* had to merely "take account" of Asiatic societies rather than accept them as members of the "family of nations" or "international society". According to positivist jurists, European citizens living or trading abroad were not to be tried or convicted using a (backward) jurisprudent system founded on *nomos* sourcing divine law instead of a secular constitution (Beckett, 2003; Anghie, 2004; Abou El Fadl, 2014). It is here that treaties of capitulation, as a legal-historical case, began acquiring a derogatory connotation in the 19th century since one of the greatest civilizations upheld by the Osmanli Caliphate was humiliated and forced to sign treaties that gave European powers extra-territorial jurisdiction over the activities of their own citizens sojourning in Osmanli territory and expanded unequal economic policies (Rodinson, 1977; Goffman, 2002; Anghie, 2004; Abou-El-Haj, 2005; Pamuk, 2010; Akçam,

2012)[41]. For instance, the Balta Liman treaty of 1838 also known as the Anglo-Ottoman treaty was according to the UK the most liberal – therefore civilized – agreement based on classical liberal-capitalist concepts of free market, comparative advantage, and the abolishment of monopolies. However, Osmanli jurists and economic ministers beg to differ on its civilized trait. Although the treaty undeniably increased trade, imports into the country increased exponentially thereby crippling Osmanli local exporting industry[42] (Issawi, 1980; Goffman, 2002; Pamuk, 2010; Necla, 2011:25). Furthermore, with international law identified as engaging in a "natural scientific inquiry", the jurisprudence *du jour* "dealt with the question of defining the proper subjects of international law accorded sovereign status" (Anghie, 2004:56). Lawrence defines sovereignty as highlighted in the opening quote of this chapter as being linked to the control over territory by stating that "international law regards states as political units possessed of proprietary rights over definite portions of the earth's surface. So entirely is its conception of a state bound up with the notion of territorial possession that it would be impossible for a nomadic tribe, even if highly organized and civilized, to come under its provisions" (1895:136).

However, what became clear to Lawrence and other positivists is that several peoples around the world met this requirement of territorial control which then posed a threat to the structural coherence of positivist jurisprudence. For instance, Arab spaces in Africa and Asia met the requirement of territorial control under the Arab-Islamic notion of Caliphate and *Ummah* however these concepts were perceived by positivist jurists as being inferior governing concepts to Europe because their source is not "secular law" (Goffman, 2002; Beckett, 2003; Abou El Fadl, 2014). Also, in the Indies according to Alexandrowitz (1967:14), all the major communities in "India as well as elsewhere in the East Indies were politically organized: they were governed by their Sovereigns, they had their legal systems and lived according to centuries-old cultural traditions" (Anghie, 2004). Also, African kingdoms of Benin, Mali, and Ethiopia according to Elias (1972) were accorded sovereign status since they exchanged commercial treaties and political relations. Positivist jurists were echoing Vitoria when he admitted that non-Europeans possessed political organization but ended up using cultural differences as legal argument to indicate that Europeans are naturally endowed with reason that furnishes a culture that was most organized, responsible, and most importantly, sovereign. Therefore, with positivists confronted with the dilemma that non-Europeans are sovereign since they have control over territory, they reverted to the concept of *society* to highlight that unless non-Europeans satisfied the criteria of

membership suggested by Latin-European civilization then they *de facto* lacked the comprehensive legal range of powers enjoyed by Latin-European sovereigns who comprised international society (Oppenheim, 1912; Anghie, 2004).

The distinction between a civilized and uncivilized mode of *Being* was then made not in the realm of sovereignty but in the realm of society which reified Latin-European philosophical theology. *Society* defined as embodying a liberal-secular *ethos* enabled jurists to link a legal status to a cultural distinction. Motivated thus, sovereignty and society as highlighted by Anghie (2004:59) posed two different tests in that non-Europeans remained "outside" the realm of international law not so much because they lacked sovereignty, but because they lacked other characteristics essential to become a member of international society. An essential characteristic adjudicated by positivist jurists is that no laws existed in non-European societies. Even when positivist jurists like Westlake seem to acknowledge the fact that different people can possess a system of governance that parallels England he quickly proceeds to affirm that "our *actual* England is regulated by law" with the word 'actual' seeming to suppress the suggestion that there could be some other England which compares with savage societies (Westlake, 1894: viii, emphases added; Anghie, 2004:61).

Therefore, the personality of "lawful" personifying cultural "sociability" is exclusively arrogated to Latin-European philosophical theology and any tendency to affirm the similarity between European and non-European society must immediately be transformed, distorted, or silenced as it risks collapsing the deterministic knowledge structures engineering *jus gentium*. At a positivist jurisprudent level, lawless spaces inhabiting "aliens" or "threatening strangers" – as mentioned earlier – are seen as a threat to the integrity and security of (a culturally particularized) international society, but it also points to the intrinsic nature of sovereignty continuously seeking to identify a temporally primitive personality as threatening the coherence of *jus gentium* for the ontological coherence of Latin-European civilization. Positivist jurisprudence, therefore, requires the constant identification of a "temporal cultural threat" for the science of positivist jurisprudence to consistently (re)invigorate and (re)actualize the civilized "self-image".

The jurisprudence regarding the issue of how sovereignty was acquired over non-European peoples concerned concepts such as cession, property, occupation, and discovery – even though recognition of such right is contrary to the idea of law as it legitimizes outcomes dictated by power

rather than legal principle (Anghie, 2004; Koskenniemi, 2012, 2017). With non-Europeans being "outside" law, this meant that there were no legal limitations on European states ability to commence war and/or be accountable for extrajudicial practices committed during a "mercantile venture" because domination and violence in the case of a war between the civilized and non-civilized become essential processes in transforming lawless "societies" (Anghie, 2004; Orford, 2012; Koskenniemi, 2012, 2017). For instance, the conceptual framework extended by private property law played an influential role in positivist jurisprudence legalizing the acquisition – through imperial practices – of non-European territory (Anghie, 2004, 2007; Bowden, 2007, 2009, 2013a, 2013b; Koskenniemi, 2017). Korman (1996), Anghie (2004), Koskenniemi (2012, 2017), and Bowden (2013b) note that European states adhering to naturalist and positivist scholastics openly relied on the legal doctrine of *dominium* as a basis for legally acquiring land in non-European spaces by exercising extrajudicial practices (Koskenniemi, 2017). This meant that land that did not abide by Westphalian ontologies of space and a liberal-capitalist ethos of political economy could be appropriated simply because the "cultural personality" informing such territorial "organization" does not correspond with Latin-European ideas of political economy.

With Westlake explicitly stating that the test of civilization is for non-European races to furnish a European civilization, the legitimacy of "property acquisition" as a legal technique meant that little to no restrictions were imposed on imperial expansion. French jurist Antoine Rougier speaking of a "liberal humanitarian intervention" argues that a "government which fails in its function by ignoring the human interests of the governed commits what may be called a perversion of its sovereignty" (Bowden, 2013a:161). In the absence of sovereignty, "when the violations of the law of human solidarity occur in the case of barbarous or half-civilized State, in which the disorders have a durable and permanent character, the civilized powers must of necessity have recourse to a more energetic method of control – a control adapted to present the wrong-rather than to repress it or cause reparation to be made". Therefore, while civilized European states engage in "the right of ordinary intervention" among themselves (Rougier, 1910:495) it seems that in the case of non-European spaces, Europeans have the "right of permanent intervention" (Rougier, 1910:495). Similarly, John Locke – while the point here is not to rearticulate the limiting postcolonial argument claiming his philosophy as emblematic of "Eurocentric" ideas and laws that serve as a cover for imperial oppression – it is however important to note that Locke drafted legal documents that transformed cultural differences into legal differences thus legalizing "first right

possession" of *vacuum domicilium/terra nullius* (i.e., vacant lands) (Mehta, 1999; Corcoran, 2017). Locke was of the opinion that "where there being more Land, than the inhabitants possess, and make use of any one has liberty to make use of the waste" (Locke, [1689]1965:439; Bowden, 2013a). This ahistorical temporal positionality adopted by jurists as a cultural legal difference to justify colonial expansion is given credence with their use of Locke wondering "whether in the wild wood and uncultivated waste of America left to nature, without any improvement, tillage or husbandry, a thousand acres will yield the needy and wretched inhabitants as many conveniences of life as ten acres of equally fertile land doe in Devonshire where they are well cultivated?" (Locke, [1689] 1965:336). This ahistoricism becomes particularly problematic since Europeans having mixed their labor with the land were now also – according to *jus gentium* – entitled to take possession of it as "property" (Anghie, 2004; Bowden, 2013a; Koskenniemi, 2017).

Such juridical thinking constellating "sovereign proprietorship" founded on "cultural differences" parallels the works of Immanuel Kant and Vattel. While Kant claims that "no one may act inimically toward another except when he has been actively injured by the other" (Kant, [1795] 1963:86), Kant was discussing spaces recognized as internally and externally "sovereign". On less civilized races Kant – using Lorimer's legal concept of *de facto* – says "Man in a state of nature deprives me of this security and injures me, if he is near me, by this mere status of his, even though he does not injure me actively (de facto); he does so by the lawlessness of his condition (statu iniusto) which constantly threatens me. Therefore, I can compel him either to enter with me in a state of civil law or to remove himself from my neighbourhood" (Kant, [1795] 1963:92). Similarly, Vattel asserted that "cultivation of the soil is an obligation imposed upon man by nature" and those who avoid labor and "pursue this idle mode of life occupy more land than they would have need of under a system of honest labour, and they may not complain if other more industrious Nations, too confined at home, should come and occupy part of their lands" ([1758] 1964:37; Jouannet, 2009). Thus, Europeans were legally sanctioned to "lawfully take possession of them and establish colonies in them" (Vattel, [1758] 1964:85). An international law dominated by scholastics reifying a "cultural dynamic of difference" stipulating a "naturalized" secular distinction between legality and morality (i.e., a positivist scholastic creed) continues to influence and dominate legal-history. This is highlighted in the contemporary writings of Italian jurist Pasquale Fiore who remarks in his renowned work entitled *International Law Codified and Its Legal Sanction: Or, The Legal Organization of the Society of States* that as "a matter of principle,

colonization and colonial expansion cannot be questioned" (Fiore, 1918:46), and continues by saying that "civilized countries in order to find new outlets for their ever increasing activity, need to extend their present possessions and to occupy those parts of the earth which are not of any use to uncivilized peoples" (Fiore, 1918:120).

Conclusion

This chapter was interested in highlighting a genealogical continuum within jurisprudent schools of naturalism and positivism consistently transforming cultural differences into legal differences by (re)formulating and (re)inventing legal concepts that sanctioned the use of extrajudicial measures. According to naturalist and positivist jurists, cultural difference translated into legal difference thus legally sanctioning the transformation of non-European spaces because they inevitably fall short from attaining the temporal coordinates accenting Latin-European philosophical theology. Positivist jurisprudence conceptualizes international law through a set of doctrines that are produced by, and situated in, an essentialist temporal time-lapse between a modern European and a primitive non-European. The temporally degenerative non-European is silenced and denied any subjectivity in resisting or suggesting endogenous alternative knowledge systems to that of Latin-European philosophical theology since its own existence assumes and promotes the "sacredness" of the civilizing mission. In other words, the non-European is encouraged not to contemplate "different" approaches to "making society" than to those provided and formulated by modern Latin-Europe.

Therefore, positivist jurisprudence asserts that the only history written of the *backward* society is in terms of its progress towards the *advanced* society since the *telos* of history is Western civilization. While positivist lawyers characterized themselves as opposing naturalist jurisprudence, each jurisprudent school (re)formulated legal concepts relating to positivist jurisprudence such as war, law, property, society, civilization, and sovereignty using a racialized vocabulary in ways that maintained and policed the unbridgeable "cultural gap" between temporally progressive and temporally primitive peoples. While positivist jurisprudence expanded legal concepts relating to sovereignty and society, positivist lawyers similar to their naturalist predecessors also based such legal recognition and membership "inside" *jus gentium* on a mythical culturalist gap of exclusion resolute in claiming that particular societies are inherently "beyond the pale of civilization". The legal vocabulary adopted by positivists was used to exclude non-Europeans from the "society of nations" characterizing sovereign states and elaborated a legal

framework that justified state-sponsored terrorism as a means of accomplishing the ends of history. Non-European spaces that failed to furnish a civilized personality evocative of Latin-European cultural mores were then legally transformed – by conquest if necessary – to spaces that exhibited Latin-European epistemic concepts such as the nation-state, secularism, laissez-faire economics, individualism, or more generally, an *ethos* derived from the protestant ethics of governance informing liberal-capitalist philosophical theology. By the end of the 19th and beginning of the 20th century, international jurists and metropole powers ensured that *jus gentium* had been globally universalized as the most superior scientifically based legal knowledge system capable of classifying and separating peoples temporally stuck in a "state of nature" from those destined to form a "society" by reifying a standard of civilization that is authored by, and based on, *ratiocinated* philosophical theology (Frank, 1998; Anghie, 2006:746; Al-Kassimi, 2018).

Chapter II

The War on Terror and Pre-emptive War as *Just*: The *Past* "Cultural Dynamic of Difference" Animating *Jus Gentium* Continues to Accent *Present* (Positivist) Juridical Concepts Adjudicated to Civilize Arabia

"The right of undeveloped races, like the right of undeveloped individuals, is a right not to recognition as to what they are not, but to guardianship – that is, to guidance – in becoming that to which they are capable, in realising their special ideals" – **J. Lorimer (1883)**

"History is all things to all men…Perhaps the most important methodological problem in the writing of history is to discover why different historians, on the basis of the same or similar evidence, often have markedly different interpretations of a particular historical event" **– R. M. Hartwell (1959)**

"I think authors ought to look back and give us some record of how their works developed, not because their works are important (they may turn out to be unimportant) but because we need to know more of the process of history-writing. Writers of history are not just observers. They are themselves part of the act and need to observe themselves in action" **– John King Fairbank (1969)**

"Since the beginning of international law, it is frequently the 'other', the non-European tribes, infidels, barbarians, who are identified as the source of all violence, and who must therefore be suppressed by an even more intense violence. However, this violence, when administered by the colonial power, is legitimate because it is inflicted in self-defence, or because it is humanitarian in character and indeed seeks to save the non-European peoples from themselves" **– A. Anghie and B.S Chimni (2004)**

"By the beginning of the twentieth century, it was a European habit to distinguish between civilized wars and colonial wars. The laws of war applied to wars among the civilized nation-states, but laws of nature were said to apply to colonial wars" – **Mahmood Mamdani (2004)**

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Introduction

By firstly emphasizing the importance of committing the "methodological sin" of being historically anachronic when seeking to deconstruct legal-historical events by bringing the *past* to bear on the *present*, this chapter will then proceed to lament that the cultural dynamic of difference originating *jus gentium* is not a "dead letter" of the *past*, but rather continues to impact the (re)formulation of the *present* legal-history of international law as a (positivist) legal regime. Deconstructing the racialized discourses informing the legal doctrine initiated after 9/11 known as pre-emptive defense strategy (PEDS), in tandem with teleological discourses encouraging Arabs to adopt temporal coordinates accenting Latin-European philosophical theology, reveals that the deterministic origins of *jus gentium* are reproduced and re-enacted by "recognized sovereigns" whenever they attempt to renew or reform the "universal legal regime". That is to say that far from older legal doctrines reifying a "dynamic of cultural difference" stipulating an unbridgeable cultural gap between Latin-Europe and Arabia being policies of the past, *jus gentium* as it evolved

after the war on terror (WoT) in general, and "Islamist Winter" of 2011 in particular, reveals striking reductionist legal discursive parallels characterizing naturalist and positivist scholastics. Therefore, this chapter is primarily interested in accentuating that the legal doctrines formulated and practices promoted to conquer Arab spaces starting with Iraq in 2003 did not institute a novel *present* "international legal order", but rather reproduced in effect *past* formative racialized legal structures *willed* by sovereign figures. The doctrine of PEDS – also known as the Bush Doctrine – deployed to civilize, modernize, and democratize the Arab world, I argue, reproduces the reductionist structures animating the "civilizing mission" maintained and policed by legal formulations situated in *jus gentium*. The chapter situates the "cultural dynamic of difference" informing positivist jurisprudence – inevitably essentializing an Arab mode of *Being* – as playing an essential role in legalizing the domineering consequences of "creative chaos" adjudicated by the Bush Doctrine through discourses advocating for a "liberal humanitarian intervention" in Arabia with an objective seeking the implementation of a "New Middle East" (NME).

The WoT is understood in terms three (secular) *ratiocinative* concepts: the doctrine of pre-emptive self-defense, liberal interventionism/humanitarianism, and the idea of democracy promotion transforming violent and threatening entities. The doctrine of pre-emptive self-defense extends the concept of self-defense well beyond traditionally understood boundaries of Article 51 of the UN Charter. The commonly accepted view of self-defense is that if pre-emptive self-defense is permitted at all, it is permitted only if an attack by an adversary is imminent. The racialized discourse of the WoT – as it unfolded in Iraq in 2003 and after the "Arab Awakening" of 2011 – suggests that these uncivilized rogue nations, once defeated, must be transformed into democratic entities furnishing a liberal-secular mode of *Being*. Democratic peace theory and a liberal humanitarian interventionist logic plays a crucial dual role in this process: it liberates the oppressed people of "Islamic states" and "primitive" Arab cultural mores by creating law-abiding societies that would be allies rather than threats to the metropole. The distinction between democratic and non-democratic states being a marker of civilization necessitating the application of "different laws" on each group, reproduces the colonial jurisprudence system of earlier centuries which asserted that cultural differences between civilized and uncivilized states decree that civilized states – because they are sovereign – are legally permitted to engage in extrajudicial practices towards an uncivilized entity identified as embodying cultural mores recognized by sovereigns as not warranting membership in International Civil Society. The National Security Strategy (NSS)

articulated by President Bush in 2002 authorizing PEDS following 9/11 highlights the reformulation of *jus gentium* by adopting a culturized rhetoric to initiate a war between the forces of good versus evil. Therefore, the use of pre-emptive force against rogue (uncivilized) states in an effort to transform *them* into "peace-loving democracies" employs the cultural dynamic of difference employed by former colonial powers in earlier centuries towards Arabs in general and Muslims in particular (Mamdani, 2004; Anghie, 2009). The cultural relativist discourse used to justify the practices exploited by the U.S. and its European allies in the Arab world since 2003 resembles the rhetoric articulated to justify the "civilizing mission" and its terrorizing means of engagement adopted by the *crusaders* or *conquistadors* during different epochs accenting a variety of cultural encounters. The Bush Doctrine imagining Arab civilization as temporally degenerative reverts to a primordial historicist discourse adopted by secular jurists during the formative epoch of *jus gentium*. This return has formulated a new form of imperialism that asserts itself in the name pre-emptive self-defence or a defensive imperialism seeking to *redeem* Arabs bodies from being stuck in the *past*. The strategy of pre-emptive defense is animated by a race war discourse resulting in principles and policies that, when taken together, closely resemble, if not reproduce, the "colonial encounter". I argue then that international law had in the past and continues in the present to be subjected to various pressures that have ultimately resulted in the emergence of an international legal regime that permits, if not endorses and adopts quite explicitly, domineering practices argued as *legally* necessary for Latin-European ontological security.

Also, I argue that events witnessed in the Arab world since the subjugation of Baghdad – a historical bastion of Arab civilization – in 2003 further highlights that positivist juridical concepts such as sovereignty, society, and just war theory continue to be a major focus of scholars attempting to assess how terrorism and responses to terrorism have challenged or changed fundamental legal-historical understandings about sovereignty, war, and international (dis)order (Brunnee and Toope, 2004; Anghie, 2009:292; Blakeley, 2010). Following the attacks of 9/11, scholars of international law and political science argued that a unique threat confronted the international community and that established laws were inadequate for the challenges it presented (Buzan and Hansen, 2009). Consequently, scholars deliberated a range of theories that had the purpose of reforming the laws of war, international humanitarian law, and the law of human rights to address these supposed "new" threats. It is principally through instrumentalizing the language of violence and war-as-self-defense that the Arab-as-object of sovereignty is constructed, excluded

from the realm of law, attacked, liberated, defeated and transformed. In enacting these maneuvers; however, the language of self-defense is not only transformed into PEDS, but rather it collects together and deploys a series of other doctrines and principles – relating for example to human rights, liberal intervention, democratization, and humanitarian intervention – to complete this structure of pre-emptive war. The system defined and informing the Arab world post-2003 in terms of humanitarianism is a system defined by trusteeship and wardship while the system defined by sovereignty is defined by citizenship. That is to say that the international humanitarian order espoused by the doctrine of PEDS is not a system that acknowledges (Arab) citizenship. Instead, it is a system of management that turns (Arab) citizens into wards similar to the Mandate System during British and French colonialism. These doctrines and essentialist teleological narratives affirm that *jus gentium* continues to invoke "past" racialized imaginary myths to (re)form, (re)structure, and (re)imagine international law by reifying a *particular* (Latin-European) epistemology made *universal*.

The chapter notes that the doctrines and the discourses perpetrated during the Bush administration were visibly informed by positivist scholastics with an objective in violently perpetuating the *telos* of history. The juridical foundations of the Bush Doctrine paying homage to positivist jurisprudence informing (neo)-conservative Orientalist academic knowledge, I argue, reminded the Arab world that *jus gentium* continues to be imagined as a legal regime that polices and maintains a cultural gap that *a priori* assumes that because Arabs are temporally and spatially primitive, therefore, they are incapable of embodying the temporal coordinates accenting the *telos* of history – Latin-European civilization. This sanctions the legal idea that cultural differences *a priori* make *legal* the adoption of extrajudicial practices involving techniques of domination such as torture and terror since Arabs are not sovereign subjects but rather *objects of* sovereignty. The deconstruction of essentialist discourses – by committing the sin of being anachronic – highlights how these practices were sanitized by cultural dynamic binaries such as "civilized-uncivilized" and "modern-premodern", by operationalizing what Mamdani calls "culture talk".

The "Middle East"[43] according to the WoT and PEDS – informed by a discourse of culture talk – is not simply a space where the war on terror *needs* to be waged in its most extreme form, but that terrorism – supposedly a cultural tendency – is closely associated with the primitive Arab-Muslim mind since it postulates a gap between "good Muslims" and "bad Muslims" (Beckett,

2003; Mamdani, 2004; Abou El Fadl, 2014). The cultural relativist discourses adopted by the Bush administration, along with political and academic speech actors adhering to "mainstream jurisprudence" *spoke of* Arab culture in a way that *a priori* perceived the Arab in general, and Muslim in particular as having "bloody borders", "culturally resistant to modernity", and naturally "antagonistic" towards Latin-Europe. This "culture talk" explicitly highlights the exclusionary character of *jus gentium* in that PEDS imagines Arab civilization as a permanent threat to the stability of international law thereby adjudicating imperial policies that can only be exercised on an entity constructed *a priori* "outside" *jus gentium* or an object of sovereignty. In this case, I argue that *jus gentium* continues to be willed by sovereign figures valorizing naturalist and positivist jurisprudence, which perseveres in viewing the Arab world as only capable of transitioning from being a "bad Muslim" to being a "good Muslim" by shedding their temporally primitive culture thus adopting a liberal-secular (slave) morality. Therefore, the following sections are interested in highlighting how *jus gentium* was and continues to be – especially after 9/11 – characterized as a regime of law that maintains and polices the *inclusive exclusion ethos* of international law by reifying positivist scholastic philosophical theology demanding the fabrication of a threatening "different" culture for the *legal* coherence of Latin-European epistemology.

1. Being *Anachronic* is a *Methodological Sin* as Detailed by Positivist Jurists and Contextual Legal-Historians

For many critical international lawyers of the 20th and 21st century, the *past* is a source of *present* obligation in recounting the relevance of rationalized sovereign governance being informed by mechanisms of domination in tandem with technologies of racism in continuously (re)making and (re)formulating an *extant jus gentium* that produces legal doctrines valorizing a dynamic of cultural difference. This statement questions the extent to which decolonization ever fully took place and remains a critical intervention in contemporary international law and politics (Escobar, 1995; Frank, 1998; Munck, 1999; Tucker, 1999; Mutua, 2000; Koskenniemi, 2002, 2011; Anghie, 2004; Berger, 2004, 2005; Chimni, 2006a, 2006b; Orford, 2011; 2012; Pahuja, 2011; Mignolo and Walsh, 2018). Unfortunately, for many mainstream contextualist lawyers, decolonization has successfully taken place with the establishment of the League of Nations and subsequently the United Nations and with all former colonial spaces being "formally decolonized" in the first half of the 20th century[44]. Accordingly, international law and the international community have become essentially anti-colonial and questions concerning the continued

relevance of imperialism and colonial structures characterizing international law are classified as anachronic and a misreading of history since the real political question worrying scholars should be how the universalization of international law could be used to end human suffering and poverty (Orford, 2003, 2012; Anghie, 2004). Roth (2000:2065) makes this clear with his disaccord with Third World Approaches to International Law (TWAIL) scholars such as James Thuo Gathii when he states that "colonialism is a legal aberration, and characterizing contemporary international law as essentially continuous with patterns of past Western dominations is of no use politically and belittles the hard-won achievements of anticolonialist struggles". Therefore, as highlighted by Anne Orford (2012:1), statements such as those articulated by Roth illustrate the tendency amongst mainstream international lawyers to draw a line "between yesterday's imperialism and today's international law".

This mainstream methodological commitment characterising contextualist positivist lawyers[45] in the beginning of the 20th century, and more so in the 21st century after 9/11, has been argued against by scholars identifying with TWAIL who caution against the dangers of forgetting international law's imperial past by asserting that imperialism is "ingrained in international law as we know it today" (Gathii, 2000:2020; Orford, 2003, 2012; Anghie, 2004; Koskenniemi, 2011). During the 1990s, critical legal scholars and political sociologists began to rethink the (Latin-European) intellectual historicism dominating international law through "universalized" teleological narratives such as democratization, development, modernization, and liberalization. This principled academic "struggle" seeking the reconstruction of *jus gentium* through deconstruction accentuates a renewed concern within and outside the academy in deliberating critiques concerned with whether and how the imperial past is relevant to the character of modern (liberal secular) law and politics (Orford, 2012). Anachronic legal-historians concerned with highlighting the return of imperialism voiced their dissatisfaction with the 20th century idea claiming that decolonization successfully took place and that domineering power-relations and knowledge structures are no longer present in international law and international political-economic institutions. These scholars and others have attempted to rethink the place of positivist philosophical jurisprudent scholastics in the shaping of international law, and the implications of civilization and sovereignty as an organizational category during the colonial encounter being once again operationalized after 9/11 in managing, re-ordering, and transforming post-colonial (temporally degenerative) spaces.

The debate that the imperial past has a bearing on the legal present is uncomfortable – to say the least – amongst contextualist legal scholars in part because the authority and legitimacy of modern international law rests on its claim to have transcended its exclusive Latin-European heritage and thus operates in the *present time* as a universal law capable of representing all of humanity (Orford, 2012). This is clearly cited in the Millennium Declaration of the Millennium Development Goals of the year 2000, in the 2005 World Summit declaring and reaffirming the provisions of responsibility to protect (R2P), and Northern and Southern speech acts[46] genuinely appealing to a normative universal law guaranteeing the rights of humanity. Therefore, according to legal contextualists, claiming that the promise of *jus gentium* continues to be "geographically" identified rather than "normatively" applied risks undermining the claim that law *is* universal. In addition, with international institutions such as the IMF, WB, and WTO being directed by contextualist international lawyers at "liberalizing, democratizing, and developing" former colonies, claiming that imperialism is still relevant seeks to undermine their liberal democratic policies. However, these contextualist arguments are quite perilous because by refusing imperialism as a necessary causal process in developing underdevelopment by proliferating illiberal practices, we shift responsibility and risk justifying the hegemonic status quo[47]. This conceptual evacuation then vindicates international institutions and legal regimes implicated in underdeveloping Arabia by averring that current uneven development, inequality, civil war, food insecurity, and poverty are a consequence of failed policies adopted *after* colonialism ended, rather than the consequences of an international law reifying a "cultural dynamic of difference" that in effect constructed a global political-economic system valorizing a protestant ethic and spirit of liberal-capitalism. As highlighted by Orford (2012:1-2), rather than analyse the possible continuity between imperialism informing multilateral institutions of exploitation and control, many legal-historical contextualists or liberal internationalists "have assumed that it is desirable to develop more expansive legal bases on which to intervene in order to educate, improve, develop, or save the peoples of the decolonised world".

Therefore, an international law informed by positivist jurisprudent scholastics and a problem-solving methodology is limited in addressing a possible continuity between an imperial *past* and a "transnational" *present* by developing and searching for expansive technocratic legal arguments or technical problem-solving solutions that seek to "improve" through tutelage and trusteeship Arab political spaces. The sense of temporality referred to by these lawyers' and much

of "modern" Anglophone legal-history declares that "we" in the "modern present" have the capacity and the responsibility to create societies, laws, and/or institutions that are free from the constraints of the "primitive past" (Orford, 2012). The idea that the past has no bearing on the present is powerfully articulated by Lesaffer (2007:34, emphases added) – an opponent of lawyers engaging in an anachronic legal-historical inquiry. He exclaims that their aim is:

> clearly not to understand what happened [in the past] but to give current ideas or practices roots in the distant past. This kind of historiography *sins* against the most basic rules of historical methodology and the results are deplorable. This *genealogic* history from present to past leads to *anachronistic* interpretations of historical phenomena, clouds historical realities that bear no fruit in our own times and gives no information about the historical context of the phenomenon one claims to recognise.

While a temporal (materialistic) *ontic* claiming as "truth" that the past has no bearing on the present is deeply ingrained in Latin-European Renaissance and Enlightenment scholastics, recent years have seen an increased interest in scholarship addressing the question of whether and how the imperial past is relevant to thinking about the "nature" of current international affairs. The introductory chapter of *The Oxford Handbook of the History of International Law* – published in 2012 – highlights that the aim of the monograph is to produce a universal history of international law that would "explore the *living bond* between the past and the present" (Orford, 2012; emphases added). This idea of a living bond between the past and the present signals an implied contestation to the methodological logic of positivism pioneered by the Cambridge and Columbia law schools of international legal history which continue to dominate and influence power relations structuring knowledge structures founding *jus gentium* as a legal regime reifying a *particular* Latin-European jurisprudence made *universal*.

The supposed danger of being "anachronic" is prevalent particularly amongst Anglophone legal historians of the late 19th century and early 20th century known as legal contextualists. For example, Quentin Skinner argues that historical texts must not be approached from an anachronic lens in light of current debates and linguistic usages, or in the search of developing canonical themes, fundamental concepts, or timeless doctrines (Skinner, 1969; Orford, 2012). Contextualists state that *we* should not look at the past with current debates and problems since that would necessarily misrepresent the past and the text that we are reading. Also, they highlight that *we* should not search for the development of canonical ideas or fundamental themes situated *in*

"modern" legal doctrines since *we* risk committing the "historical sin of being anachronic" (Orford, 2012). These schools demand that a clear demarcation between historical research concerning law be placed in the context of its time and that present-day questions should not distort our sense of *that* context. Therefore, "mainstream" jurists dominating international law argue that the present should have no claims upon the past thus regularly denouncing an anachronic reading of legal-history as perpetuating "the unreflective intrusion of present-day concerns" that "distort the way in which the history of political thought is written" (Oakley, 1999:7). This clear demarcation between past and present provides legal-historians with their principle methodological commandment inscribed as "thou shall place everything in the context of its time" (Fasolt, 2004:6) with legal jurists conforming to the legal curriculum of both schools encouraged to concern themselves with simply recovering "past meanings" (Oakley, 1999:7; Orford, 2012).

While the claim that a proper "secular" historical method depends upon a clear separation of past and present is not novel, the idea that for political thinkers to be interpreted properly they need to be placed in their original historical context was received as an exhilarating programme for both schools – Cambridge and Columbia – during the 20th century due to the dominance of contextualist legal-historians such as James Brown Scott, Herbert Butterfield, and Quentin Skinner (Sassine, 2007:106; Orford, 2012). As a result, *contextualist* scholarship cultivated a "sensitivity to anachronism" that continued to shape much Anglophone history of political thought over the past forty years (Oakley, 1999:9; Orford, 2012). Ian Hunter – a major critic of scholars adhering to the idea that the imperial past is ever present in present day international law – claims that *jus gentium* has "been dogged by debilitating anachronism and presentism" (2012:11). Therefore, while contextual legal practitioners and historians think about concepts in their particular time and place, critical legal scholars inevitably think about *how* and *why* concepts move *across* time and space and how their *meaning* is *genealogically* modified, shaped, and (re)constituted (Fendler, 2010; Orford, 2012).

Motivated thus, this chapter seeks to defend the place of anachronism in international legal thinking by arguing that legal-history *is* necessarily anachronic. That is to say that the operation of modern international law cannot be exclusively governed by a "rationalised" perception of *chronos* identified as archeologically linear[48] in which events and texts are confined to their proper place by adopting an absolutist temporal binary of progression consisting of "then" and "now". Interpreting past events and/or texts only in the context of their time has faced challenges both

from within the disciplinary world of practicing historians such as Francis Oakley and from more philosophically oriented scholars like Michel Foucault (Orford, 2012). Oakley contests Lesaffer's statement by questioning the idea that the "context" and "reality" shaping "linguistic conventions and ideological concerns" can be confined to a context that is "contemporaneous with the lifetime of the historical author under scrutiny" (1999:11). With political sociologists and legal historians being "people of the book", they may often have "more in common, both intellectually and in terms of linguistic conventions followed, with writers of the past than with many of their contemporaries" (Oakley, 1999:19; Orford, 2012). In the case of the latter, Foucault explicitly challenges the philosophical assumption that demarcates a *discontinuity* between past and present in his work entitled *Discipline and Punish.* Foucault (2005) mentions that history should be written not to show that our current situation is inevitable but to "show that our current situation is contingent" on past choices (Orford, 2012:8). Foucault, in 1975, articulated his approach to history as an archeological diagnostic engagement with the present by saying that: "In trying to make a diagnosis of the present in which we live, we can isolate as already belonging to the past certain tendencies which are still considered to be contemporary" (Williams, 2005; Garland, 2014:308). Aligning with Foucault's historical methodology of "excavating the past", Roth (1981:43) declares "Writing a history of the present means writing history in the present; self-consciously writing in a field of power relations and political struggle".

In this sense then, while some legal historians identify as historians and preach against the "sin of anachronism", legal-historians must be sinners and should not be forgiven since we have yet to figure out where the boundary between history and law should be drawn. Fasolt (2004:216; emphases added) makes this point when he highlights that we need to have a debate concerning where the past ends and where the present begins because the separation of history and law – similar to the positivist separation between law and morality – was a secularization process through which "modern" (Latin-European) philosophical theology came to contemplate "a past that was separated from the present, and came to imagine a *sovereign state* that was independent in time as well as space". Similarly, Anand (2008:72) writes that international law is "not something in existence in perpetuity; it is a perpetual becoming" since any law which does not "change with the changing life becomes dead driftwood". Therefore, to analyse the (im)moral consequences of a *jus gentium* animated by a "dynamic of cultural difference", it is necessary to look at the problem

"historically" because the "present cannot be properly assessed, nor future projected, without an understanding of the past" (Anand, 2008:5; Orford, 2012).

W.E.B. Du Bois – perhaps (un)aware of his remarkable *Khaldunian* influenced sociological approach in reading history – highlights the importance of being anachronic to analyse the development of legal history when he states: "I want to appeal to the past in order to explain the present. I know how unpopular this method is. What have we moderns, we wisest of the wise, to do with the dead past? ... Don't you understand that the past is the present, that without what was, nothing is. That, of the infinite dead, the living is but unimportant bits?" (Du Bois, 1965:80). Du Bois's statement encapsulates an entirely different methodological approach in discussing legal history thereby destabilizing the linear conception of time developed during the Enlightenment period which drove the theorization of classical (rationalist) political philosophies observing that history took the form of *progressive* changes through *successive* stages (Smith, 2006:79). The cultural characteristics of *progress* seemed to be a property that was linked solely to the exceptional character of a Latin-European/Occidental mode of *Being*, while the Arabian/Oriental was perceived as inherently stuck in a *regressive* time incapable of advancing to a more progressive temporal dimension embodying Latin-European civilizational coordinates.

It is important to note in detail that the positivist critique mounted against critical legal scholars demanding the reassertion of the concept of imperialism into the discipline of international law are guilty of methodological hubris and represent a failure of the contextualist method. For example, in chapter one of Anghie's work entitled *Francisco de Vitoria and the Colonial Origins of International Law* (2004) he highlights how American internationalist/contextualist jurist James Brown Scott reclaimed Vitoria for the discipline of international law, and more specifically for the American 20th century with his Carnegie sponsored series entitled *Classics of International Law*. Scott was a proponent of free-trade and a supporter of international administrative agencies headed by the League of Nations and its Mandate System which proclaimed "trusteeship" instead of "colonization" as the concept *du jour* in managing colonies in the Near East and Africa (Koskenniemi, 2003; Orford, 2012). While Scott was at various times the Dean of the then Los Angeles Law School, Professor at Columbia Law School, Professor at Georgetown School of Foreign Service, as well as Carnegie Exchange Professor to the Universities of Salamanca, Havana, Chile, Buenos Aires and Montevideo in 1927, his most enduring influence upon international legal scholarship derives from his role in editing the *Classics*

series which he described as the "*Corpus Juris Gentium*" (Orford, 2012:13). Imperative for our discussion is that Scott included Vitoria's *De Indis* and *De Jure Bellis* mentioned in chapter I in the *Classics* and regarded Vitoria as a liberal and a humanist. He mentioned when asked about why he included Vitoria that:

> [sic]*Victoria* recognized that there were peoples in an *imperfect state of civilization*; but they were human beings, and human beings, to his way of thinking, should not be subject to exploitation, but should be *fitted* – if they were not already fit – to enjoy the rights of all human beings, as well as to be subjected to their duties. Therefore, it was proper – and indeed praiseworthy – for a *State* in the plenitude of *civilization* to take, as it were, these children of nature in hand in order to educate them in their rights and in their duties, that their principalities might be admitted to the *international community*….This was a nameless principle in [sic] Victoria's system – a principle thought some four centuries later to have been newly created by the Covenant of the League of Nations, and as such christened with the dignified name of mandate (as cited in Orford, 2012:14; *emphases added*)

While Anghie does not engage Scott's work past the first page of chapter one of his dissertation, Anghie draws our attention to the special place Vitoria played according to Scott in the new American century. Anghie argues that the total effect of the lecture published by Carnegie after WWI reminds us that the *ratiocinative* legal process used in earlier centuries to transform cultural differences into legal differences – discursively characterized as simultaneously "defensive, overwhelming, humanitarian and benevolent" (Anghie, 2004:317) – were similarly adopted by "recognized sovereign" figures after WWI and WWII to give powerful ideas (i.e., sacred trust of civilization, human rights, decolonization, sovereignty, and self-determination) structuring the post-war international legal system in the 20th century legal backing. It is these juridical concepts that re-emerge as a "prelude to the grand redeeming project of bestowing sovereignty on the dark places of the earth which we now call decolonization" which Scott resurrected from *the past* to make sense of America's *present future* (Anghie, 2004:30). Scott reclaimed Vitoria because he saw the centrality of his lectures to America's century of informal commercial expansion by emphasizing the "centrality of commerce to international law and how commercial exploitation necessitates war" (Anghie, 2006:744; Al-Kassimi, 2017). James Brown Scott reclaiming Vitoria as "Victoria" problematizes the contextualist idea that the past and present are clearly demarcated since Scott clearly created an apparition of Vitoria that provided the origin and the ideological justification for the universalization of a particular Anglo-Saxon law for an

American century. Scott introduced Vitoria to the profession and scholastic of International Law – especially in the USA – as the father of a new kind of *jus gentium* – a *novus ordo seclorum*. And it is *this* new order of the *ages* that scholars critical of (positivist) *jus gentium* have sought to understand and critique by adopting an anachronic approach to legal-history.

I argue that critical legal-historians created a new context within which to understand the relevance of Vitoria today and that context is related to the Vitoria recovered by Scott which is a context of free-trade, liberalized economies, informal empire, and benevolent humanitarianism (Orford, 2003; 2011; 2012; Anghie, 2004). Thus, while Vitoria's work valorized at Carnegie does bear an unambiguous relationship to classical Latin-European canons, so does 21st century legal practices of "peace-keeping" missions and sovereign (re)ordering by Europe and the United States of America. Vitoria's humanitarian critique of Spanish empire was invoked by ideological innovators such as Scott to provide a language for rationalizing new forms of international administration led by liberal institutional governance (i.e., League of Nations). Therefore, while contextualists such as Scott placed Vitoria in a specific (American) context (as Victoria), the political decadence in the 21st century demonstrates that we ought to place Vitoria in a "new" context that moves from the School of Salamanca of the 16th century to the "Eastern Question" of the 18th century, then to the apex of imperial expansion in the 19th century when empire and its rationalization took a radically new form in the aftermath of the British Aden Protectorate in 1875, Berlin Conference in 1884, Young Turk "Revolution" of 1908, then to the Mandate System extended by the League of Nations in 1919 to partition Ottoman-Arab provinces, followed by the creation of Bretton Woods institutions in 1944 solidifying neo-colonialism, leading us to the declaration of a war on terror (WoT) in 2001, and more recently, the conquest of the Arab *Mashreq* and *Maghreb* after the "Islamist Winter" in 2011. This "new" context – which seeks to address Vitoria, Scott, and other contextualists and/or positivist lawyers – suggests that the "humanitarian critique" of informal empire offered – what Cambridge Law school called "ideological innovators" – means to rationalize a "benevolent" form of empire that would triumph in the 20th century. The "new" form of empire in the 20th and 21st century no longer depended on occupation of territory, instead the normative foundation of empire was the protection of private property, navigation, investment and trade, open economies premised on neoliberal economic logic, and the humanitarian administration of life in the North and South by *technocratic* "civil society groups" and "international liberal organizations" suggesting technical (problem-solving) solutions

(Anghie, 2004; Orford, 2012; Al-Kassimi, 2018). Motivated thus, attention to the context in which Vitoria was reclaimed for modern Western international law, according to critical legal-historians, did not invent a project of modern internationalism that was then "anachronistically project[ed] backwards onto early modern *jus gentium*" (Hunter, 2010:11; Orford, 2012:15) but rather that modern *jus gentium* was *systemically* and carefully *reconstructed* in the U.S at the dawn of the 20th century to make sense of practices and institutions that were already (re)shaping the world[49].

It is this "new" context that this chapter seeks to unpack by claiming that it is necessary to resurrect the imperial past backgrounding the formative phases of *jus gentium* to demonstrate that the legal doctrines developed to fight the war on terror (i.e., PEDS) are reminiscent of legal doctrines developed during previous colonial encounters – particularly in the Arab world – emphasizing and transforming cultural differences into legal argument to sanction a "civilizing mission". More importantly, I will attempt to highlight that the war on terror is the most recent event reminding us that international law continues to be animated by a civilizing mission that not only legally sanctions violent practices with the "objective" and "responsibility" of transforming the Arab *Maghreb* and *Mashreq* using *chaos* into an "ordered state", but that *those* same practices and their consequences (i.e., Arab forced displacement and *en-masse* carnage) highlight that an international law informed by positivist jurisprudence continuously demands identifying a threatening culture for the ontological security of (Latin-European) philosophical theology.

Sovereignty as a positivist juridical concept is then reclaimed in relation to the Arab world as a process of "violent cultural separation" that continues to exist in terms of dispossession and its ability to have the power to subjugate and alienate Arab life to the power of death (more on this in chapter V). The (*ratiocinative*) scholastic roots informing the jurisprudence of the 21st century is highlighted in pre-emptive war (i.e. Bush Doctrine/Defensive Imperialism) being the legally sanctioned strategy selected to fight "terror" thus (re)creating and (re)formulating an international legal system that in many ways returns to the violent historical juncture elaborated by naturalist and positivist jurists in earlier chapters. This review will accentuate that the cultural relativist roots of *jus gentium* endures and continues to be discerned and (re)produced in policy-making circles adhering to a positivist approach of Security Studies and International Relations, thus legalizing extrajudicial practices on the Arab body by adopting "creative chaos" as a necessary "legal technique" allegedly essential to transform inhabitants of Arabia from premodern to modern *beings*.

2. The War on Terror and Pre-Emptive Defense as *Law – Jus Gentium* Continues to Reify the Dynamic of Cultural Difference for Epistemological *Coherence*

Ernesto "Che" Guevara once said "at the risk of seeming ridiculous, the true revolutionary is guided by great feelings of love" and I say, at the risk of sounding anachronic, that current policies and practices adopted in the name of safeguarding and maintaining a particular personality of *jus gentium* informing an international cosmopolitan community[50] bears resemblance to the contextualist legal practices informing naturalist and positivist jurisprudent legal doctrines adopted in earlier centuries during the "Holy Inquisition Age", "Age of Discovery", and "Age of Reason". While it is accurate to state that international law has expunged – to a large extent – the explicit racialized vocabulary informing the 18th and 19th century such as civilized/non-civilized, advanced/backward, it did however revert to more technocratic benevolent terms interested in teleological objectives (i.e., modernity, development, democratization, and liberalization). Therefore, *past* colonial encounters may still be with us not merely because of conceptual affinities, but because of historical continuity. Since the conclusion of the Cold War, powerful arguments have been made that history has ended and that ideas informing Western modernity – therefore civilization – such as Liberal Democracy provide an authoritative answer to the question of what political and economic arrangement is best for the *progress* and *security* of "international civilization" (Al-Kassimi, 2018). According to Anghie (2004:113) and Mamdani (2004), the supremacy of ideas characterizing Western civilization has never been more emphatically displayed as they were in the first decade following the conclusion of Cold War than any other time since the late 19th century. Coincidently, just as Scott and earlier jurists deliberated the adoption of Western epistemological knowledge structures informing civilization as the only feasible alternative for post-colonial states to become members of *jus gentium*, post-Cold war international lawyers, policymakers, and executive members have deliberated and adjudicated a pre-emptive war, humanitarian legal doctrines, and techniques of domination that ultimately resemble the formative discourses and domineering practices adopted during the development of *jus gentium* (Anghie, 2004; Mamdani, 2004; Orford, 2003, 2011).

The legal history of the 19th century highlighted the importance of a positivist *jus gentium* identifying *fearsome* cultural particularities and/or threatening profiles for the ontological security of (Western) civilization and society. Similarly, the 20th and 21st century is but one of several centennial examples of a nexus between *jus gentium* and a "civilizing/democratizing mission".

While the civilizing mission of the 16th century adopted naturalist jurisprudence to justify legal conquest, later, positivist jurisprudence was also similarly occupied with furthering the civilizing mission by adjusting or inventing new legal doctrines and techniques by continuing like its predecessor in prioritizing the dynamic of cultural difference as legal justification for (non-European) temporal transformation. As mentioned, the dynamic of cultural difference engenders a *jus gentium* informed by positivist jurisprudence with one set of particular cultural values being able to cast itself as universal, while societies who do not fit within this particular idea of *universality* are generalized as "lacking something" and are therefore "outside" *jus gentium* (Orford, 2003, 2011; Eslava and Pahuja, 2012:211). Or put differently, a *jus gentium* emphasizing the dynamic of cultural difference results in an endless process of creating a (reductionist) cultural gap between two cultures by demarcating one as "universal", "civilized", and "modern" and the other as "particular", "uncivilized", and "premodern", and then proceeds to bridge the gap by formulating legal doctrines adjudicating the use of measures founded on technologies of racism that seek to normalize and transform the aberrant society (Orford, 2003; Anghie, 2004; Shetty, 2011). Therefore, the only unique legal *ethos* about the 19th century is that it explicitly adopted a racialized vocabulary informing a civilizing mission and reflected its goals in its very vocabulary. And now presently in the 21st century, we see the likely possibility that the civilizing mission with all of its sovereign mechanisms of violence and domination informs the defensive imperial strategy known as the Bush Doctrine adopted after 9/11 in one form or another with supposed neutral concepts, ideas, and categories, governing a "new" international law being based on the transmission of a Latin-European mode of *Being* in Arabia through essentialist categories such as liberal development, humanitarianism, democracy, and responsibility to protect (Koskenniemi, 2002; Orford, 2003; Anghie, 2004; Mamdani, 2004, 2010).

Following the attacks of 9/11 international lawyers and political sociologists argued that terrorism is a new and unique threat that confronted the international community and that previously established international law was inadequate for the challenges it presented (Koskenniemi, 2002, 2011; Mamdani, 2004, 2010; Anghie, 2009; Orford, 2011). Therefore, a wide range of theories that purported to reform the laws of war, international humanitarian law, and the law of human rights was developed to address this supposed juridical lacuna. What these arguments overlooked is that *imperialism* in the Third World – defined as a set of practices performed by great powers to govern the world according to their own "universal" vision – never

ceased to be a major governing principle of the *world-system*[51]. However, the novelty of current developments rests on the fact that imperialism has reasserted itself in such an explicit form that it has become unavoidably central to any analysis seeking to deconstruct and reconstruct contemporary international relations. International law is being subjected to various doctrinal innovations and legal techniques that permits, if not endorses and adopts quite explicitly, imperial practices as the means to protect a *particular* (Latin-European) international community with an objective of transforming pre-modern/irresponsible threatening subjects (Anghie, 2004; Mamdani, 2004; Orford, 2003, 2011). It is here that we notice the importance of TWAIL methodology consisting of a naturalized epistemological inquiry – alluded to in the methodology section of the introductory chapter of this dissertation – that reflects on the *etiology* of doctrines in tandem with adopting a hermeneutics of suspicion reading legal-history. The importance of TWAIL is noted in how it seeks to analyze the legal effects of pre-emptive defense strategy (PEDS) – as it was actualized by *jus gentium* following September 11th 2001 – by accentuating how the particular character of contemporary imperialism highlights the ways in which *jus gentium* resembles "past imperialism" by reifying "culture talk" to alter the existing framework of international law. The jurisprudent developments formulated to fight this new "threat" are by no means novel, rather I argue, it (re)employs and (re)creates a familiar international legal system that resembles in many ways a return to the legal arguments, essentialist narratives, and sovereign violent exercises of power adjudicating a "civilizing mission". In other words, PEDS affirms that international law is constantly (re)created and rejuvenated in part through its confrontation with the "pre-modern" Arab-Object and that it is through this *necessary* confrontation and transformation of the *Saracen* that initiatives concerning the use of pre-emptive force are sanctioned and generated to redeem the Arab-Muslim body.

The hermeneutics of suspicion arising in former colonial powers reverting to the language of war following the terrorist event on September 11th 2001 created much debate whether to categorize the attack as a criminal act that would be addressed by policing actions directed at bringing the perpetrators to justice, or as an armed attack that could justify a (pre-emptive) war in self-defence (Cassese, 2001; Koskenniemi, 2002; Anghie, 2004). The difference between both legal frames is significant as Ansah argues because to "resort to the language of war as 'natural' and 'starkly simple', as it is, nevertheless has a profound impact on how the law's intervention is shaped, or how the laws governing the transnational use of force are interpreted to accommodate

a ‘war’ on terrorism” (2003:799). While self-defense is permitted under Article 51 of the UN charter, the U.S. however, declared its intention to act in pre-emptive defense wherever necessary (Anghie, 2004:276). The speech act legalizing PEDS was outlined in the National Security Strategy (NSS) of the U.S in 2002 and 2006. President Bush (2002a) declared:

> For centuries international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often condition the legitimacy of pre-emption on the existence of an imminent threat – most often a visible mobilization of armies, navies and air force preparing to attack. We must adapt the concept of imminent threat to the capability and objectives of today’s adversaries…To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively…in an age where the enemies of civilization openly and actively seeks the world’s most destructive technologies, the United States cannot remain idle while danger gather.

Interestingly, President Bush *sinned* by alluding to the *past* to meet the sudden and tragic needs of the *present* and reiterated the applicability of the doctrine in 2006 when he asserted that “when the consequences of an attack with WMD are potentially so devastating, we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of pre-emption. The place of pre-emption in our national security strategy remains the same. We will always proceed deliberately, weighing the consequences of our actions. The reasons for our actions will be clear, the force measured and the cause just”. Similarly, on a different occasion at West Point academy, President Bush highlighted the required legal modification in international law in relation to declaring *war* on terrorism when he declared that “for much of the last century, America’s defense relied on the Cold War doctrines of deterrence and containment…But new threats also require new thinking. Deterrence, the promise of massive retaliation against nations – means nothing against shadowy terrorist networks with no nation or citizens to defend” (as cited in Snauwaert, 2004:123). It should be noted that this perspective on a new global strategy of U.S. hegemony for global leadership, and security, was articulated in a 1993 document written by then Secretary of Defense Dick Cheney entitled *Defense Strategy for the 1990s: The Regional Defense Strategy* (RDS). The document argued for a new philosophy of international relations based on a strategy which considers that with the U.S. standing as a “preeminent*”* power, a new “revolution” in military affairs and global (geo)strategy is needed to guide U.S. foreign policy. The centerpiece of this

grand strategy is to "*preclude* the emergence of rivals, regional and/or global, that would threaten U.S. dominance in critical regions of the world both economically and geopolitically" (Snauwaert, 2004:124; emphases added). Cheney writes "the goal is to preclude any hostile power from dominating a region critical to our interests, and also thereby to strengthen the barriers against the re-emergence of a global threat to the interests of the United States and our allies. The regions include Europe, the Middle East/Persian Gulf, and Latin America. Consolidated, nondemocratic control of the resources of such a critical region could generate significant threat to our security" (1993:3).

The legal doctrine articulated in the NSS paying homage to RDS led Senator Edward M. Kennedy to declare that the "administration's doctrine is a call for 21st century American imperialism that no other nation can or should accept" (Leiva and Medrano, 2007:10) since it essentially extended the concept of self-defense beyond traditionally understood boundaries of Article 51 in the UN charter. The traditional view of self-defense is that if pre-emptive defense is permitted at all, it is permitted only if an attack by an adversary is imminent (Anghie, 2004). However, the NSS articulated by President Bush suggests that the concept of an "imminent threat" should and could be expanded to correspond with modern realities, and that "emerging threats" could also be subject to pre-emptive self-defense (Anghie, 2004:276). Scholars supporting the Bush Doctrine departed from a narrow, literal approach to the UN charter. The 2002 NSS emphasized the fact that the doctrine of PEDS was a response to new threats such as undemocratic rogue states harboring terrorists and/or possessing WMDs.

Advocates of the doctrine, therefore, argued that pre-emptive defense was not a departure from the law as it was understood so much as it was an attempt to adapt a legal doctrine approved by earlier jurists such as Vitoria, Grotius, and Vattel (Beckett, 2003; Greenwood, 2003; Zoller, 2004:333; Anghie, 2004). Since state self-defense is a foundational attribute of sovereignty as no state can be truly sovereign unless it has the right to preserve itself through (internal and external) self-defense, in this sense then the concept of self-defense precedes *law* and shapes the legal universe (Anghie, 2004). Vitoria makes this clear when he says in "war everything is lawful which the defense of the common weal requires. This is notorious, for the end and aim of war is the defence and preservation of the State" (as cited in Anghie, 2004:293). This highlights that self-defence is fundamental for the preservation of "international society" – therefore *jus gentium* – and more importantly, sovereignty as a juridical concept since whatever self-defence requires is

legally *willed* by a sovereign figure. However, with self-defence exalting sovereignty by asserting that war against an imminent threat is legitimate, the precise contours of the doctrine of pre-emption remain unclear and problematic since it is clearly a morally fraught secular matter as by definition "the aggressor has not been harmed, and his judgment about the necessity of his action might well be called into question both by the victim and the neutral observer" (Tuck, 1999:18).

The Bush Doctrine attempts to expand the legal use of force and is intimately connected to reductionist imaginaries that construct Arab civilization as being naturally lawless and receptive to terror, thereby transforming powerful symbolic discourses into legal differences against which pre-emptive force is necessarily directed in accordance with a new doctrine of *just war* seeking the temporal transformation of "primitive" Arab society. Pre-emptive strategy rethinks and revives the importance of what can be termed *democratic sovereignty* for the "security" of a cosmopolitan international order, and its cultural transforming potential role in preventing terrorism and ensuring international peace (Anghie, 2004). Since almost two decades have elapsed since the initiation of the WoT, one could state with confidence that terrorism continues to firmly influence and strategically dictate the reformulations of (ratiocinated) legal doctrines. Before we continue discussing how the civilizing mission with its imperial practices continue to animate international law, it is important to highlight how cultural difference was once again translated into legal difference with culturally influenced legal concepts such as sovereignty, society, war, and civilization located in the Bush Doctrine being operationalized in tandem with three interrelated concepts – rogue states, weapons of mass destruction (WMDs), and democracy – to sanction pre-emptive war/defensive imperialism on Arab civilization.

President Bush stated in his June 1st 2002 West Point speech part V that "we must be prepared to stop *rogue states* and their terrorist clients before they are able to threaten or use *WMDs* against the United States and our allies and friends" (2002b, emphases added). This statement suggests that certain "uncivilized states" – now rogue – in possession of WMDs or were suspected of holding WMDs could be subject to a legitimate attack by the U.S., and more importantly, subject to different set of rules since by being identified as rogue, sovereign privileges guaranteed by *jus gentium* are *a priori* negated. Under the Bush Doctrine, force may be used not only against emerging threats but also against states ostensibly complicit in acts of terrorism. Therefore, states being responsible for acts of violence committed by terrorists operating within their borders further exposes the immorality of the Bush Doctrine since the line between Arab and terrorism is blurred

as evidenced with Iraq being imagined in 2003 by the *Coalition of the Willing* in totality as inherently terroristic, chaotic, and anarchical (Anghie, 2009:297). The traditional law of state responsibility held a state responsible for terror acts only if a clear nexus existed between the state and the group causing the violence. In contrast, pre-emptive strategy proposes – as highlighted in the war in Afghanistan, Iraq, Libya, and Syria – that a state can be held responsible and be attacked even if it did not directly participate in the operations conducted by terror groups. Broader attempts to give the term "rogue states" a legal character suggested that they could be defined as states that possessed WMDs, engaged in large scale human rights violations, and had a propensity to use force in violation of international law (Slaughter, 2003; Anghie, 2004, 2009:297). As highlighted in the lead up to the Iraq war in 2003, Iraq was labeled as a rogue state and in possession of WMDs and once defeated, Iraq would be transformed into a democratic entity. Democracy plays a crucial role in this process since it liberates the oppressed people of "Islamic" states or "Arabization" tendencies and creates law-abiding societies that would be allies rather than threats to cosmopolitan (international) society.

The NSS promotes "modern governance" especially in the Muslim world to ensure that the conditions and ideologies that promote terrorism do not find fertile ground in any space since in November of 2001 President Bush argued that the absence of democracy turned Arabs towards Islamic extremism (Mamdani, 2004; Anghie, 2004:277). The current U.S. position appears to be that pre-emptive self-defense against any space that emits a different cultural personality to Europe and the U.S. is legal and that the transformation of the offending society into a democracy approximating the *telos* of (Western) history is the most effective way in ensuring that it will pose no future threat to international society. It is clear then that the WoT is challenging, elaborating, and violating existing laws of armed conflict (Yee, 2002:1; Anghie, 2004). However, what is more significant is that the Arab *Saracen*, the "terrorist", is constructed not only in terms of the discourse of race but using a discourse of war, characterized as self-defense, and is compelled as a strategy to transform Arabs before they emerge as threats to international law. It is through the language of war as pre-emptive that the Arab as desert-dweller is constructed, excluded from the realm of law, attacked, liberated, defeated, and transformed (Anghie, 2004). However, as noted above, PEDS requires benevolent imaginaries to become actualized which is why it collects together and deploys a series of other doctrines and principles relating to liberal democracy, responsibility to protect, human rights, and the style of warfare to complete this circular structure of pre-emptive war.

Considering that it is the Arabian region where the war on terror is being waged in its most extreme form, the idea of being anachronic when deconstructing legal-history becomes imperative. The past is revealing when we consider that the mythical cultural traits imagined to create a "terrorist profile" bears important resemblance to the peoples of the Arab world who have for over a millennium – but more so since the *Granada War* in January of 1492 concluding the period of the *Reconquista* thus ending Arab-Muslim presence in Iberia and Al-Andalus – been portrayed as the enemy against whom this modified theory of (just war) "pre-emption" has been applied since their personality is imagined as inimical to (Latin-European) modern-secular philosophical theology. For instance, President Bush on September 26th 2001 referred to the evolving battle against terrorism as a "crusade" requiring "Operation Infinite Justice" (Becker, 2001; Anghie, 2004), and a headline in the front page of the New York Times on September 15th 2001 implored that the "US Demands Arab Countries Choose Sides" (Perlez, 2001). Furthermore, as declared by President Bush's address to a joint session of the U.S. Congress on September 20th, 2001, "Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists". The world, after 9/11, was once again divided into two opposing camps and failing to support the U.S. in its war on terror meant risking being classified as an "uncivilized" sympathizer and proponent of evil Arab-Muslim terrorists i.e., rogue states. In a different speech act in Congress on September 20th 2001, President Bush further declared that the attacks on U.S. soil were "the heirs of all murderous ideologies of the twentieth century…they follow in the path of fascism, and Nazism, and totalitarianism" (Bush, 2001).

While President Bush and his administration avoided the language of characterizing the war on terrorism as a "clash *of* civilizations" as alluded to by Samuel Huntington, Bush claimed that the war is a "fight *for* civilization" (Bush, 2001; Bowden, 2002) and to leave no observer in any doubt as to which side the U.S. was on, President Bush confidently added that the "civilized world is rallying to America's side" (Bush, 2001; Bowden, 2002). The casting of the attacks as an attack on the entire civilized community prompted a number of heads of state to declare that they adhere to PEDS such as Australia, Italy, Great Britain, Japan, Israel, and Germany (Anghie, 2009). For instance, the German Chancellor Schroeder denounced the attacks as not simply an attack on the U.S. but also "against the entire civilized world" (Bowden, 2002:30) and similarly, the PM of the UK Tony Blair stated that the "terrorists can only truly be said to have won if civilized nations abandon civilized values" (Bowden, 2002:30). What is clear is that the war on terror articulated in

the National Security Strategy of the U.S. with its willingness to use PEDS as a doctrine of force against "rogue states" and its ambitions to transform Arab countries into "civilized democracies" resembles in many ways the rhetoric used by naturalist and positivist jurists to justify the legal conquest of non-European spaces in earlier centuries. Once again it is the Arab as *Saracen* that has prompted the concerted effort to reconstruct international law while ironically creating an international law that returns quite explicitly to a primordial and formative structure of international law – the "civilizing mission". As highlighted earlier, the legal formulations adopted after 9/11 resulted in the formulation of a "new" form of imperialism identified as "defensive imperialism" asserting itself in the name securing and protecting the epistemology of Latin-European philosophical theology. The consequences of a "war on terror" (i.e., Arab forced displacement and *en-masse* carnage) demands that we appeal to the *past* to understand how imperialism in the *present* continues to animate international law especially when we consider that the policy of the U.S. appears to be "premised on the belief that only the use of force and the transformation of alien and threatening societies into 'democratic' states will ensure its security…the transformation of the non-European world is seen as essential for [Western] physical [epistemological] security" (Anghie, 2006:751).

3. Defensive Imperialism and Denying Arab Civilization Sovereignty: The Responsibility to Attack, Democratize, and Order "*Lawless*" Arabia

Even prior to the attacks of September 11th 2001, terrorism was regarded as a form of "new barbarism" and/or a contemporary "savage war". The military historian Everett Wheeler mentions that the "shock of modern terrorism resembles the outrage of the seventeenth or eighteenth-century European regulars in North America when ambushed by Indians who ignored the European rules of the game" (1991:15; Bowden, 2007). Therefore, terrorism is primitive warfare in comparison to the "military horizon" or "arts of war" ascribed to "recognized sovereign" (i.e., members of *jus gentium*) in that the shock value of "unexpected savagery towards innocent victims creates the impression of civilization teetering on the brink of anarchy" (Wheeler, 1991:6). In this reductionist framing the "terrorist" characterizes individuals imagined as inhabiting a geography rather than a society shucking off "in particularly violent and blatant fashion the restraints that divide civil society from the state of nature" (Lomasky, 1991:99; Bowden, 2007) since their "terror activities" are interpreted as declaring that the "whole world is a Hobbesian state of nature devoid of civil order" (Phillips, 1990:77; Bowden, 2007). Furthermore, terrorism being identified as an

uncivilized military tactic that is exclusively practiced and identified in Arab personalities lacking the *art of war* is highlighted by John Keane when he says that today's terrorists are "autistic" and "vandalize the threefold division of government, army, and civilians once enforced by conventional warfare and the Westphalian and Philadelphian models". Thus, terrorists are imagined as ransacking the Weberian "legal monopoly of armed force long claimed by states; they put an end to the distinction between war and crime; ensuring that conflict degenerates into 'criminal anarchy', into deathly destruction and self-destruction" (Keane, 1996:141). Terrorism is then practiced, located, and identified in areas inhabiting peoples located in spaces that are denied sovereignty – therefore uncivilized, lawless, and lacking in social organization – because of a supposed unbridgeable (antagonistic) culture gap between the universal Latin-European subject and the particular Arabian object.

A considerable part of the "new" divide following 9/11 between "civilized" and "uncivilized" worlds is founded on a familiar "standard of civilization" relating to the style of warfare supposedly employed by each group. This reductionist cultural difference transformed into a legal distinction is of vital importance since Sir John Keegan[52] – a British military historian – in the wake of the attacks on 9/11 stated on October 11th, 2001 that Samuel Huntington's *Clash of Civilization* misses a crucial military ingredient by arguing that:

> Westerners fight face to face, in stand-up battle, and go on until one side or the other gives in. They choose the crudest of weapons available, and use them with appalling violence, but observe what, to non-Westerns may well seem curious rules of honour. Orientals, by contrast, shrink from pitched battle, which they often deride as a sort of game, preferring ambush, surprise, treachery and deceit as the best way to overcome an enemy (Keegan, 2001; Bowden, 2002, 2007).

In the same article, Keegan (2001) makes the supposed obvious link between the barbarians of the past and the barbarians of the present by declaring that the Arab "oriental war-makers, today terrorists, expect ambushes and raids to destabilize their opponents, allowing them to win further victories by horrifying outrages at a later stage". In a different interview, Keegan equates the Arab region with Al-Qaeda – even though it is a terrorist organization that flourished and received direct logistics through the tutelage of former colonial powers and local colonial subjects during the Cold War and quite explicitly during the "Islamist Winter" of 2011 – by declaring that it is "very Islamic, but particularly very Arab – and you can see that it has its roots in Islamic but particularly Arab

Islamic style of war making that goes back to the seventh century AD. The surprise attack, victory, killing for its own sake" (as cited in Bowden, 2007:13).

What is noteworthy is that Keegan is not critical of Huntington identifying a variety of "civilizations" being included in the world in contrast to earlier jurists of the 18th and 19th century who arrogated the *telos* of *civilization* as exclusively situated in Latin-Europe. However, this is understandable since Huntington identifies Arab civilization – from an essentialist narrative – as being wholly Islamic and that it is a culture that is *naturally* clashing with Judeo-Christian civilization because of its tendency of having "bloody borders" and being inhabited by irrational – therefore lawless – peoples. While some commentators and leaders of the Western world stressed that the war on terror is not to be equated with a war against the "Arab Islamic world", John Keegan (2001) concludes his observation with the following deterministic claims:

> This war belongs within the much larger spectrum of a far older conflict between settled, creative, productive Westerns and predatory, destructive Orientals. It is no good pretending that the peoples of the desert and the empty spaces exist on the same level of civilization as those who farm and manufacture. They do not. Their attitude to the West has always been that it is a world ripe for the picking. When the West turned nasty, and fought back, with better weapons and superior tactics and strategy, the East did not seek to emulate it but to express its anger in new forms of the raid and surprise attack

This distinction between civilized and uncivilized worlds being determined by the conduct of war and cultural differences is evocative of a sense of Western civilizational superiority that is reminiscent of past legal arguments justifying imperial conquest (Bowden, 2002, 2007; Anghie, 2004; Mamdani, 2004). Keegan's expressed sentiments were held by the majority of British and American defense strategists following 9/11, but more importantly – by being anachronic – to past discussions by jurist Robert Ward (1973 [1795]:136, emphases added) who is credited with having written the first complete history of *jus gentium* by stating that:

> if we look to the *Mahometan* and *Turkish* nations…their ignorance and barbarity repels all examination, and if they received any *improvement* since the days when they first set foot in Europe, it is probably from their connection with people professing the very *religion* which they most hate and despise…Their *wars* have always been carried on with *Eastern* barbarity, and their known *laws* against *strangers* would alone demonstrate the point

On June 28th, 2005 President Bush underlined the idea that the violation of the standard of civilization is based on the fighting tactics employed by uncivilized parties to a conflict by declaring that:

> we see the nature of the enemy in terrorists who exploded car bombs along a busy shopping street in Baghdad, including one outside a mosque. We see the nature of the enemy in terrorists who sent a suicide bomber to a teaching hospital in Mosul. We see the nature of the enemy in terrorists who behead civilian hostages and broadcast their atrocities for the world to see. These are savage acts of violence. We're fighting against men with blind hatred – and armed with lethal weapons – who are capable of any atrocity

The cultural difference underlined by President Bush positions Arabs as the modern *present day* savages of history, similar to the communities of the *past* in the New World[53] by utilizing fabricated cultural differences as a legal argument for conquest by saying that modern savages "wear no uniforms, they respect no laws of warfare or morality" (Bush, 2005; Bowden, 2007:15). Another important point to make here is that this revival of "cultural differences" being a legally sanctioned argument to justify pre-emptive war to transform Arab societies into "democratic entities" rejuvenates the idea that *sovereignty* continues to remain a marker of civilization arrogated to Western civilization.

Following the attacks of 9/11, the legal doctrines adopted by the U.S. and the EU leave little doubt about the supposed *passé* idea that decolonization in the 20th century perceived all peoples of the world as equal sovereigns. The fundamental principle of international law that stipulates that all sovereigns are formally equal would posit that any right of PEDS that develops in international law should be enjoyed by all states since it is inferred from the inherent right of all states for self-defense and self-determination (Anghie, 2004:305). The development of the Doctrine in the context of a "war on civilization" suggests that it is only certain powerful states that would enjoy such a right (Anghie, 2004:305). The war on terror constitutes a (re)turning point recounting the cultural civilizational legal marker of "sovereignty" being denied to Arab civilization because they are imagined as lawless, lack social organization, and are deficient in the arts of war. However surprising to some, when President Bush immediately claimed after 9/11 that if you are "against us" then you are uncivilized – therefore a terrorist – he was referring to the thesis put forward by Richard Haas, the director of Policy Planning in the US state Department in Bush's administration entitled *Limits to Sovereignty*. According to Lemann, sovereignty – similar

to positivist jurists such as Westlake and Wheaton – entails internal and external "obligations" and one

> is not to massacre your own people. Another is not to support terrorism in any way. If a government fails to meet these obligations, then it forfeits some of the normal advantages of sovereignty, *including the right to be left alone inside your own territory*. *Other governments, including the United States, gain the right to intervene.* In the case of terrorism, this can even lead to a *right of preventive, or peremptory, self-defense. You essentially can act in anticipation if you have grounds to think it's a question of when, and not if, you're going to be attacked* (2002, *emphases added*)

Similarly, in 2005, Douglas J. Feith, the Under Secretary of Defense for Policy argued before the Council on Foreign Relations that:

> The United States strengthens its national security when it promotes a *well-ordered world of sovereign states*: a world in which states respect one another's rights to choose how they want to live; a world in which states do not commit aggression and have governments that can and do control their own territory; a world in which states have governments that are responsible and obey; as it were, the rules of the road. The importance of promoting a well-ordered world of sovereign states was brought home to Americas by 9/11 when terrorists enjoying safe haven in remote Afghanistan *exploited globalization and the free and open nature of various Western countries to attack us disastrously here at home. Sovereignty means not just a country's right to command respect for its independence, but also the duty to take responsibility for what occurs on one's territory*, and, in particular, to do what it takes to prevent one's territory from being used as a base for attacks against others (2005, *emphases added*)

What (liberal-secular) globalization has ensured according to these speech acts, of course, is that it is no longer possible to distance oneself from "uncivil spaces" since we live in a "globalized borderless world". The legal doctrine of PEDS characterizing defensive imperialism in Arabia is the "rational" mode of engagement. Fight them *there* before they get *here* and contaminate *our* civilized space. What is clear in these deliberations is that the objective of the Bush Doctrine through its emphasis on regime change, pre-emptive defense, and re-ordering is a "grand strategy of transformation" that "destroys in order to rebuild"[54] (Gaddis, 2002; Acharya, 2007:279). The problem of "order among sovereign states" according to PEDS arises – once again – only in the context of sovereign Western states similar to the formative phases of *jus gentium*. Here once again we see how the positivist legal doctrine of "order among sovereigns" is (re)actualized by consisting

primarily of mechanisms of exclusion which expel Arab civilization from the realm of *jus gentium* and then proceeds to legitimise sovereign extrajudicial acts that resulted in the "attempted" incorporation/inclusion of the Arab body into the system of international law through a variety of liberal humanitarian discourses. These statements make salient that defensive imperialism links different types of benevolent discourses within its mythicized "axis of evil" by claiming that a country not furnishing Latin-European culture is a legally justifiable reason for intervention – therefore – essentially denying Arabia sovereign recognized privileges.

More importantly, non-Europeans being conceptualized as being "objects" and/or "outside" of law because they violate the "standard of civilization" inevitably results in there being an absence of any legal limitations on the ability of Western sovereign states to commence war and/or be accountable for atrocities committed during war because *domination* and *violence* in the case of a war between a civilized and non-civilized peoples becomes essential in transforming lawless Arabia. Although theoretically pre-emption should apply to all states, the U.S. articulated the doctrine never intending to extend it to its declared enemies since under the logic of the doctrine, the attempts of U.S enemies to arm themselves could be interpreted by (*realpolitik*) defense strategists and (positivist) lawyers itself as an emerging threat or aggression, therefore, a *raison d'être* for declaring pre-emptive war (Anghie, 2004, 2009). PEDS is then a right reserved only for the most powerful with advocates of the doctrine claiming that PEDS is the U.S. essentially claiming "an assertion of the right to review the policies adopted by the other government and to override them whenever the US finds it necessary" (Benvenisti, 2004:691; Anghie, 2009).

Therefore, the war on terror is not so much aimed at, and declared in, fear *of* Arabs eroding the Westphalian liberal-secular order as one might assume through these benevolent transformational discourses of "humanitarian intervention" seeking "democratization", but rather *is* a war that seeks to cynically strengthen and further consolidate the already-established *orderly* community of *jus gentium* exclusively among Western sovereign societies. This point is clearly made by Anghie (2004), Mamdani (2004), Koskenniemi (2011), Orford (2011), and Morefield (2014) who align with the idea that the:

> higher principles evoked by the U.S. to justify its war on Iraq, such as the human rights of the Iraqis, and democracy promotion in the Middle East, are now clearly seen to have been a façade to

> mask the geopolitical and ideological underpinnings of the invasion. In this sense, the war on terror has revived national security and naked self-interest as the principal rationale for intervention, notwithstanding the self-serving efforts by some Bush administration officials to 'graft' the 'selective sovereignty' thesis on to the evolving humanitarian intervention principle (Acharya 2007:274).

Act I operationalizing the legal doctrine of PEDS occurred with the conquest of Iraq in 2003 with Western sovereign figures denying Iraq sovereignty by claiming it lacked a modern liberal-secular democratic personality, harbored terrorism, and possessed WMDs – thus imagined as temporally situated in a "state of nature" and incapable of maintaining a "society". What we can deduce presently looking back at the past is that the legal argument stating that a pre-emptive war in Iraq is necessary – because it supposedly possessed WMDs – was never about whether Iraq *empirically* possessed WMDs, it was simply enough for the *assumed thought* of Arabs possessing "modern" weapons – let alone use them – for pre-emptive war to be waged in the hopes of transforming Arab spaces into a personality that furnishes Latin-European epistemology. Arabs being denied sovereignty *a priori* considers that they are *irrational* and *premodern* – therefore not to be trusted with "modern" weapons.

These deductions and legal justifications reassure hermeneutically suspicious and anachronic legal-historians that pre-emptive defense is a strategy that unequivocally highlights that *jus gentium* continues to be animated by a civilizing mission that developed, rethought, and created legal doctrines that reformulated *sovereign-will-to-power* by giving it unfettered power to legally sanction the use of force – regardless of the "collateral damage" induced. Taken together, these "new" doctrines with their emphases on "race war discourses" resemble in many ways a return to the international law informing the 19th century which reified the secular Austinian positivist idea postulating a natural detachment between morality and law. The imperialistic nature of the legal initiatives developed by the *chaotic* Bush Doctrine attempting to "instantiate an imperial sovereign in the international system" (Anghie, 2009:298) can no longer be ignored because it is a "sin to be anachronic". As matter of fact, Chimni (1998), Anghie (2004), Pahuja (2011), Pasha (2013), Patnaik and Patnaik (2015), Khiabany (2016), Narayan (2017), Patnaik et al., (2017), and Biccum (2018b), emphasise the lack of academic reflexivity by highlighting how the concept of imperialism has been pushed to the margins of the debate concerned with international law and international relations. Khiabany (2016) mentions that the level of

marginalization has been such that the concept of "imperialism" was not included as a keyword in Bennett, Grossberg, and Morris's updated and revised *New Keywords: A revised vocabulary of culture and society* (2005) even though the imperial war on Afghanistan and Iraq occurred prior to publication.

Imperialism has been alive and well to the point that literature produced in the last decade by prominent Global North and Global South scholars argues not only for the requisite of imperialism to "modernize Arabs", but that it is a vital transformational policy that will be welcomed and acquiesced to by those who are subjected to it. This idea that the Coalition of the Willing is a benevolent/philanthropic "family of nations" equipped with solutions and ideas that the object of sovereign (re)ordering – the Arab in this case – is obliged to adopt is reminiscent of laws extended by naturalist jurists to legally justify the conquest of Arabia during the *Reconquista*, and similarly, positivist jurists in the 20th century claiming that a British and French "Mandate System" in Arabia is necessary for "temporal progress" since Arab civilization fails at obeying the "standard of civilization". According to legal historians and political sociologists such as Anghie (2004), Bowden (2002, 2007, 2009), Koskenniemi (2001, 2011, 2012), Orford (2011), Chimni (2013), and Wood (2003) the reformulated legal system which developed following the declaration of a war on terror in the 21st century constitutes a return to "imperial international law". Characterizing the attacks on 9/11 as an "attack on civilization" and the required response a "pre-emptive war to fight for civilization", rejuvenates the "culturalist vocabulary" of the colonial encounter separating civilized from uncivilized spaces thus bearing the hallmarks of a resurrected "civilizing mission" for the 21st century. Proponents of "pre-emptive" legal doctrines formulated following 9/11 such as Michael Ignatieff (2002, 2003) claim that "America's entire war on terror is an exercise in imperialism" and advocates for what he calls "Empire Lite" in the 21st century headed by U.S. global hegemony whose "graces", he notes, "are free markets, human rights, and democracy, enforced by the most awesome military power the world has known".

Similarly, Larry Diamond, a professor of Sociology and Political Science at Stanford University, a Senior Fellow at the Hoover Institution, and director of the Center on Democracy, Development, and the Rule of Law (CDDRL) proposes that we use the racialized vocabulary of "civilized-uncivilized" as part of a project outlining the standard a state should meet to be considered a legitimate member of the "civilized" community and/or International Society (Diamond, 2002, 2008). According to Diamond, the civilized world consists of "good societies"

that he designates as "civic communities" that have "strong, effective institutions of governance to enforce and reproduce civic behaviour", and possess a culture that is based on *civil* habits such as "trust, cooperation, reciprocity, respect, restraint, tolerance, and compromise" (Diamond, 2002:6-7). However, the Arab "uncivil" world comprising "bad societies" or what he calls "predatory societies" possesses a culture that is antithetical to civic community. Inhabitants of these societies are predatory and uncivil because their societies have "weak, porous states that are prone to complete collapse…the line between the police and the criminals is a thin one, and may not exist at all" (Diamond, 2002:7-8). Diamond believes that "predatory societies" constitute "Islamic Bolsheviks" and the best way to civilize '*Saracens'* is through the establishment of "institutions of 'horizontal accountability'…a process by which some state actors hold other state actors accountable to the law, the constitution and norms of good governance" (Diamond, 2002:10). In other words, and similar to Vitoria, Diamond wants to bound Arab societies using a (secular) law that while seeming *inclusionary* is essentially *exclusionary* by reason that inhabitants of Arabia are imagined – using reductionist imaginaries – as mentally incapacitated in approximating a culture resulting in 'good governance' mirroring the governing modality furnished by "recognized sovereign states" – reifying Latin-European philosophical theology – personifying members of "international civil society". According to Bowden (2002:38), Diamond puts forward a case for greater U.S. imperial involvement disguised as humanitarian intervention in "bad societies" because according to Diamond, the U.S. remains "the indispensable country in the quest for democracy and good governance", and as the self-proclaimed "leading civic community, it has an obligation to the world to lead the way" (Diamond, 2002:14).

On the other hand, Max Boot, a conservative military historian, Senior Fellow in National Security Studies at the Council on Foreign Relations (CFR), and a member of the former think-tank known as the Project for a New American Century (PNAC) is less diplomatic than Diamond in dressing the "standard of civilization" and the required (violent) responses for "temporal transformation". Max Boot explicitly proposes that a "dose of US imperialism may be the best response to terrorism" (Bowden, 2002:38) since the attack on 9/11 was a result of "insufficient" American "involvement and ambition" in the Middle East (Boot, 2001, 2004). The solution is to be "more expansive and the U.S. goals more assertive in their implementation" (Boot, 2001). Similarly, Niall Ferguson, a conservative British historian, argues that the U.S. "must make the transition from informal to formal empire…there is no excuse for the relative weakness of the US

as a quasi-imperial power. The transition to formal empire from informal empire is an affordable one". He also highlights similar to other advocates of the Bush Doctrine of pre-emptive war that if resistance occurs objecting to the civilizing mission endowing Arab spaces with cosmopolitan values, then the U.S and Europe need to impose their values and institutions on others as part and parcel of a process of civilizing (Ferguson, 2001, 2002, 2011; Anghie, 2004; Bowden, 2002, 2009). Ferguson identifies the wars in Bosnia, Kosovo, East Timor, and Iraq as precedents where a form of "new imperialism" took place and advocates that it expands globally (Ferguson, 2001; Bowden, 2002; Anghie, 2004). Echoing Niall Ferguson, Philip Hensher wrote on the war in Afghanistan that "responsible imperialism, might stand a chance of solving Afghanistan" by stating that the problem with Afghanistan is that it was successful "over the years in fighting colonizers off", and entertains the idea that if Afghanistan was subjugated and colonized the way India was then "investment and the exchange of ideas might have produced a tradition of parliamentary democracy and some kind of substantial infrastructure". Hensher concludes by legally justifying imperialism to expand the "standard of civilization" through violent domineering practices globally by saying that there is no doubt that people in Afghanistan would "benefit to a colossal degree from the *imposition* of *our cultural, political* and *even religious values*" (2001, emphases added).

The most detailed account advocating for imperialism is by Robert Cooper, a senior British diplomat and one of the architects of former British PM Tony Blair's doctrine of "internationalist interventionism" (Bowden, 2002:40). Cooper conceptualizes "pre-modern states" as being zones where the "state has failed and a Hobbesian war of all against all is underway". He mentions that "pre-modern states" need to "get used to the idea of double standards" since "modern states" need to "revert to the rougher methods of an earlier era – force, pre-emptive attack, [and] deception" because a "pre-modern world is a world of failed states. Here the state no longer fulfills Weber's criterion of having a monopoly on the legitimate use of force…in such areas chaos is the norm and war is a way of life. In so far as there is a government it operates in a way similar to an organized crime syndicate". Similar to Diamond's "predatory societies" category, Cooper's "premodern spaces" according to him "provide a base for non-state actors who may represent a danger to the postmodern worlds, notably drug, crime, or terrorist syndicates". To respond to this civilizational threat and by making the distinction between modern (civilized) and pre-modern (uncivilized) societies, Cooper argues that if a rogue "premodern state" became "too dangerous for established

states to tolerate", it will then become necessary to inaugurate a "defensive imperialism" that is a "new kind of imperialism, one acceptable to a world of human rights and cosmopolitan values" (Cooper, 2002, 2003).

Bowden argues that Cooper's "post-modern imperialism" is conducted with the direct aid of multilateral international regimes such as the IMF, the WB, the WTO, and the UN which he terms "imperialism of the global economy" (2002:41). It is important to note that the idea of "defensive imperialism" also entails the notion of "imperialism of neighbors" which are situations where "misgovernment, ethnic violence, crime" ostensibly conducted by "premodern states" extends sovereign states the privilege and responsibility to transform the geography to "create something like a voluntary UN protectorates" to return democracy and civility to the region (Bowden, 2003; Cooper, 2002, 2003). This was evidently clear in the establishment of the Coalition for Provisional Authority (CPA)[55] in 2003 when President Bush declared that the primary goal of the coalition in Iraq is "self-government" (Bush, 2003; Anghie, 2004:280). "Self-government" is the familiar language of trusteeship used by the League of Nations after WWI to partition Class A spaces inhabited by Arabs using the Mandate System to demographically and geographically alter and transform the region. As a matter of legal fact, Article 1-4 of the Mandate System Covenant stated that self-determination or self-governance is not possible in Arabia since Arabs have yet to embody the "sacred trust of civilization" endowed to the trustees, and that tutelage is necessary "until such time as they are able to stand alone" because they cannot handle the "strenuous conditions of the modern world" (UN, 1945).Therefore, since 9/11, Western sovereign executives, policymakers, academics, and lawyers adhering to positivist jurisprudence proposed extrajudicial measures as necessary for the (re)ordering of Arabia to further consolidate the already-established system of international law reflecting a particular "universalist" cultural self-image of (Latin-European) civilization. This vision for humanity reifying a "cultural dynamic of difference", according to Charles Krauthammer, does not require the U.S. to be diplomatic since "America is no mere international citizen. It is the dominant power in the world, more dominant than any since Rome. Accordingly, America is in a position to reshape norms, alter expectations and create new realities. How? By unapologetic and implacable demonstration of will" (2001:42).

What is revealing about the aforementioned advocates of pre-emptive war (defensive imperialism) is their obsession with the idea that *dissimilar* cultural personalities to Latin-Europe are not only imagined as threatening *jus gentium*, but are adopted and transformed into a legal

argument by policy-makers and jurists to justify extrajudicial violence to protect Enlightened dogmas informing a Judeo-Christian (slave) morality of civilization[56]. The idea that imperialism is necessary to transform Arabs because they violate the "standard of civilization" is captured through what Mamdani (2002, 2004) labels "culture talk". Culture talk gained currency after 9/11 with metropole centers of knowledge located in the U.S and Europe *speaking of* Arabs and Muslims as innately "democratically deficient" because of their "terrorizing" cultural tendencies. According to a reductionist narrative charged with "culture talk", modern democratic states have a special status in *jus gentium* since they are sovereign – therefore responsible and reason-able – and they also have an "intimate responsibility" linked with "countering" and "preventing" cultures producing personalities that develop terrorizing subjects. Culture talk, therefore, reifies a liberal interventionist discourse operationalized using the Bush Doctrine which highlights that modern civilized democracies protect human rights, embrace the rule of law, protect civil society from government intervention, and promote a market economy (Anghie, 2009:300)

Apologists of liberal imperialism such as Ferguson, Boot, Diamond, and Cooper, including executive speech actors with political capital who *speak* "cultural talk", assume that every culture has as an essence by which it can be defined and that the dividing line between those predisposed to "civil" existence and those inclined to "pre-civil" existence *is* culture thereby necessitating a *clash of civilizations*. This dichotomy presumes that culture in the "modern world" stands for creativity – for what being "civil" is all about (Mamdani, 2002:767). In contrast, culture in the premodern world is imagined as being founded on primitive habits located in non-secular texts that make its followers naturally incapable of, and resistant to, (Western) modernity (Mamdani, 2002, 2004; Al-Kassimi, 2018). Culture talk reifies an "unbridgeable cultural gap" between Europe and non-Europe based on philanthropy and benevolence since according to such "talk" premodern peoples have not yet attained the *telos* of history (Mamdani, 2002, 2004). More importantly is that defensive imperialism is legally sanctioned in these narratives of "cultural talk" with premodern peoples being perceived as predisposed to, and in possession of, an abundant capacity for chaos and destruction by using arguments revolving around their barbarity in war and their non-secular/irrational based episteme. Premodern peoples who require transformation with a "lite dose of imperialism" are referred to by speech actors engaging in *culture talk* as individuals who lack the capacity of creative reasoning to be included in a "society of nations" that is informed by civilizational knowledge markers of Antiquity, the Renaissance, and most importantly, the

Enlightenment period which produced the *nomos* informing Latin-European epistemology seeking to maintain the cultural gap pervading teleological narratives constellating (Latin-European) modernity, civilization, and development.

Culture talk imagines Arab-civilization as figuring premodern spaces from "traditional" cultures who personify identities that are temporally degenerative with lifeless customs, and a space where time has ceased to *progress*. Cultural talk essentially dehistoricizes Arab political identities and deliberately overlooks and silences the importance of Arab-Islamic philosophical theology in "developing Latin-Europe" (Abou El Fadl, 2014). Cultural talk is perilous not only because it is a reminder that the Bush Doctrine rejuvenates the idea that *jus gentium* is animated by an imperial sovereign and a violent civilizing mission, but that the legal explanation provided to declare a "war on Arab-Muslims" is based on ahistorical cultural explanations devoid of any genuine political and historical reading of Arab-Islamic philosophical theology. Equating the political tendencies of the terrorists of 9/11 with entire communities encourages collective discipline and punishment characterizing past crusading encounters (Mamdani, 2002). Cultural talk justifies punishing wars against entire Arab countries by ignoring the recent colonial history that shaped the region and the influence Western powers had along with their local colonial agents in developing a specific type of "terrorizing political Islam" embodying the barbaric "Afghan-Arab". This savage "political Islam" is then generalized as being *the* premodern cultural identity located in all Arab-Muslim majority countries and is consequently used as a legal argument to sanction relentless and endless defensive imperial wars of transformation. In other words, the cultural turn informing present day politics since 9/11 continues to distinguish modern from premodern cultures and then offers premodern culture as an explanation for the necessity of imperial political violence. Political sociologists and international lawyers petrified of committing the sin of being anachronic then risk overlooking the historical *truth* that "modern" Islamic terrorism is not born out of the residue of a "premodern culture", but rather that "Arab Islamic terrorism" *is* a "modern" construction with its structural base (Qaeda) being initially and primarily founded and funded logistically and ideologically by the U.S., Britain, and Israel during the Cold War and continues – especially since the "Islamist Winter" of 2011 – to proudly parade its chaotic terror operations in Arabia (Mamdani, 2002:767).

Many aspects of the Bush Doctrine are novel; however, the overall contours of the legal techniques characterizing this "new" international order resemble in many ways the "old" legal-history of the "civilizing mission" which is being (re)produced in the mode of pre-emptive self-defense. The defensive imperialism advocated by the Bush Doctrine is all the more powerful because it has been combined with a series of other doctrines and discourses to establish the legal framework for the war on terror. The frameworks of these legal doctrines combine discourses on human rights, humanitarian intervention, and democratic governance thus creating a system of management that derives its power and resonance in part through the invocation of an old vocabulary informing the "standard of civilization" thereby (re)affirming the enduring hold of *past* formative phases of international law continuing to bear on *present* structures and imaginaries of international law. As argued by Kennedy (2000) and Anghie (2004), attempts to renew international law often repeat similar patterns since Anglo-American wars as Anthony Pagden argues "all at one stage or another, had been based on conquest and had been conceived and legitimized using the language of warfare" (1995:63). Inevitably then, as highlighted above, the war on terror and its defensive imperialism strategy has been most readily justified through supposed violations of the law of war by Arabs in general and Muslims in particular thereby necessitating conquest as observed centuries ago by Vitoria (1532:165) in *De Indis* when he claims that "the seizure and occupation of those lands of the barbarians whom we style Indians can best, it seems, be defended under the law of war".

The violence and domination connected with the idea of self-defense is now achieved only through the violent transformation of the uncivil Arab-Other into a personality mirroring Western civilization. The *attempt* to transform the Oriental-Other into the Occidental-Self has been the continuous *telos* of the civilizing mission. However, since the war on terror, and more so since the Arab Spring, the civilizing mission has acquired an unprecedented urgency because it has now been linked to the idea of self-defense and survival of Anglo-American civilization. As highlighted by Anghie (2004:298-299), cultural differences being evoked by powers across the Atlantic as a cause for a war of self-defence highlights that a new imperial imperative has been created that while "promising to establish perpetual peace, may very well instead result in endless war" since the invocation of the "terrorist" suggests a threatening entity beyond the realm of law that must be dealt with by extraordinary emergency powers and extrajudicial methods. The legal characteristics evoked by pre-emptive defense strategy suggests that since September 2001, *jus gentium* has

witnessed a "Vitorian moment" where the conceptualization of the "other" as culturally *different* invoked legal responses that combined doctrines of self-defense, humanitarian intervention, transformation, and tutelage that threaten and violate existing laws and resulted in a dramatic shift in the character of law by "rethinking sovereignty" (Anghie, 2009). The invoked imperial responses not only "undermined and violated international human rights law and the UN charter on the use of force" (Carty, 2002:45), but also highlight that Arab civilization continues to be denied sovereignty with terrorism being connected in various ways with a "modern" puritan idea of "Islam" and reductionist depiction of "Arab culture" which has "since the time of the crusades represented the extreme 'other' against whom the civilized west must respond" (Anghie, 2004:301).

Conclusion

The *sovereign-willed* legal doctrines and reductionist imaginaries of non-Europeans adopted by naturalist and positivist jurisprudence to formulate *jus gentium* and mitigate "past" civilizing missions are analogous to the legal doctrines (re)formulated to conquer Iraq in 2003 thereby activating a pre-emptive war against Arab civilization. Imperialism continues to be experienced and promoted in the Third World in a much more "everyday way" by "international law and institutions that systematically disempower and subordinate the people of the Third World" (Anghie, 2006:750). While much has been said about the differences between Europe and the U.S. when it comes to their 'dealings' with non-Western peoples, they are in many ways arguing for the same thing – an imperial international system "one more explicit than the other" (Anghie, 2006:751) – especially when we consider the stance and response of EU members to the "Arab Spring" being quite similar to that of the U.S. administration.

As highlighted above, the war on terror and its defensive imperialism strategy accentuates the idea that sovereignty manifests itself differently in Arab spaces as compared with the Western world. As made evident in chapter one, during the formative phases of *jus gentium* – informed by naturalist and positivist jurisprudent scholastics – no legal restrictions were imposed on the actions of Latin-Europe with respect to Arab subjects since the former was sovereign and the latter *denied* sovereignty. Latin-European states could and did commit extrajudicial violence invariably justified as necessary to ostensibly transform non-Europeans into subjects of European civilization rather than continuing to be objects of Western civilizing missions. Imperial sovereign practices

performed in Arabia therefore give credence to the "inclusive exclusion" character of *jus gentium* when we notice that positivist lawyers created a situation in which sovereignty was supreme, and extrajudicial actions committed by a "recognized sovereign" in a territory identified as "outside" *jus gentium* was beyond scrutiny. In contrast, Arab civilization being denied sovereignty meant that no *law* was recognizable by *jus gentium* extending Arabia "rights" over its own political society since Arab civilization is necessarily characterized by *jus gentium* as *lawless* – therefore devoid of *reason-able* subjects – for Latin-European epistemological *coherence*.

Understanding the role of race and culture in the formative phase of *jus gentium* is vital to keep in mind thus noticing a legal-historical continuum with *rational* juridical concepts (i.e. sovereignty, self-defence, arts of war, self-determination, and *just war*) continuing to be (re)formulated and rethought in a way that *a priori* reifies Latin-European knowledge structures and mode of *Being* while subordinating and relativizing life-world experiences accenting Arab civilization. The singular relationship between sovereignty and the Arab world since 9/11 has never been more explicit. It is singular in that the benefits of "sovereign recognition" as a positivist legal concept informing *jus gentium* is exclusively endowed to Latin-European subjects emitting Western epistemic knowledge structures. Also, it is singular in that *sovereign-will* manifested itself in domineering ways in the Arab world in comparison with the Western world as made evident with the imperial deliberations made by apologists of liberal empire (Anghie, 2004; Schmitt, 2006). Therefore, sovereignty as a positivist scholastic idea in the Arab world is not a secular liberating juridical concept, rather it is a juridical concept that is inherently violent by naturally seeking to separate "different" cultures by historicizing Arab civilization.

The intent to erase Arab civilization and strip Arab subjects from all subjective consciousness pervades the influence positivist jurisprudence had in developing the Bush Doctrine at virtually every level of its juridical logic. This is especially obvious with the Bush Doctrine emphasizing the "scientific" binary of civilized and non-civilized by associating the latter exclusively with non-Europeans cultures being lawless and vacant of any sociable organizational structure. Sovereignty, therefore, represents a means to assert power and authority through the necessary use of violence which valorizes an exclusive distinct culture-made-universal thereby preserving and asserting its distinct "universalized" philosophical theology. As highlighted by Anghie (2004:104), for the non-European world, "sovereignty was the complete negation of power, authority and authenticity…European sovereignty was used as a mechanism of suppression

and management…because the acquisition of sovereignty was the acquisition of European civilization". Therefore, sovereignty for the Arab world is alienation and subjugation instead of empowerment and independence as supposedly heralded with the establishment of the League of Nations and the United Nations in the 20th century[57].

The exogenous legal vocabulary of "sovereignty", "nation-state", "democracy", "secularism", "individualization", and "liberal capitalism" imposed on formally decolonized Arab spaces in the *Mashreq* after the Paris Peace Conference of 1919 was unconvincingly connected with endogenous Arab civilization or its historical cultural personality. Rather, the international law that supposedly granted Arabs 'independence' and 'self-determination' was inextricably linked to a complex set of practices which were directed at fomenting generational *creative chaos* thereby managing, exploiting, and dominating Arab subjects. Therefore, adopting an anachronic approach in reading to deconstruct legal-history, in tandem with being hermeneutically suspicious, accentuates the "inclusive exclusion" *ethos* of *jus gentium* in that the technologies of racism and mechanism of domination informing sovereignty as a secular juridical concept continues in the present to animate international legal doctrines by valorizing "culture talk" or "race war discourses" adopted to activate a "modern" puritan process – creative anarchy – for the supposed "temporal modernization" of the Arab world. This "culture talk" explicitly highlights the exclusionary character of *jus gentium* in that PEDS imagines the Arab body as a threat to the stability of international law thereby adjudicating imperial policies that can only be exercised on an entity constructed *a priori* "outside" international law or as an object of sovereignty. In this case, *jus gentium* continues to be *willed* by sovereign figures who persevere in viewing the Arab world as incapable of becoming a member "inside" *jus gentium* until it surrenders Arab civilization.

What is perhaps most distinctive about this "new" post-9/11 international law is the belief that in a globalized world, the transformation of the Arab as *Saracen* is essential for the ontological security and purity of a liberal-secular mode of *Being*. Put more bluntly, with the *telos* of history being Western modernity, the Latin-European *Self* requires the *exclusion* of the Arab as *Other* from *jus gentium* – therefore "outside" *law* – to define the *inclusionary* cultural aspects of the *Self* required to be "inside" *jus gentium*. This "inclusive exclusion" *dispositif* characterizing (a positivist) *jus gentium* maintains the supposed unbridgeable cultural gap between a modern universal Latin-European mode of *Being* and a particular Arab mode of *Being* resistant to (liberal-

secular) modernity. This belief has been most saliently located in the Arab world after 9/11, but more explicitly after the "Arab Spring" in 2011, with Arab spaces essentialized as one monolithic group of people defined by "Islamism" and their Semitic *Jahiliya* cultural mores.

Therefore, the doctrines formulated and practices exercised to conquer Arab spaces since 2003 did not institute a novel order, but rather reproduced and reasserted in effect the formative colonial structures of *jus gentium*. The doctrine of pre-emptive self-defense deployed to civilize, modernize, and democratize the Arab world reaffirmed the idea that international law was and continues to be animated by a "civilizing mission" based on essentialist imaginaries of Arab civilization. These (neo)-Orientalist cultural differences – transformed into legal differences – were and continue to be adopted by Western political executives, media communication centers, and academics to activate a liberal humanitarian intervention for the West to legally sanction defensive imperialism with a declared objective of temporally transitioning *particular* Arab objects into subjects embodying "modern" cultural epistemic values accenting the secular linear (temporal) periodization of the Renaissance and Enlightenment. The "liberal humanitarian" narrative upholding PEDS, then, is a *sovereign-willed* mission seeking to pre-emptively *transform* and *redeem* Arab spaces – through any chaotic means necessary – from their "irrational" cultural traits constructed as moulding them into objects of sovereignty *decaying* in time.

Chapter III

Defensive Imperialism Imagines a (Chaotic) New Middle East following 9/11 & the "Arab Spring": (Neo)-Orientalist Representations Rejuvenate the *Inclusive Exclusion* Character of *Jus Gentium*

"The Heads of State or Government rejected the use, or the threat of the use of armed forces against any NAM [Non-aligned movement] country under the pretext of combating terrorism, and rejected all attempts by certain countries to use the issue of combating terrorism as a pretext to pursue their political aims against non-aligned and developing countries and underscored the need to exercise solidarity with those affected. They affirmed the pivotal role of the United Nations in the international campaign against terrorism. They totally rejected the term 'axis of evil' voiced by a certain State to target other countries under the pretext of combating terrorism, as well as its unilateral preparation of lists accusing countries of allegedly supporting terrorism, which are inconsistent with international law and the purposes and principles of the United Nations Charter. These actions constitute on their part, a form of psychological and political terrorism" – **Final Heads of Sates Document (XIII) of the Non-Aligned Movement (2003)**

"The threat of recolonisation is haunting the world…indeed, international law is the principal language in which domination is coming to be expressed in the era of globalisation…Even international human rights discourse is being manipulated to further and legitimize neo-liberal goals…In the era of globalization, the reality of dominance is best conceptualized as a more stealthy, complex and cumulative process. A growing assemblage of international laws, institutions and practices coalesce to erode the independence of third world countries in favor of transnational capital and powerful states" – **B.S Chimni (2006)**

"Bernard Lewis, the doyen of modernising Orientalists, asked some decades ago 'What went wrong?' in the evolution of the countries in the Arab world. His response to his own question was that Arabs were burdened with a cultural inability to overcome traditions bestowed by Islam that prevented neoliberal economics and Western technologies from providing their societies with the supposed miracles of modernisation...Undoubtedly, the most flawed feature of Lewis' contribution to the neocon effort to restructure the Middle East when they were in control of American foreign policy was its arrogant imperial contention that Arab peoples are not capable of making their own history, and that they will be better off if they allow the West to do it for them, including by periodic military interventions" – **Richard Falk (2013)**

"My argument was this: Let's all stop pretending that the cause of the Middle East's problems is Israel. We want to work to help achieve statehood and dignity for the Palestinians, but I was hoping that my speech could trigger a discussion, could create space for Muslims to address the real problems they are confronting – problems of governance, and the fact that some currents of Islam have not gone through a reformation that would help people adapt their religious doctrines to modernity…the U.S. is not standing in the way of this progress…we would help, in whatever way possible, to advance the goals of a practical, successful Arab agenda that provided a better life for ordinary people" **– President Barack Obama (2016) discussing his 2009 Cairo speech**

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Introduction

As we approach the second decade since the terror attack in Manhattan took place on September 11th 2001, it is becoming increasingly clear that the terror of that day has been hijacked into a *casus belli* for endless privatized *pre-emptive/preventative* wars using sovereign state sponsored agents of terrorism (Al-Kassimi, 2019). This is coupled with neo-colonial geostrategic

objectives seeking to redraw and re-engineer Arabian geography and demography inhabiting colonial borders thus transforming the region into a modern, sociable, and civil "New Middle East" (Kumar, 2012:233). According to Kumar (2012:43), and Lazarus and Gupal (2006), the preventative legal doctrines developed after 9/11 are more accurately described as *redemptive* measures since the violence and domination legally sanctioned after the event effectively replaced "other historical precedents of the 20th century, including the Second World War and the Cold War" with the *green* scare replacing the *red* scare (Mamdani, 2004; Al-Azmeh, 2009; Samiei, 2010; Altwaiji, 2014; Kerboua, 2016). It is *culture talk* or *race war* discourses, or more precisely, neo-Orientalism colluding with racism, Islamophobia, and selective prejudice that has been at the crux of the legal developments affecting Arabs and Muslims (Al-Azmeh, 2009; Kumar, 2012). With liberal-interventionists claiming that a "new" defensive imperialism in the 21st century is required and welcomed to transform *premodern* Arabs into *modern* Arabs, or *bad* Muslims into *good* Muslims, the coinage of a "new" terrorist has been "part and parcel of an incendiary discourse that is designed for the sole purpose of relegating terror to an [Arab] alien domain" (Kumar, 2012:234). With defensive imperialism being fought against *premodern* Arab spaces – because they are lawless in war and do not furnish a culture reminiscent of Europe – the "new" barbarian is constructed using powerful *ratiocinated* symbolic discourses. These reductionist representations situate Arab space in a "non-discursive" degenerative temporal epoch inhabiting objects of sovereignty lacking civil personality, deficient in democracy, and therefore, prone to producing irrational objects that are fanatically driven by an evil *sharia* seeking to violently target Western civilization (Mamdani, 2004; Goodwin, 2006; Al-Azmeh, 2009; Kumar, 2012; Kerboua, 2016; Ventura, 2017).

This idea of *terrorism* being identified with Arabs in general and Muslims in particular[58] – as highlighted in the introductory quote by legal scholar Richard Falk – is not new, but is rather familiar *ratiocinated* language inherent to a positivist international law animated by a cultural dynamic of difference. The liberal-interventionist policies since 9/11, especially succeeding the Arab uprisings of 2011, advocated for a "new" colonial encounter or an "Imperial Lite" of the 21st century implying that only Western perceptions of other cultures and ways of killing be it through privatized war, invasion, or military conquest, are deemed superior, proper, necessary, and unquestionably legitimate (Anghie, 2004, 2009; Porter, 2009; Kumar, 2012). These legal developments endemic to *jus gentium* are not novel but are evocative of naturalist and positivist

juridical scholars transforming cultural differences into legal differences in previous centuries to adjudicate a civilizing mission. Therefore, by adopting an anachronic approach to legal history and a hermeneutics of suspicion[59] in reading legal history, this chapter seeks to deconstruct how the threat and fear of Arab "primitive" culture has since 9/11 been represented by speech actors with political capital through neo-Orientalist imaginaries informing concepts of Islamophobia, the barbarian thesis, despotism, and the mental incapacities of the "Arab mind". These imaginaries are adopted by Western and Arab *comprador* political executives, academics, and communication centers to propagate multiple deterministic hegemonic frames constellating themes relating to "outsourcing Arab subjectivity", "training Arabs in non-violence", "gendering the protests", and the "Arab-Jihadist". The objective of such imaginaries essentially empties Arabs from any subjectivity in being rational authors and capable enablers of a "modern democratic" uprising since these thematic discourses assume that sovereign figures are *a priori* familiar with Arab demands because they claim ideas and lack experiences found and furnished in sovereign (Western) civilized societies. These distorted cultural constructions are transformed into legal differences to (re)formulate and (re)produce the threatening Arab-Other as object of sovereignty not only to justify a defensive imperial war, but more importantly, to *redeem* Arabs and in the process provide the Western-Self ontological security – therefore – epistemological *coherence*. The interpretation of 9/11 and the Arab uprisings in Western zones of knowledge using positivist legal doctrines and neo-Orientalist benevolent discourses founded on the perception that an Arab mode of Being is inherently resistant to Western modernity – therefore *temporally* stagnant – makes it evidently clear that *jus gentium* is fundamentally characterized by an *inclusive exclusion* animated by a civilizing mission positing a *compulsory* unbridgeable cultural gap between a sovereign universal *Athenian subject* and a particular *Madīnian object* denied sovereignty.

1. The War on Terror and the Symbolic Power of Orientalist and Neo-Orientalist Myths: Reductionist Imaginaries of Arab Civilization as Resistant to (Western) Modernity

The year 2001 is referred to by some critics as "year zero" or a "transformative moment" (Altwaiji, 2012:313) regarding how Europe and the U.S. have (re)imagined Arabs as *legal* Saracens. This prompted scholars from the North and South to declare that metropole centers of power continue to transform cultural differences into legal differences thus reviving an interest in a wave of neo-Orientalism as mode of representation (Tuastad, 2003; Anghie, 2004; Merskin, 2004; Mamdani, 2004; Al-Azmeh, 2009 Samiei, 2010; Altwaiji, 2014; Kerboua, 2016; Ventura,

2017). The year 2001 has inaugurated a century where the metropole uses its sovereign privileges to fabricate an artificial threatening enemy to sanction waging a *just war* by creating a hegemonic version of reality – using symbolic power – that distorts the image of the dominated Arab people (Tuastad, 2003; Merskin, 2004; Altwaiji, 2014; Ventura, 2017). Arabs are victims of symbolic power in the way race war discourses arrogate terrorism *a priori* as a cultural trait endemic to Arabs prompting Altwaiji to declare that this is "imperial stereotyping" and racism of the highest rank (2014:314). The most important intellectual repercussion of 9/11 on classical Orientalism is the (re)introduction of a "neo" dynamism to cultural issues related to the Arab world which is imagined and represented as the "most static and dictatorial region of the world" (Tuastad, 2003; Altwaiji, 2014:314; Ventura, 2017). The legal doctrines developed after 9/11 and the (re)formulation of sovereignty through PEDS to accommodate defensive imperialism, contributed to the re-evaluation of the 19th-century classic Orientalist discourse which included Arabs, Turks, and the Indians (Lewis and Wigen, 1997:54). The catalyst event of 9/11 initiating a geographic and demographic redrawing of Arabia through redemptive force, domination, and conquest made salient that the East-West relationship was re-evaluated to include the emergence of a neo-Orientalist discourse of distorted mythical imaginaries in which the Arab world "becomes the *center* while major classic [Orientalist] components such as India, Iran, Turkey are *excluded* from the *neo-Orientalist* map" (Merskin, 2004; Altwaiji, 2014:314; emphases added).

The concept of neo-Orientalism is indebted in part[60] to Edward Said's 1979 work entitled *Orientalism* with scholars involved in the recent resurgence admitting that while Orientalism has operated in diverse historical paradigms, it has consistently emphasized and constructed threatening cultural assumptions made by the West of the Orient (Beckett, 2003; Attar, 2007; Al-Azmeh, 2009; Altwaiji, 2014; Kerboua, 2016; Ventura, 2017). Therefore, just like imperialism and colonialism are not policies of the *past* since they both "Orientalize" the colonialized subject and in the process transform cultural differences into legal differences, Orientalism has in the past and continues in the present to produce distorted images of the Arab as resistant to (Western) modernity (Anghie, 2004; Mamdani, 2004; Mahmood, 2006; Samiei, 2010; Altwaiji, 2014; Kerboua, 2016). Samiei (2010:1148) cautions about an increasing academic trend adhering to a non-anachronic legal-historical reading asserting that Orientalism "as an ideology… belonged to a period of history that is now behind us".

Past and *present* Orientalist patterns of distorted Arab history have not been effaced from Western imaginaries. Orientalism is not a static concept that was excavated and discontinued in a past archeology of history, but is rather a *moving* concept that continues to inform the genealogy of knowledge production concerned with the supposed *uncivility* of an Arab mode of *Being*. Scholars interested in highlighting the features of neo-Orientalism have pointed to their postcolonial predecessors by claiming neo-Orientalism like Orientalism serves as "a system of knowledge which creates and propagates subjective representations of the Other from the Orient" (Kerboua, 2016:8). Said (1979) argues that knowledge production in Western capitals relating to Arabs is neither objective nor unbiased, but rather is the end-result of a "process that reflects particular interests and a Western-centric worldview" (Kerboua, 2016:9). It is the lens called Orientalism through which the West perceives and conceives non-European space that distorts the reality of the inhabitants of Arabian spaces (Said and Jhally, 1998; Kerboua, 2016). Using Foucault's theory of discourse analysis endeavouring to "grasp other forms of regularity, other types of relations" (1972:29) accentuates the genealogical continuity in the relationship between different textual productions and their relation to a certain reality by revealing how *Orientalism* as a mode of representation constructs, produces, and proliferates ideas of the Arab-Orient that serve in "making statements about it, authorizing views about it, teaching it, settling it, ruling over it" (Said, 1979:3; Kerboua, 2016). Therefore, Orientalism of the 18th and 19th century has some similarities to the neo-Orientalism of post 9/11 in that Western civilization (re)produced and (re)formulated specific disciplines of knowledge (i.e., Anthropology and International Law) in both historical periods which enabled it to transform cultural differences into legal differences thus *legally* sanctioning the West having the power to dominate and transform the exotic Arab *Bedouin*. In other words, as mentioned in previous chapters, domination over the Arab body ensued after jurists, political scientists, sociologists, and anthropologists produced reductionist (neo)-Orientalist imaginaries emphasizing Arab civilizational inferiority, then, succeeding such deterministic imaginaries, engaged in a "humanitarian intervention" (Anghie, 2004; Altwaiji, 2014; Kerboua, 2016; Ventura, 2017).

Early Orientalism and post/911 neo-Orientalism are based on discourses that devalue epistemologies located *outside* Europe by claiming that subjectivity can only be considered with the non-European shedding their *unsociable* culture. However, more importantly for neo-Orientalists is that Arabs are imagined as *temporally* incapable of attaining the *telos* of (Western)

history or producing a *reason* based philosophical theology because they are denied (temporal) coevalness. The (re)production of a (neo)-Orientalist image of Arabs lacking the capacity of organization and rationality characteristic of *cosmopolitan society* is based on essentialist discursive constructions that naturally lead to reductionism. Past and current trends of Orientalist discourses have been consistent in adopting logical fallacies associated with semantically "closely-related concepts such as reification or gross generalisation"[61] (Herzfeld, 2010; Kerboua, 2016:11) perceiving Arabia as a monolithic space with "inhabitants", rather than "political subjects", and a "geography", rather than a "homeland" (Ar. وطن) with civilizational and cultural-historical experiences different to those informing (Occidental) liberal-secular modernity. The process of hypostatisation informing cultural relativist reifications assumes abstractions relating to the Arab-Muslim body – such as receptivity to terror – becoming an actual "cultural" reality thereby enabling the simplification of the message being conveyed and the obliteration of a rational and objective understanding of the subject being *obliterated.* The hegemonic version of reality developed through the power of (neo)-Orientalist symbolic generalizations is endemic to the *ratiocinated* essentialist framework of Aristotelian-Cartesian deductive logic[62] which distorts and perverts reality by reducing complex "abstract objects to concrete ones" (Kerboua, 2016:11).

The intrinsic relation between the construction of the Arab-Orient and positivist legal (mis)representation to sanction defensive imperialism is evident when Huntington claims that "Islam has bloody borders" (1993:35), or Bernard Lewis claiming that the attacks on 9/11 were the "*logical* historical outcome of a millenary *struggle* between a *religion* and its believers and a *geographically* situated, *culturally* heterogeneous, and ideologically constructed *western civilization*" (as cited in Kerboua, 2016:12; emphases added). Bernard Lewis is an important link between Orientalism of the *past* and neo-Orientalism of the *present* with his reductive discourse imagining Arabs as temporally *backward* and *allergic* to liberal-secularism[63]. While Lewis has several disciples such as Paul Wolfowitz, Richard Perle, and Jared Kushner who agree with the claim that "Muslim countries have the most terrorists and the fewest democracies in the world" (Pipes, 2008), Lewis's work often engages in hypostatisation by equating Arabs with Islam and linking the deterioration of Arab societies on the idea that Arabs did not adopt Western epistemology which according to him is the only *reason-based* philosophical theology leading to modern civilized status (Beckett, 2003; Mamdani, 2004; Attar, 2007; Al-Azmeh, 2009; Altwaiji, 2014; Kerboua, 2016). This is evident when he says, "according to Islamic law and tradition, there

were three groups of people who did not benefit from the general Muslim principle of legal and religious quality – unbelievers, slaves and women" (Lewis, 2003:67). It is not surprising then that Lewis was one of the most reliable advisors to the American administration after 9/11 considering his advocacy for the Bush Doctrine in conquering Iraq in 2003 by stating that "significant numbers of Muslims are ready to approve, and a few of them to apply, this [extremist] interpretation of their religion. *Terrorism* requires only a few. Obviously, the West must *defend* itself by *whatever means* will be *effective*" (Lewis, 2004: xxxii; emphases added). These 21st-century neo-Orientalist distorted representations of Arabs and Muslims are motivated by an identical (anachronic) primitive image Lewis articulated of Arabs in the 20th century when he declares:

> It should now be clear that we are facing a mood and a movement in Islam far transcending the level of issues and policies and the governments that pursue them. This is no less than a *clash of civilizations*. The perhaps *irrational*, but surely historic receptions, of an *ancient rival* against our *Judeo-Christian heritage*, our *secular present*, and the worldwide expansion of both, it is crucially important that we, on our side, should not be provoked into an equally historic, but also equally *irrational* reaction against our rival (1990:60; *emphases added*).

2. The Contours of Neo-Orientalism – Islamophobia, the Barbarian Thesis, the Irrational Arab *Mind,* and Arab *Compradors*

The main break between early Orientalist discourses and neo-Orientalist discourses post-9/11 is the feeling of apprehension, fear, and hatred relating to anything and everything that involves Arabs in general and Muslims in particular. Neo-Orientalism in the 21st century is a body of knowledge created and propagated by a coalition of intellectuals, political figures, and media pundits that enjoy a special relationship with the U.S., Europe, Canada, Israel, and several Arab capitals (i.e., Doha, Beirut, Baghdad, Cairo, Amman, and Riyadh). Neo-Orientalism of the 21st century is unlike early Orientalism in that it is explicitly constituted within a culturalist Islamophobic paradigm that operates within a "clash of civilizations" that brought Arabia and the classical Orientalist discourses of "us" and "them" to the forefront with terrorism being the most valorized and prevalent term adopted to address and identify Arab-Muslims (Altwaiji, 2014). While it is true that Islamophobia is a "new" word for an "old fear" – since identifying and fearing Arab-Muslim philosophical theology has a long history in European scholastic jurisprudence – it did however increase exponentially after the Cold War and more specifically after 9/11 with Western politicians replacing the threat of Communism with the phobia of Islam and Arabs

representing a threatening worldview (Nonneman, 1996; Mamdani, 2004; Sajid, 2005; Mahmood, 2006; Al-Azemh, 2009; Miller, 2011; Jenkins, 2012; Kerboua, 2016:26). Therefore, a peculiar aspect of neo-Orientalism is the hostile manifestation of a social phenomenon called "Arabization" and "Islamophobia" which manifests itself in how Arabs and Muslims are represented within Western societies and how peoples inhabiting the Arab world are imagined as threatening *universal* civilization. Wajahat et al. (2011), CAIR (2013), and Kerboua (2016) emphasize the extensive funding and dissemination of Islamophobic propaganda by wealthy foundations, institutes, and think-tanks involved in networks of power in Europe and the U.S. in producing imaginaries referencing liberal-secular discourses that conflate Arabs and Islam with illiberal and/or terrorist related activities.

The recent resurgence of the term Islamophobia appears to underscore the (re)production of a familiar sentimental element between Europe and Arabia with the former emphasizing Arab cultural differences as ontologically threatening thereby essentially repudiating the idea of Arabs and Muslims as "rational subjects" capable of developing or informing a *civil society* – thus fundamentally denying them *legal* sovereignty (Tuastad, 2003; Beckett, 2003; Al-Azmeh, 2009; Altwaiji, 2014; Kerboua, 2016). It is important to note that Islamophobia is more than simply a critique of the Islamic faith but rather is a *neologism* that literally means the "irrational fear of the Muslim faith" which is expressed through factors relating to apprehension, fear, rejection, and hatred (UN, 2004:18; CAIR, 2010; Asal 2014; Mohammed, 2014; Kerboua, 2016:23). According to Mohammed (2014) and Kerboua (2016:24), neo-Oriental discursive components are essentially informed by an "ontological fear" constructing an essentialist "Arab-Muslim problem" in Western societies. A "problem" that is fundamentally seeking to emphasize the (il)legitimacy of Muslim presence in European and North-American (civil) societies thus making salient that neo-Orientalist discourses require the fabrication of a hegemonic view of reality identifying a subject as foreign, threatening, and/or fearsome for the ontological security of European civilization. A neo-Orientalist representation therefore operates within a deterministic culturalist parameter that generalizes Arab modes of *Being* by essentializing, stigmatizing, and stereotyping the Arab world and Muslim people since Islamophobia entails a xenophobic perception of Muslims and Arabs representing "elements extraneous and irreconcilable to the societies of the Western world" (Lowe, 1985; Kerboua, 2016:25). The positivist jurisprudent idea of the *lawless* Saracen is then constructed and based on a lens of a "renewed orientalism or neo-Orientalism, far from giving an

accurate representation of Islam and Muslims, emphasises exclusively on what are considered negative dimensions and components of the Islamic faith and culture, or the alleged behaviour of the Muslims" (Kerboua, 2016:24).

The resurgence of a neo-Orientalist mode of representation is most readily identifiable after 9/11 when we consider that the Arab and the Muslim became the "new barbarian" (Tuastad, 2003:595) and with Orientalism of the 21st becoming a "belligerent neo-Orientalism" (Said, 2003: xxi). A belligerent neo-Orientalism was inaugurated after 9/11, in tandem with the reformulation of *jus gentium*, to approve a transformational defensive imperial war sanctioned by the Bush Doctrine to "modernize" and "democratize" Arabia. Neo-Orientalism was inaugurated as a "new academia of Orientalism" with European and U.S. executive members defining *their* culture and civilization as incompatible to Arab epistemology (Ar. نظرية المعرفة العربية /الحضارة العربية). American and European intellectuals such as Pipes (2003), Harris (2007), and Caldwell (2010) make the case that Arab and Muslim identity is threatening and irreconcilable with Latin-European civilization thus accentuating that neo-Orientalist discourse post-9/11 is constituted by an ontological insecurity which claims that the "western world [is] under siege and threatened in its culture, way of life, and identity" (Kerboua, 2016:25). This ontological insecurity is also induced by recent "civilizational debates" concerning displaced Arabs and Muslims "taking over" Europe and North America (more on this in chapter V).

A critical reading of post-9/11 neo-Orientalist discourses underlines the limitation in adopting an essentialist approach analogous to Huntington or Lewis since it not only ignores the influences of (neo)-colonialism and imperialism in (under)developing the Arab region after the conclusion of the Mandate System in 1945, but more importantly, it ignores the immoral consequences of discursive symbolic power identifying an "anti modern-core" in 7th century Arabia that supposedly *doomed* and *(pre)-destined* any further political, social, and economic development of Arabs (Tuastad, 2003; Beckett, 2003; Mamdani, 2004; Altwaiji, 2014). The "new barbarian" thesis – one of the primary tropes of neo-Orientalism – includes racist imaginaries perpetuated by professional organizations, leadership, and experts resting their claims on a (Latin-European) secular "moral" sovereign authority that reverts to Newtonian and Cartesian "natural" science for validation (Bauman 2000; Tuastad, 2003; Mamdani, 2004; Altwaiji, 2014). For instance, in *Culture Matters: How Values Shape Human Progress* written by leading American neo-Orientalists, Arab culture is described to the reader as "Islamic culture" with Islam being

perceived as a dependent variable that explains the level of Arab antagonism towards Western values (Harrison and Huntington, 2000: xiv; Tuastad, 2003; Altwaiji, 2014). These generalizations are essentialized when we notice that Harrison and Huntington identify religion – similar to Bernard Lewis – as hindering progress because it confines people to "primitive" traditions. They declare that the "pace of modernization in most Islamic countries has been slow, illiteracy, particularly among women, is still very high in many of them…Turkey is the only Islamic country – secular, to be sure – that approaches modern standards of pluralistic governance" (2000: xix).

The "new barbarian" thesis central to a "belligerent neo-Orientalist" mode of representation perceives Islam as being an *atavus* that threatens not only the "return to the Middle ages", but also the destruction of what is "regularly referred to as the democratic order in the Western world" (Altwaiji, 2014:317). Accordingly, neo-Orientalism identifies Arab identity as an ethno-religious individual actor and Islam as an institution thereby generating a distorted abstract image of the Arab figuring as barbarian (Tuastad, 2003). Also, the "barbarian thesis" becomes a marker of "temporal primitiveness" implying explanations of political violence that exclude political and economic interests when assessing violence thus perceiving *terrorism* as a peculiarity endemic to Arab culture. Robert D. Kaplan, an influential neo-Orientalist scholar, adopted the barbarian thesis in an Atlantic Monthly article called the *Coming of Anarchy* (1994), in his renowned book called *The Coming Anarchy: Shattering the Dreams of the Post Cold War* (2000), and continued to rejuvenate the distorted discourse over two decades later in an article called *Why So Much Anarchy* (2014) after the "Arab Spring" of 2011.

In both of Kaplan's books, conflicts are presented between a primitive tribal Arab people fighting against Western civilization. Kaplan indicates that "in places where the Western Enlightenment has not penetrated and where there has always been mass poverty, people find liberation in violence…Physical aggression is part of being human. Only when people attain a certain economic, educational, and cultural standard is this trait tranquilized" (2000:45). Kaplan admits it was compulsory in the Pentagon to read Martin Levi van Creveld's book entitled *The Transformation of War* (1991) emphasizing essentialist arguments stipulating that Arabs are not endowed with the civilized "arts of war" and "military horizon". Identifying Arabs as barbarians because of their *irrational mind* is based on the idea that the Arab world is inhabited by people who conform to "tribalistic identity" (Van Creveld, 1991; Kaplan, 2000:47), where war is "not a means but an end" (Kaplan, 2000:44), and where there is no distinction between war and crime

since war amongst Arabs includes "struggles of primitive tribes than with large-scale *conventional* war" (Kaplan, 2000:48; emphases added). The barbarian thesis is intertwined with neo-Orientalist imaginaries reinforcing an idea highlighting a "deep cultural dualism between Islam and the West" (Tuastad, 2003:1149). This serves hegemonic strategies requiring the production of distorted images of an Arab-Muslim enemy that is "not wholly reasonable" to legitimize a defensive imperial war under the guise of a benevolent discourse representing inhabitants of Arabia as in need of a humanitarian intervention saving them from *their-Self*.

The intensive power of symbolic images is also readily recaptured and (re)produced after 9/11 with neo-Orientalists emphasizing the deficiency of the *Arab mind*, to use the words of Raphael Patai, who was tasked by the UN in 1952 to head a cultural anthropological project in the Arab world (Beirut, Damascus and Amman) for the Human Relations Area Files (HRAF) at Yale University. The mental incapacities of the "Arab mind" is adopted to construct images of Muslims and Arabs not only as *naturally* cognitively backward and inferior, but also violent and threatening, thereby highlighting the discontinuity between early Orientalist and neo-Orientalist discourses (Patai, 1973; Zureik, 1979; Tuastad, 2003; Mamdani, 2004; Altwaiji, 2014). The new barbarian thesis informing neo-Orientalism leans on a psychological and mental configuration to explain the premodern cultural stagnation and backwardness of Arabs – a *temporal* argument – rather than *spatiality* as argument emphasized by dogmatic critics of Orientalism (i.e., Edward Said). Arabs, according to neo-Orientalist imaginaries, have a sense of temporal "marginality which never allows an Arab to detach himself from his traditional culture" (Zureik, 1979:85). This distorted hegemonic reality is further emphasized by Patai and Zureik who claim that Arabs lack the cultural *qualité* making them "psychologically ready" members of an international "democratic society" (Zureik, 1979:92; Tuastad, 2003; Altwaiji, 2014)[64]. The underlying message of the new barbarian thesis and Arab mental incapacities endemic to neo-Orientalism is reminiscent of naturalist and positivist jurists legalizing domination over non-Europeans because they are "not wholly endowed with reason". This "cognitive deficiency" is transformed into a legal difference by imagining Arab culture as lacking *civic ethos* thereby sanctioning *redemptive* measures because Arabs "cannot represent themselves" but "must be represented" (Tuastad, 2003:592).

According to Tuastad (2003:592), the essentialist idea perceiving terrorism as endemic to the "Arab mind" serves as a "powerful invention that legitimize[s] continuous colonial economic or political projects". Here, the Arab mind and terrorism in a neo-Orientalist discourse are

connected in that Arab culture produces a backward Arab mind lacking *intellect* therefore prone to barbarism and/or terrorism. With Arabs and Islam being the targets of a *neo* Orientalist academia, Almond (2007) and Kumar (2012:237) remind us that the *redemptive* war sanctioned through PEDS justifying "humanitarian responsibility and intervention" is cultivated by "liberal-minded advocates of assimilationist policies who exoticize difference in the name of empathy and solidarity". The historical-political conditions developed post-9/11 have (re)produced the West-and-Islam dualism identified in neo-Orientalism by integrating a set of *ratiocinated* juridical conceptual structures from the past. As highlighted by Tuastad (2003), Samiei (2010), Kumar (2012), Altwaiji (2014), and Kerboua (2016), the neo-Orientalist representation of the Arab world, especially in the "Middle East" requires a threatening *irrational* object – the barbarian – to sanction *redemptive* measures *on* Arabs since PEDS deploys a series of principles relating to liberal democracy, responsibility to protect (R2P), and the "style of warfare" to complete the circular structure of pre-emptive/preventative war. The barbarian thesis and the irrational Arab mind are essential compounds of a neo-Orientalist mode of representation since it is *that* distorted image of the "Middle East" that is framed as "threatening civilization" thus sanctioning imperial strategies aiming at dominating the Arab world by transforming *premodern* Arabia into a *modern* Arab world – a New Middle East.

Designating Orientalism post 9/11 in a "neo" rather than a "new" mode of representation signals a continuity between contemporary and classical forms of Orientalism but not *absolute* similarity. While this continuity designates a shift in the discourse of Orientalism – with neo-Orientalism emphasizing *temporal* differences – it nonetheless entails certain discursive repetitions of, and conceptual continuities with, its predecessor. Like its classical counterpart, neo-Orientalism is a monolithic totalizing discourse that is based on a binary schema that brings the differentiation and confrontation between different cultures and civilizations at the center of any intercultural discussion. However, critics of neo-Orientalism underscore the Manichean constructions founding neo-Orientalist knowledge production – with Islamophobia being the social outcome of *that* distorted reading of Arabs and Islam – which then aggravates and perpetuates the divide between Latin-Europe and Arabia by failing to deliver a nuanced objective understanding of Arab-Islamic philosophical theology (Abou El Fadl, 2014; Kerboua, 2016).

In addition, critics of such distorted relativist logic highlight that neo-Orientalism is based on a *ratiocinated* assumption that Europe, the U.S, and Israel possess a moral and cultural

superiority over the (Ishmaelite) exotic desert dweller thereby foreclosing any lucid interreligious and/or inter-civilizational dialogue. This foreclosure eliminates any critical discussion seeking to critique for instance the primary influence Western capitals had in funding and authorizing *death squads* from Al-Qaeda affiliated mercenary groups such as Jabhat al Nusra (JN), Hayat Tahrir al-Sham (HTS), and the Islamic State in Syrian and Iraq (ISIS), who – to say the least – lack in the "arts of war". This lack of critique cynically substantiates the fabricated essentialist discourse suggesting the "Arab mind" as inherently prone to terror, rather than emphasizing a *universalist* positivist international law as the primary cause (under)developing the Arab world. Neo-Orientalism then is to be understood not as *sui generis*, but rather a supplement to enduring modes of Orientalist representation that have been reconstituted, redeployed, and redistributed in characterizing Arab space. Nevertheless, and crucial to note, while Orientalism in previous centuries served the policies of colonial powers in constructing a threatening uncivilized entity to legalize an imperial war of transformation, neo-Orientalism serves the political interests of metropole centers aware of the *necessity* in producing threatening images of a conflict taking place between civilization and barbarism for epistemological *coherence* (Tuastad, 2003; Williams and Behdad, 2012; Dabashi, 2012; Al-Kassimi, 2018).

A final important trope not underlined by critics of classical Orientalism, i.e., dogmatic post-colonial scholars, is overlooking the complicitness of Third World subjects (i.e., Arab *comprador*) in disseminating *culture talk*, and to be explicit, perpetuating the idea of an "innocent" Global South. While Orientalism as an academic industry is predominantly a North American and European phenomenon, neo-Orientalism as a mode of representation is neither limited to these regions nor is it merely exclusively articulated by "Western" based subjects (Williams and Behdad, 2012; Dabashi, 2012). Arab writers[65] often called "experts of the Arab region" play an active role in (re)producing and propagating a deterministic representation of Arabs which according to Williams and Behdad (2012) represents a "kind of doxa about the Middle East and Muslims which is disseminated, thanks to new technologies of communication, throughout the world". Similarly, Hamid Dabashi calls Arabs adopting and propagating a neo-Orientalist belligerent discourse to analyse the region as colonial subjects or "comprador native intellectuals"[66] whose role is "to package the atrocities taking place in their countries of origin in a manner that serves the belligerent empire best: in the guise of a legitimate critic of localized tyranny facilitating the operation of a far more insidious global domination – effectively perpetuating (indeed aggravating) the domestic

terror they purport to expose" (Dabashi, 2006). Neo-Orientalist writers from the Global South have been promoted in part to advance themes constellating an "irrational Arab mind" or the "barbarian thesis" explaining violence and terrorism taking place in the Arab world by "omit[ing] political and economic interests and contexts when describing violence, and present violence as a result of traits embedded in local cultures [of the region]" (Tuastad, 2003:591; Dabashi, 2012; Robson, 2017).

For instance, Third World *comprador* intellectuals such as Walid Phares, Fouad Ajami, Azar Nafisi, Roya Hakakian, Brigitte Gabriel, Paula Yacoubian, Nabil Khalife, Nonnie Darwish, Raymond Ibrahim, Ayaan Hirsi Ali, and Walid Shoebat perpetuate Barbara Bush's neo-Orientalist discourse on the veil and/or Kaplan's or Lewis's views of Arabia by equating Arabs with Islam. This neo-Orientalist imaginary perpetuated by Third World *compradors* extends moral authority required for metropole powers such as the UK, France, Israel, and the U.S. to pursue their imperial interests and interventions in the Arab *Mashreq* and Arab *Maghreb* since Arabs being "culturally prone to violence" means that they are innately "irrational and cannot be stopped by means of diplomacy or conciliation" (Tuastad, 2003:596; Mamdani, 2004; Al-Azmeh, 2009; Mamdani, 2001, 2004; Dabashi, 2012; Altwaiji, 2014; Ventura, 2017). Another Arab *comprador* neo-Orientalist imaginary exaggerated after 9/11 and the "Arab Spring" of 2011 are Kurds, Assyrians, and/or Chaldeans demanding "independence from Arabs". This declaration disregards the spatial and temporal colonial reality affirming that the Ottoman-Arab world suffers – since the termination of the Mandate System – from an imposed exogenous Westphalian "territorial trap"[67] adjudicated at the Conference of London in 1920 as being one of primary causes in developing and/or exacerbating cultural cleavages and sectarianism along abstractly partitioned "ethno-religious" territorial boundaries[68]. Here, neo-Orientalist myths espoused by Arab *compradors*, whether intentionally or not, are reproduced and revitalized in tandem with the injection of liberal-secular scholastic terms such as "minority rights"[69]. Here, the threat of "Arabization", founded on deterministic imaginaries, becomes a *casus belli* demanding as a solution the implementation of a positivist Westphalian nationalist program transforming cultural differences into legal differences by considering Arabs as barbaric "neighbors" prone to "genocide" (Anghie, 2004; Akçam, 2012; Dabashi, 2012, 2016; Mamdani, 2007, 2012; Robson, 2017).

Arab and Western scholars alike who adopt a neo-Orientalist discourse to represent the Arab region understand a political-economic crisis occurring in the Arab world as a natural

Malthusian catastrophe, and political violence as a resurgence of Bedouin tribal *Jahiliya* linked to *premodern* local traits endemic to a backward peripheral desert culture. Arab *compradors* perpetuate "race war" by discussing *Arab(ness)* as simply designating an ethno-religious signifier rather than a civilization with its own epistemological and ontological particularities. This is not to suggest that native colonial informants are being "actively recruited to perform a critical function for the militant ideologues of the US Empire" (Dabashi, 2006), however, it does point to circles of power located in Canada, Europe, and the U.S. fetishizing and/or benefiting from an "academic individualistic-consumer surge" promoting "authentic" and "expert" information concerning inhabitants of the *Mashreq* and *Maghreb*. These hegemonic circles inject a problem-solving logic informed by a positivist technical lexicon of the Mandate era to conceptualize the region. These *particular* (European) semiotic terms include amongst others Indigenous/Indigeneity, Majority/Minority, Humanitarianism, Self-determination, Constitutionalism, Sovereignty, Arabization, Civil Society, Nation-State, Secularism, and Democracy while referencing powerful symbolic imaginaries based on distorted Arab cognitive configurations (Beckett, 2003; Mamdani, 2001, 2009, 2012; Dabashi, 2012; Robson, 2017; Ventura, 2017).

This deterministic discursive craving formed fertile ground for the proliferation of neo-Orientalist imaginaries producing *pathologies* of "Arab fear" that are vital in enabling the authorization of legal doctrines operationalizing defensive imperialism and its benevolent humanitarian mission. The *pathos* of the threat and fear of Arabs in general, and Muslims in particular, continues to be a genealogical sentimental necessity used to (re)formulate international law using naturalist and positivist juridical doctrines, thus emphasizing *jus gentium* continuing to be informed by an *inclusive exclusion*. This necessity highlights that the U.S. and Europe continue to arrogate sovereignty – therefore *jus gentium* – to the Occidental-Self for ontological security in the pursuit of a coercive redemptive civilizing mission entailing a doctrine of "full-spectrum dominance" and a quest of "infinite justice"[70] to secure U.S. and European hegemony in the MENA region. Reshaping the Arab world by perpetuating neo-Orientalist imaginaries continues to characterize a "Western" approach imagining Arabia. This is apparent in the events leading up to and succeeding the Arab uprisings in 2011 (Hinnebusch, 2007; Dabashi, 2012; Altwaiji, 2014:320; Borg, 2016; Ventura, 2017; Dostal, 2018).

3. The (Neo-Orientalist) Arab Uprising of 2011: A *Temporal* rather than *Spatial* Argument – Western Epistemological Coherence is *Constitutive* and *Productive* of *Vitorian* Moments

In their early days in 2011, the Arab uprisings were welcomed in Western spatial coordinates as a fundamentally "altering" and/or "awakening" moment in the Arab-Muslim world with communication centers endearing the protestors by claiming that "[t]hey were young. They spoke *English* or *French*. Their voices dominated *Twitter* and *Facebook*. They looked and sounded like people that might be on the streets of *London* or *New York*. They were not chanting *religious* slogans. They did not carry *weapons*" (Noueihed and Warren, 2012:6; emphases added). Others like Charles P. Ries were more explicit with their essentialism by declaring that "it's easier to say what has changed: Populations in the region have *gone* from being *'objects'* to *'actors'* in their *own history*…just the *thought* of *self-determination* is *revolutionary*, as such ideas have been at other *times in history*" (2011; emphases added). The issue with such culturalist discourse is precisely what this section seeks to critically assess by deconstructing the ways in which the Arab uprisings were discursively neo-Orientalized with elite speech actors perpetuating and inserting the uprisings into a *progressive* linear temporality informed by a liberal-secular *teleology* emphasizing a positivist jurisprudent unbridgeable cultural gap between the Western Occident as subject of sovereignty, and the Arab Oriental as object of sovereignty. It is as if anti-imperial struggles taking place before the Arab protests in 2011 do not qualify for an acknowledgment of the "energies, struggles, and fighting for a better life that the Arab people have been waging against western colonialism, intrusions, and unjust local governments for over 100 years" (Shihade, 2012:59).

The uprisings reminded Arabs generally and Muslims particularly that international law continues to be animated by a civilizing mission adopting (neo)-Orientalist discursive representations claiming European epistemic knowledge structures as inherently democratic in contrast to Arab epistemology inherently being deficient in, and resistant to, democracy. Therefore, and more to the point, Arabs were reminded that the West continues to fail in explaining developments in Arabia since they are legally constructed as embodying a philosophical theology that is *a priori* a necessary *exclusion* for the coherence of *jus gentium*. With the critique of culturalist discursive representations occupying an important place in the discipline of International Relations (IR) in the last few decades, the Arab uprising is therefore interpreted by aligning with critics who claim that the foreign policy of the U.S. and Europe has for several

centuries failed at articulating political visions that do not ascribe them as being a "redeeming" nation, with the *telos* of history being the transformation of *Other* places "into mirror images of its idealized self" (Borg, 2016:213). The Arab uprising in metropole regions is interpreted as an event that reinforces an idealized version of Western/European *Self* with policies produced and articulated being influenced by a positivist jurisprudent conceptualization of foreign policy theorized as simply being *constitutive* of political community rather than the "external deployment of *instrumental reason* on behalf of an unproblematic *internal identity* situated in an *anarchic realm of necessity*" (Campbell, 1998:37, emphases added; Borg, 2016). This is particularly true since *realism* is the traditional approach adhered to by Western sovereign figures informing foreign affairs and is directly indebted to positivism as a juridical school of thought. Realism during the 20th and 21st century has "rendered culture not merely epiphenomenal, but invisible and mute" (Mingst and Warkentin, 1996:171) since the adoption of a *realpolitik* lens to deduce foreign policy *a priori* makes "culture invisible by suppressing difference in favor of sameness" even though "culture *is* about *difference*" (as cited in Mingst and Warkentin, 1996:171, emphases added).

Western sovereign figures valorizing a foreign policy based on a "cultural security dilemma" conceptualized exclusively as *constitutive* of a Self-Other binary risks simply recognizing the Arab-Other as embodying a threatening "Other-culture", a "victim", or an "underdeveloped version of the Self" (Buzan and Hansen, 2009:220). The moral issue with a positivist realist lens stating that foreign policy is simply *constitutive* rather than also *productive* of the *Self* and *Other* is made salient with President Obama perpetuating neo-Orientalist images of Arabs before and after the protests of 2011. His speech acts in contrast to President Bush were not founded on the idea that the Arab is "premodern" or a radically different "Other" based on an ontological temporal *and* spatial threat, but rather opted exclusively for a *temporal* legal argument recognizing civilization/modernity as not *spatially* determined, but *temporally* inferred by identifying Arabs as humanitarian victims stuck in a primitive *temporal past* in need of tutelage to transition into a modern *temporal present*.

David Campbell (1998) cautions of ethical dangers induced by a positivist foreign policy by attempting to develop a poststructuralist ethics emphasizing foreign policy as *constitutive* and *productive* of an oppositional binary where the *Other* is constructed as a threatening depoliticized subject-object in need of "rescue" with the West appearing to be "doing something" without fundamentally acknowledging "responsibility" for mismanagement (Buzan and Hansen,

2009:230). Therefore, a liberal-secular foreign policy informed by positivist scholastics and the civilization it seeks to protect, explicitly foregrounds the importance of transforming Arab cultural differences into legal differences by imagining "differences" not only as a threat to the ontological security of the West, but a positivist *ratiocentric* juridical *prerequisite* revealing the ontological "double requirement" of (Western) civilization needing to be secure by demanding a threatening *Other* to define its identity – only then – realizing epistemological coherence (Buzan and Hansen, 2009).

It is therefore imperative to interrogate discursive representations of the Arab-Muslim before and after the Arab uprising of 2011 in Western foreign policy as *constitutive* and *productive* of a temporal essentialization rather than simply adopting the limited post-colonial argument citing Eurocentric spatial logics between East and West as constituting the primary issue of the "Arab Spring". Just as hegemonic epistemic *teleological* narratives of development, modernization, and liberalization were presented to the Arab world as the sole remedy to their socio-economic (under)development in the post-colonial era, the same hubristic expertise and theorization accompanied and dominated narratives attempting to explain the "failure" of the Arab uprisings in 2011 as rooted in Arabs inherently being mentally incapacitated in temporally transitioning into modernity. This subjective effacing is not only necessary for the coherence of (a positivist) Western philosophical theology, but also further makes explicit the *inclusive exclusion* character of *jus gentium*.

Two years before the Arab uprising was "seasoned" in 2011, former U.S. President Obama performed his Vitorian gesture by articulating a powerful speech act inserting and bounding the Arab world into a liberal civilizing narrative that highlighted their continued temporal stagnation in failing at becoming modern, progressive, and active subjects in making their history. On June 4th 2009 in Cairo, Obama presented a speech entitled *"The New Beginning"* by essentializing all Arabs as Muslims but nevertheless emphasizing the similarities between America and Islam by stating that they "overlap, and share *common* principles – principles of *justice* and *progress*; *tolerance* and the *dignity* of all human beings" (Obama, 2009; emphases added). In the speech, Obama distanced himself from the discourse adopted by the neo-conservative administration headed by President George W. Bush after 9/11 by acknowledging civilizational *similarities* between both spaces but also, and most importantly for our discussion, recognizing *temporal*

differences. Obama attempted to articulate his Vitorian moment by balancing "an appeal to *sameness* and the recognition of *difference*" (Borg, 2016:216, emphases added) by asserting:

> each nation gives life to this principle [democracy] in its *own* way, grounded in the *traditions* of its people…but I do have an unyielding belief that *all* people yearn for certain things: the ability to *speak your mind* and have a say in how you are *governed*; confidence in the *rule of law* and the *equal* administration of justice; government that is *transparent* and doesn't steal from the people; the *freedom* to live as you choose. Those are not *just* American ideas, they are *human rights*, and that is why we will support them *everywhere*

In a follow-up speech in Indonesia on November 10th, 2010, President Obama was further explicit in transforming cultural differences into legal differences by claiming that "we can choose to be defined by our *differences*, and give in to a *future* of *suspicion* and *mistrust*. Or we can choose to do the hard work of forging *common* ground, and commit ourselves to the steady pursuit of *progress*." (Obama, 2010; emphases added). Benevolent liberal concepts adopted by the Bush Doctrine to legalize a pre-emptive war such as modernity, progress, minority rights, liberalism, democracy, good governance, and human rights are (re)produced in Obama's speech as exclusively *temporal* differences that are lacking because Arabs in general, and peoples of the Muslim faith in particular fail at furnishing a temporally *modern* civilized personality. Obama's speech act in Cairo universalizing Western cultural mores is consistent with his initial articulation concerning the "Arab Spring" in February of 2011 when he said "in Cairo, I began to broaden our engagement based upon mutual interests and mutual respect…we have a stake not just in the stability of nations, but in the *self-determination* of individuals…The United States will continue to stand up for *democracy* and the *universal rights* that all *human beings* deserve, in Egypt and around the world". The liberal civilizing narrative with its neo-Orientalist tropes forcibly inserting the Arab uprisings into a Western temporal *timeline* becomes clearer when Obama contends in his address at the United Nations that "we recognized our own belief in the aspirations of men and women who took to the streets" (2012). By seeming to *include* the Arab world as a member of international law and society by emphasizing similarities between both cultures from a spatial perspective, Obama was quick to emphasize differences between both "worlds" from a temporal standpoint thereby taking the opportunity to bound Arabs using (Western) secular universal law and making what seems to be an act of *inclusion* essentially an act of *exclusion* (Agathangelou and Killian, 2016)[71].

Similarly, former Secretary of State Hillary R. Clinton accentuates and legitimizes Obama's Vitorian moment by seeming to include the voice of Arabs in international law by quickly moving to exclude and silence them when she claims that Arab protestors are essentially the same as ordinary Americans. Accordingly, Arabs are bound by *jus gentium* because "Americans *know* what the protestors want since they are demanding the *same* kind of things as enjoyed by Americans *themselves*" (Borg, 2016:217; emphases added). Clinton bounds the Arab *as* object of sovereignty in *chronos* by claiming that "Americans believe that the desire for *dignity* and *self-determination* is *universal* – and we do try to *act on* that *belief* around the world" (2011a; emphases added). Therefore, in Cairo as in the New World and the Mandate System era, the recognition of cultural similarities is used by sovereign subjects as a temporal affirmation to transform and (re)formulate legal principles that expel the Arab from its realm and then proceeds to legitimize imperial practices that are deemed necessary to incorporate the non-European world into the realm of *jus gentium*.

This (im)moral affirmation is noted by Clinton (2011a) when she relativizes Arab mental capacities by claiming that "[we] should never fall prey to the belief that *human* beings anywhere are *not ready* for *freedom…until this year*, some people said *Arabs don't really want democracy*. Well, *starting* 2011, that too is being proved *wrong*". This reductive logic situating Arabs temporally in a degenerative "state of nature" being founded on their mental (in)capacity of progressing to "modern" times as rational peoples is asserted and assumed because the universality of positivist legal scholastic concepts according to Clinton are "progressively" realized according to "histories, cultures and mindsets" (Clinton, 2012; Borg, 2016; Agathangelou and Killian, 2016). The genealogical continuum identified in naturalist and positivist jurisprudence classifying cultural differences as determining *temporal positionality* in a linear conception of time is evident in these speech acts since Arab *sameness* is represented in tandem with the recognition of *differences* circumscribed as an affirmation of "universal principles" being absent in Arabia thus requiring tutelage and intervention by the Western subject *on behalf of* the Arab object.

The U.S. being "on the right side of history" (Borg, 2016:218), or more specifically, the *active* subject and *maker* of history, while Arabs are represented as *passive* objects attempting to *conform* to history, permits the U.S. in establishing authority over the *chronology* of the Arab uprisings since Arabs are portrayed as attempting to catch up with the historical temporal trajectory of Western modernity. Sovereign figures *a priori* knowing what Arab protestors demand

establishes their authority as the universal interlocutor informing history (historicism) with an underlying teleological assumption that time progresses and moves to realize the potentials of a transformed (liberal-secular) (Arab) subject (Jones, 2003; Agathangelou and Killian, 2016; Borg, 2016). Western supposed "natural" experience with democracy influenced by an atomized Cartesian-Newtonian temporal *timeline*, therefore, puts it in a privileged position to monitor and assist in its implementation in the Arab world. This is highlighted with the U.S. administration stating that the uprisings reflect "*universal aspirations* and *rights*, and therefore, people everywhere should be able to work toward its realization, and the United States, as the *oldest* existing democracy, should be working to *help* people achieve that" (Borg, 2016:218; emphases added). Therefore, Arab subjectivity seeking to contest or suggest alternative discourses and policies to the reductionist imaginaries distorting the Arab uprising is silenced since positivist philosophical theology is constructed as the exclusive blueprint for temporal *coevalness*.

Denying Arabs authorship of their historical *timeline* by presuming that their uprising should be understood as wanting similar knowledge structures informing Western philosophical theology is explicit when Clinton (2011c; emphases added) mentions in an interview with the Atlantic on April 7th, 2011 that "*We* have *figured out* how people from *every part* of the *world*, *every* kind of *person* you can *imagine*, can *live together*, can *work together*. It wasn't easy. *It took a long time*, but I think *we* know a little bit about how to do it, and *we* want to *offer* whatever *assistance we* can". These essentialist narrations reinforce the temporal idea that *jus gentium* necessarily perceives Arabia as a *geography* with *passive inhabitants* rather than a *political space* with *active citizens* that may or not demand "Western" ideas or experiences. The West – having supposedly perfected markers of modernity such as democracy, civil rights, and human rights – is then in a privileged temporal position "in time" endowed with providence and the ethical obligation of being responsible for, and a guide to, peoples inhabited by Arabia. Here we notice the reductionism in *seasoning* the Arab uprisings as a "new beginning" since it claims that the Arab world has finally *began* to show signs that it has "awoken", "bloomed", and "matured" – even if momentarily – in wanting to join the "miraculous" liberal-secular tide of modernity.

An important development, I argue, revealed by critics of neo-Orientalism is that Obama's Vitorian moment does not explicitly mark the "end of postcolonialism", however, it does highlight the limit of "Eurocentricity" as a dogmatic postcolonial critic *of* (Western) legal-history (Beckett, 2003; Dabashi, 2012; Borg, 2016)[72]. Dabashi (2016) explicitly claims that *springing* the Arab

uprisings made salient that "the term 'West' is more meaningless today than ever before…and with it the notion, and the condition, we had code-named postcoloniality. The East, the West, the Oriental, the colonial, the postcolonial – they are no more. What we are witnessing unfold in what used to be called 'the Middle East' (and beyond) marks the end of postcolonial ideological formations". Therefore, postcolonial scholars contesting hegemonic realities should no longer simply analyze cultural differentiation between the East and the West in spatial antagonistic terms, but more importantly be conscientious that neo-Orientalist speech acts given during the Arab uprising have extended a temporal differential argument as a *causal factor* influencing a liberalizing narrative claiming Arabs could *possibly* "progress" through the passing of time (Beckett, 2003). This point on moving beyond (the limits of) postcolonialism is essential since it reaffirms that international law and metropole powers continue to (re)formulate and recycle sophisticated narratives that are indebted to naturalist and positivist jurists since the distinction between temporality and spatiality – a Vitorian practice *par excellence* – is adopted to guise the brutality and chaos informing modernity as a liberal-secular project.

According to Said (1979:2), Orientalism is a "style of thought based on an ontological and epistemological distinction between 'the Orient' and (most of the time) 'the Occident'". However, Borg emphasises the limits of such style of thought since it perceives "difference" as "primarily a *spatial* way of differentiating, and an intellectual disposition that established a virtually unbridgeable difference between 'the Orient' and the 'Occident'" (Borg, 2016: 215; emphases added*)*. A critical neo-Orientalist paradigm of thought highlights that the West claiming that a temporal rather than spatial difference is the cause of Arab stagnation is a "poisonous differentiation disguised as honey" since the moral issue of *jus gentium* is not *principally* that it is Eurocentric but rather that it is characterized by a temporal *inclusive exclusion* policed and maintained by a *ratiocentric* legal regime. The idea that Western universal principles are not only to be found *spatially* in the West but are also located in the Arab world is akin to Vitoria claiming that natural law is universal and is to be found in Europeans and non-Europeans alike only to end up justifying *sovereign-willed* practices of domination and violence over non-Europeans in the name of *civilizing* the aberrant society. Whether the liberal civilizing narrative is adopted because of temporal or spatial considerations, sovereign members of *jus gentium* espoused and constructed a reductive vision of Arabs by denying them subjectivity and the possibility of drawing from their *own* collective cultural capital any "civil image" worthy of producing events distinct from the

linear *sequential timeline* furnished by Western teleology (Ramadan, 2012; Borg, 2016). Benevolent discourses informing the "Arab Spring" and Vitorian gestures founding legal doctrines of "humanitarianism" and "responsibility to protect" are therefore *inherent* to a *jus gentium* founded on positivist jurisprudence since it is *constituted* and *productive* of a civilizing mission that is "little more than expressions of a particular Western experience disguised as universals" (Borg, 2016:222).

Since any attempt of Arab resistance seeking to contest civilizational tutelage is translated as "resisting modernity" and suggestive of "Arabs not knowing what is best for them", the *temporal* argument – albeit in a subtle manner – requires the Arab-Other as ontological threat to shed their "premodern" identity because their culture is imagined as reifying *past* (temporal) traditions which *a priori* makes them fall short of reaching the exact temporal coordinates needed to become *coeval* with Europe. The neo-Orientalist temporal argument delivered by Obama during his Vitorian moment before and after the momentary "Arab Awakening" of 2011 is telling of Arabs continuing to be imagined as outside (excluded) rather than inside (included) *jus gentium* because their *probable* inclusion is at the same time their *definite* exclusion. This *dispositif* of *jus gentium* is essential for the *coherence* of Western epistemology since it is policed and maintained by an international legal regime – *jus gentium* – that reifies a *particular* (Western) culture made *universal*.

4. Western Ideas are the "*Originator*" of the Arab Uprising: Neo-Orientalist Myths Outsource Arab Agency – Oriental Despotism, Non-Violence, Modern Technology, and Gender Equality

Neo-Orientalist imaginaries gesturing Vitorian moment(s) illustrate sovereign members of *jus gentium* continuing to hold reductionist generalizations about the Arab world as being a homogenous, monolithic, and static geography. Neo-Orientalism as a mode of representation disregards an *anachronic* approach to legal-history by refusing to acknowledge a historical continuum in moments revealing Arabs struggling (i.e., *Jihad)* and dissenting (i.e., *Intifada)* against international legal structures making such immoral continuity possible (Frank, 1969, 1998; Beckett, 2003; Anghie, 2004; Borg, 2016). Hegemonic powers revert to producing abstract images of the Arab-Oriental as Saracen, especially in relation to their character and mental configurations, to sanction a *redemptive* venture seeking to civilize Semitic tribes. Critics of neo-Orientalist stereotypes caution that to speak about a single Arab mind and character in general terms

essentially neglects the particular history of each Arab country and the fact that Arab countries comprise close to half a billion people stretching from the *Mashreq* to *Maghreb* (Beckett, 2003; Borg, 2016).

The representation of recent Arab uprisings as one monolithic wave of protestors is a pertinent example of how the progressive European continues to define itself in opposition to the degenerative Arab. This is because neo-Orientalist imaginaries are founded on a positivist binary logic proclaiming the West as the subject and authority of history – the one who studies and speaks – while the East is the object and obeyer of history – the one who is studied and spoken about – thereby in the process (re)solidifying the supposed unbridgeable cultural gap between a universal Western subject and a particular Arab object (Beckett, 2003; Borg, 2016; Ventura, 2017). While it is accurate that most protesters in different Arab countries used similar slogans and communication methods, but to consider "them as one revolution implies embracing an abstract viewpoint that reduces and neutralizes the real differences between various Arab countries"[73] (Ventura, 2017:285). Thus, by considering the multiple historical differences influencing each Arab country – for example, Syria, Iraq, Tunisia, and Libya – renders it extremely difficult to adhere to the idea that the uprisings comprise a "single Arab revolution" (Ventura, 2017:285).

Neo-Orientalist proponents of the uprising identifying Islam and Arab interchangeably was a prominent selected discourse since the "Arab Spring" was interpreted in fact as "the birth of a modern Arabism" founded on an idea that there is an "inseparable link between Arabism and Islam" (Sawani, 2012:394-395; Ventura, 2017). Islam being represented as the main unifying variable that connected the movements was capitalized on by the U.S. and the EU by claiming that the protests include Arab barbarians and/or Arab Jihadist attempting to eject by force non-Muslims from their land. Neo-Orientalist representations overlook the fact that the violent exogenous "modern" *Islamist* engulfing the Arab world since 2011 is directly authorized and funded by the U.S., EU, and local Arab *compradors* (more on this in chapter IV). The refusal in acknowledging the "modern" inception of "Islamist Arabs" provides Obama's discourse of the "New Beginning" in Cairo a *raison d'être* by giving credence to fabricated myths stating Arabs are inherently mentally prone to barbarism and terror (Dostal, 2018). The idea of Islam being the unifying factor of the uprisings is generalized and accepted simultaneously with novel neo-Orientalist myths claiming that the protests are a result of Arab-Muslims being temporally inept to attain modernity because their cultural mores produce *Islamic despots* – a classical essentialist myth linked to the

idea of "Oriental despotism" (Ventura, 2017:286). Hardt and Negri (2011) stress the hijacking of Arab subjectivity during the uprisings by forcibly injecting the agitations into a Western linear perception of time by stating:

> These revolts have immediately performed a kind of ideological house-cleaning, sweeping away the racist conceptions of a clash of civilisations that consign Arab politics to the past. The multitudes in Tunis, Cairo and Benghazi shatter the political stereotypes that Arabs are constrained to the choice between secular dictatorships and fanatical theocracies, or that Muslims are somehow incapable of freedom and democracy. Even calling these struggles 'revolutions' seems to mislead commentators who assume the progression of events must obey the logic of 1789 or 1917, or some other past European rebellion against kings and czars.

The idea that the Arab uprising is a result of Arab spaces possessing "despots" is a neo-Orientalist idea that was perpetuated early on by two important Western academics. The first is French philosopher Bernard-Henri Lévy from the "New Philosophers" movement in France who is dubbed by Arabs as the "Merchant of Revolutions" since he was the legal *attaché* of terrorist groups linked to Al-Qaeda (also known as ISIS) in Benghazi, Libya in 2011. The second is Marc Lynch, Professor of Political Science at George Washington University and director of both the Institute for Middle East Studies (IMES) and the Middle East Studies Program (MESP) who is celebrated as having coined the term "Arab Spring" by forcibly injecting Arab political activism into a *chronos* linked to the Occidental *seasoning* of revolutions (i.e., Spring of Nations Revolution in 1848 and the Prague Spring of 1968) (Lynch, 2011a, 2013; Shihade, 2012:58). Both intellectuals were perceived as influential and supposed "experts" and "authority" figures in knowing what Arab demands were from the outset of the Arab "Spring"[74]. The importance of both intellectuals is centered around the perpetuation of the myth stating that Arabs are ruled by "despots" because of their mental incapacities thus necessitating humanitarian tutelage (Lynch, 2011b, 2013, 2016; Wallerstein, 2011; Ramadan, 2012; Lévy, 2015; Ventura, 2017).

According to Ventura (2017:286), the neo-Orientalist "despotic" narrative was the dominant frame underlining most media commentary and hegemonic policy circles seeking to interpret and filter the uprisings by grounding their discussion on the symbolic powerful myth that "all the Arab countries involved had or were supposed to have a 'despotic' government of which they wanted to be rid". While characterizing Arabia as inherently despotic is an Orientalist representation that goes back to the Greco-Romans (Venturi, 1966; Richter, 1969; Beckett, 2003;

Ventura, 2017), Lévy and Lynch rely on the writings of Tocqueville's *Democracy in America* (1835) and specifically Montesquieu's *Spirit of the Laws* (1748) to determine that Arab spaces are deficient in democracy because of their cultural temperament breeding "Oriental despots". They jointly adhere to Tocqueville's and Montesquieu's claims of cultural mores determining the development and trajectory of political thinking; that is, whether a society will regress temporally into Oriental despotism or progress temporally into Occidental cosmopolitanism (Richter, 1969; Ventura, 2017). For Montesquieu, despotism is located in Eastern Islamic empires such as the Osmanli Caliphate and the Mogul Empire (1748:88) where the principle of government is "fear" (1748:83) and law the "momentary will of the prince" (1748:94). According to Montesquieu, in despotic spaces religion is used to reinforce the power of the prince because it is "fear added to fear" and in "Mahometan countries, it is partly from their religion that the people derive the surprising veneration they have for their prince" (1748:86; Ventura, 2017)[75].

Despotism is *temporally* imagined as a "geography" lacking Tocqueville's "equality of condition" or "sovereignty of the people", therefore, it is constructed as a degenerative space defined by its "savage cruel" inhabitants and "arbitrariness of power" (Ventura, 2017:287). In contrast, Occidental space informs a European philosophical theology of "natural law" and "universal rights" guaranteeing "individual freedom and property rights" (Kaiser, 2000:12; Agathangelou and Killian, 2016; Ventura, 2017). Thus, Arab-Muslims are identified as embodying a primitive mode of Being; an unaccultured body characterized by a "state of nature" deficient in "democratic mores" aiding them in transcending the *will* of the "sultan" (Ventura, 2017:287). These representations adopted by neo-Orientalist scholars to monitor, intervene, and *speak on behalf* of the Arab uprisings in 2011 are reminiscent of naturalist/positivist legal doctrines developed during the colonial encounter in tandem with benevolent discourses *speaking on behalf* of non-Europeans to justify conquest. The despotic myth used by commentators transforms cultural differences into legal differences to sanction, for instances, colonial practices that seek to "modernize the economy" i.e., neo-colonial privatization, by reverting to distorted images of a despotic Orient "ruled by a 'medieval' form of power, social structure and organization" (Ventura, 2017:288).

The image of the "Oriental despot" temporally situated in a "non-discursive" epoch was gaudily adopted by hegemonic institutions such as the Council on Foreign Relations (CFC). Neo-Orientalist scholars such as Goldstone (2011:330) declared that to understand Arab "revolutions"

it is important to remember that the region is composed of a "primitive" governing modality. He says, "Sultanistic regimes arise when a national leader expands his personal power at the expense of formal institutions. Sultanistic dictators appeal to no ideology and have no purpose other than maintaining their personal authority". Ventura (2017:288) is critical of Goldstone adopting the term "sultanistic" when describing Arab countries since it is not "historical information" and Arab countries who have been conquered since 2011 such as Libya and Syria do not have leaders who possess(ed) personalities that correspond to the "despotic sultan" and/or a "sultanistic dictatorship" of the supposed past. Regardless of whether the features correspond to reality, Ventura (2017:289) highlights that the stress on features of Arabs in general and Muslims in particular as "naturally" inhabiting "despotic" spaces could be interpreted as stating that they inhabit "uncivilized spaces" since the main feature of despotism entails Arabs occupying an implicit temporal "lag" in time lacking discursive registers. The representation of Arab spaces as lacking "societies" – therefore sovereignty – regardless if they enjoy governing aspects of "modern states" i.e., parliaments, parties, and constitutions, is a key aspect informing despotism because it perceives Arab space as always falling back into stagnation and inhabited by slaves linked to an "old" feudal world in contrast to an Occidental space inhabited by citizens of a "new" cosmopolitan modern world (Ventura, 2017).

Arab demands during the uprising constellating governing concepts furnished in the West being represented as simply not "sufficient" in "passing the civilization test" is based on the cognitive (in)capacity of Arab faculties identified in Montesquieu's *positivist spirit* (Ventura, 2017:293). Goldstone (2011:340) makes this neo-Orientalist hypostatisation evidently clear when he declares that what is expected after the failure of the "Arab Spring" is Arabs falling back into stagnation because "in the last thirty years no deposed sultan has been succeeded by an ideologically driven or radical government…in every case the end product has been a flawed democracy". This accentuates the *inclusive exclusion* character of *jus gentium* in that even though Arabs during the uprisings according to Western interlocutors showed "tentative" signs of "maturity" – by demanding ideas accenting Western epistemology – it is the emphases on temporal *differences* rather than cultural *similarities* based on Islamophobic narratives that triumphs as the dominant narrative casting the Arab-despot as inherently incapable of temporally transitioning into modern Western coordinates (Ventura, 2017:295).

The despotic perception of Arab space inhabiting degenerative passive objects of sovereignty is also noted with Western and Arab *comprador* media centers perpetuating the idea of Arabs not being the originators of the uprising (outsourcing subjectivity). These interlocutors discursively framed the Arab uprising as "Western in origin" since Arabia is constructed as an *atavus* vacant of "civil ideas" relating to "non-violence" and/or "modern" methods of communication (Borg, 2016). At the core of Arab *comprador* media outlets – such as Al-Jazeera, Al-Arabiya, and BBC Arabic – was a culturalist belief claiming a "general *doubt* in the *agency* of the *Arab people* to *make* their *own history*" by (mis)representing the uprisings in a frame that created doubt whether they were home-grown, genuine, and in need of Western guidance (Shihade, 2012; Borg, 2016:214, emphases added; Ventura, 2017). The neo-Orientalist idea perceiving Arabs as unorganized and requiring tutelage in *making* history is indicated in media commentaries depicting Arab and Muslim people from a *Montesquian* lens as "lazy, lacking the vitality for change and lacking the *spirit of initiative*" (Shihade, 2012:62, emphases added). Similarly, Salaita (2012:144) examines the role of American media outlets in perpetuating essentialist notions about Arab culture claiming that they were in a "long period of dormancy", finally "awakening to democracy", and that their culture is predisposed to violence thus requiring U.S. guidance to guard them against their "inherent barbarity" (Borg, 2016:214). In this distorted representative pattern, neo-Orientalist mythologies saw something *threatening* about Arabs controlling their *own* destiny during the uprisings and were continuously understood by Western audiences as "not only attempts to *modernize* but also a kind of *'jump'* into the *western coordinates* and *system of values*…the fight against the *despotic* and *'old' powers* appears automatically *libertarian, 'modern',* and *progressive* because it brings *movement* where there was supposed to be only *immobility*" (Ventura, 2017:290; emphases added).

By analyzing the celebrated neo-Orientalist themes in Western media constructing Arabs as objects of sovereignty we notice the frame "outsourcing subjectivity" muting Arab subjectivity. The image of the Arab in the West included bloggers using "modern social media or smartphones" leveraging platforms such as Facebook and Twitter, young students, and women dubbed "modern heroes" who were discursively represented as being *similar* to the West because they demanded "freedom" and "equality" (Salaita, 2012; Ventura, 2017). In this distorted frame, we notice Arab protesters framed as clashing between modernism and anti-traditionalism, with the "young" and "technological aspect" of the uprisings "reinforcing the idea of these revolts as being based on the

opposition between tradition and modernity" (Ventura, 2017:290). According to this powerful symbolic narrative, any "momentary change" that took place during the uprisings had to be influenced or aided by Western ideas since even the power of modern Western technology supposedly shaped and made the uprising possible (Salaita, 2012; Shihade, 2012; Borg, 2016; Ventura, 2017). Instead of focussing on demands accentuating Arab subjectivity such as fighting against oppressive neoliberal economic policies upheld by local oligarchic clientelist regimes for over 50 years solidifying colonial economic dependency (Frank, 1969; 1998; Shihade, 2012), a deliberate attempt was made by American and British, Saudi and Qatari news broadcasters in dedicating air-time to cover the fear of "Arabs taking matters in their own hands". Arab autonomy was portrayed as dangerous since neo-Orientalist imaginaries perceive Arabs as *inherently* despotic and irrational. Such distorted narrative created fertile ground for a frame claiming "Islamist" terrorists taking over in the midst of chaos, even though the same broadcasting centers served as a platform for terrorist groups by claiming them to be "moderate rebels", "freedom fighters", "protestors", and/or "opposition groups" (Abdelmoula, 2012; Bosio, 2013, 2016; Borg, 2016; Ventura, 2017; Dostal, 2018).

As a matter of fact, managers, journalists, and directors from Al-Jazeera resigned during and after the Arab uprising citing American and Qatari pressure in framing the uprisings in a particular manner thus violating the rules of objective journalism. The managing director of Al-Jazeera in Beirut, Hassan Shaaban, the director of Al-Jazeera in Beirut, Ghassan Bin Jiddo, and journalist Afsar Rattansi, have all been explicit in mentioning that their resignation is based on their respective media centers not only fabricating "Islamist" stories in relation to Syria, Libya, and Bahrain, but became a publicity center to sanitize terror acts conducted by *bona fide* terrorists framed as "protestors" (RT Editorial, 2012; Kühn, Reuter, and Shmitz, 2013; Erlich, 2015; Ventura, 2017; Dostal, 2018). For instance, in relation to Syria, the station was framing terrorist attacks by Al-Qaeda affiliated groups on the Arab Syrian Army (SAA) as attacks by "protestors" and "freedom fighters" engaging a "despotic regime" in the name of "democracy" in places such as Da'raa, Idlib, Aleppo, and Homs. Journalists critical of a neo-Orientalist frame were attempting to highlight that the SAA was engaging armed terrorist groups as early as 2011 funded by Western intelligence agencies and local Arab *compradors* (RT, 2012; Kühn, Reuter, and Shmitz, 2013; Erlich, 2015; Ventura, Dostal, 2018). Ventura reveals the danger in neo-Orientalist themes of

"despotism" and "barbarism" sanitizing extrajudicial practices conducted by terrorists/rebels by highlighting how the reaction:

> …to the discovery last year that a leading member of Ahrar al-Sham, one of the groups supported by the West against Syrian President Bashar al-Asad, was closely connected to al-Qaeda…did not affect the narrative of the "Arab Spring" (as further evidence of its being abstract). In addition, prominent commentators and policy-makers used the occasion to present what they described as 'the murderous policies of the Assad regime' as comparable to, if not even worse than, the actions of al-Qaeda (2017:294).

The deliberate essentializing aspect of "modern technology" is used as spotlighting proof of an Arab tension based on the "opposition between tradition and modernity" (Ventura, 2017:290), by perpetuating through the mastery of visual technologies the threatening Arab barbarian who uses "modern" technology to showcase their "unmodern" culture. It is vital to note that terrorist groups receiving air-time from some of the most technologically sophisticated media stations in the world in tandem with Twitter, YouTube, and Facebook to perpetuate their "Islamist" ideas highlights that "the use of the internet is not always equal to freedom of speech and thought, and videos are not always equal to the truth because images can be manipulated" (Ventura, 2017:291). To put the point more directly, "modern" technology as a means of communication was essentialized with the objective of broadcasting Arabs attempting to transition to "modernity", even though it is the same "modern" technology that is in fact used to showcase Arabs "live on-air" falling back into despotism by focussing on supposed innate cultural barbaric acts (i.e., airing acts of beheading, caging, mass-executions, and immolations). Here we notice that the use of "modern technology" while seeming to be a "cultural similarity" that "includes" Arabs as an equal among Western sovereigns, it is precisely technology, through the production of distorted reductionist imagery, that is adopted to heighten temporal differences thus "excluding" Arabia from the realm of sovereignty and modernity – therefore *jus gentium*.

The silencing of alternative depictions and demands of Arabs highlights the hubris of Western historicism claiming a monopoly on understanding Arab reality "on the ground" by representing their agitations as inherently sporadic and trivial (Hazbun, 2013). This calculated deliberate (mis)representation not only risks dismissing any attempt at reminding the world that Arabs have been protesting imperial policies for several centuries, but also risks reifying an essentialist idea claiming that Arabs demanding change inevitably results in the "fear of chaos",

"fear of extremism", "fear of the young", and "fear of the unknown" since demands made by "irrational objects" are professed as alarming and dangerous (Shihade, 2012:50). The role of Western media during the uprising perpetuating powerful symbolic frames identifying Arabs as anti-modern is explicitly recognised with "bearded" armed mercenaries dressed in "Bedouin tribal garb" articulating a foreign language being associated with Arabs and Islam – thus evoking the barbarian thesis (Ventura, 2017)[76]. Even though religion during the uprising was never an issue and was absent during the uprising (Felsberger, 2014; Ventura, 2017), Western commentaries' emphases highlights the fear of accepting Arab agency at being capable of conducting "change on their own" because Arabs and Muslims were framed as being inherently disorganized and prone to chaos as highlighted with the idea of the "Oriental Rebel", "Arab Jihadist", or "Islamist" dominating Western representations of Arabs involved in the uprising to elicit fear in the audience (Azeez, 2014:20). The fear of Arabs writing their history and the idea that Arab impulses for change always originate in Western Enlightenment knowledge structures are grounded in a hegemonic regime of truth where Western colonial powers "surveils, familiarizes, gauges, labels and finally subjectifies the colonialized subject's resistance" (Azeez, 2014:245). In this case Arab resistance is translated as "resisting modernity" unless inferred by the West, but even then, according to neo-Orientalist figurations, Arabs fall short of completely transitioning into becoming temporally *coeval* with the West.

The hijacking of Arab subjectivity during the uprising through reductionist imaginaries is further noted with "non-violent" methods being represented as non-endemic to Arabs and imperatively a Western method of *civic* engagement (El-Mahdi, 2011; Shihade, 2012; Borg, 2016; Ventura, 2017). Borg mentions that "mainstream analyses tended to focus on the alleged *Western origins* of the uprisings; such as how *Western technology enabled* the protests, and the role of the *ideas of US non-violent resistance* theorist *Gene Sharp* in *inspiring* the Arab revolutionaries" (2016:214; emphases added). The non-violent disposition of Arab protesters during the first months of the uprisings was discursively presented as being due to a number of Arabs visiting Europe and the "U.S. for training and learning of the methods of non-violent activism and the theory of Gene Sharp"[77] (El-Mahdi, 2011; Shihade, 2012:62; Borg, 2016). The non-violent episode of the Arab uprising – later known as the "Islamist Winter"[78] among Western policymaking circles – was recognized as being indebted to Western values of "modernity" extended in Gene Sharp's books entitled the *Politics of Nonviolent Action* (1973), *From Dictatorship to Democracy* (1994)

and, *How Nonviolent Struggle Works* (2013) (Arrow, 2011; Stolberg, 2011; Sharp, 2011; El-Mahdi, 2011; Shihade, 2012; Engler, 2013; Roberts, 2018).

In this neo-Orientalist spectacle, we notice the formation of a binary within a binary with the West displaying a "flexible positional superiority" by retaining the "relative upper hand" (Said, 1979:7) claiming that the success of the uprisings originates in, and is indebted to, Western modern ideas constellating "peaceful resistance" and "non-armed struggle". Shihade cautions about adopting generalizations claiming that the uprisings would not have occurred without Arabs adopting "Western technologies" or learning how to be "non-violent" as historical fact since there has not been any critical study concerning the "number/percentage of users, and also if without such technology the revolution would not have happened" (2012:62). These "facts" not only contradict "the history of revolutions in the region that has been taking place there for decades without such technology" (Shihade, 2012:62), but point to a deep-seated *realpolitik* commitment in foreign policy analysis during the uprisings seeking to represent Arab civilization as *constituting* violence thus requiring training in "non-violence". These *realist* arguments are founded on positivist jurisprudent deductions stipulating that Arabs "lacking in the arts of war" risk their reversion to irresponsible and irrational behavior during democratic temporal transitions.

A final important neo-Orientalist trope engendering the uprisings is based on how the uprising was "gendered" by reviving the mode of representation claiming Arab women need "saving" and that Arab culture *a priori* suppresses women. While the idea of women lacking rights in Arab-Islamic societies has been perpetuated for centuries by classical Orientalists and contemporary neo-Orientalists, the fact that Western media made a "gender issue out of the revolts and even a large win for women's rights shows their Orientalist approach" (Mahmood, 2006; Abu-Lughod, 2013; Abbas, 2014; Ventura, 2017:291). The Arab uprisings were depicted as an occasion for Arab women to acquire Western-like gender rights and freedoms. Khalid (2015:163) highlights the importance of deconstructing such deterministic frame since it forcibly injects Arab women agitations into a Western linear perception of time by being read in the "context of long-standing western discourses on the MENA, which are shaped by orientalist logics that are themselves gendered". Furthermore, Khalid (2015:163) emphasizes the importance of being cognizant of neo-Orientalist reductionist myths accompanying the "gendering of the Arab uprisings" since they influence and shape "…dominant western understandings of the role of women and non-heterosexual peoples in the 'Arab Spring', which (re)produce orientalist logics that marginalize

those who do not conform to particular gendered understandings of the roles of various peoples in MENA".

Arshad is explicit in declaring that the Arab uprising was not demanding liberal-secular values "yet it was the issue of women's rights which sought to define it in the perception of the West" (2012:110). When it came to "gender issues" neo-Orientalist commentary on the uprising considered Arab women as representing a homogenous group similar to the neo-Orientalist myth perpetuated by Bernard Lewis claiming that all Arabs are Muslims (Mahmood, 2006; Abu-Lughod, 2013; Arshad, 2014; Abbas, 2014). This neo-Orientalist secular "genderism" refused to consider that Arab women "have varied, sometimes, contrasting, goals and ambitions" and that "they are all hoping that they have the opportunity to voice their numerous concerns and demands" (Arshad, 2012:115). Similarly, Khalid (2015:164-166) clearly affirms that the:

> basic assumptions of orientalism (as a gendered discourse) are reflected in dominant western representations of the 'Arab Spring', most significantly in the deployment of gender and sexuality to construct 'the West' as enlightened in contrast to a backward and barbaric 'East'…western discourses on the 'Arab Spring' have centred on gender (largely understood in these discourses as the treatment of women) and sexuality in 'reading' the events of the 'Arab Spring' in ways that function to reaffirm orientalist tropes of 'eastern' backwardness and barbarism.

Western commentators, therefore, refused the idea of Arab women as being rational capable authors of their political lives by discounting the complexity of Arab cultural heterogeneity across the *Mashreq* and *Maghreb*. A neo-Orientalist spectacle founded on a (positivist) cultural dynamic of difference discounts different Arab civilizational realities by hypostatizing Arab women and stripping them of their subjectivity by refusing to ask "what the women of Arab countries are actually seeking" and/or whether they did not feel like equal "partners in the revolution" (Abu-Lughod, 2013; Abbas, 2014; Khalil, 2014; Khalid, 2015; Ventura, 2017:291). While the image of Arab women protesting was adopted to reinforce the liberal-secular temporal argument of Arabs finally "awakening to democracy" and "gender equality", a novice acquaintance with the history of the region reveals that women always played an indispensable role in (re)formulating an Arab mode of Being. The fact that woman were involved in the protests from the beginning and did not politicize their visibility and participation corresponds to the actual situation of Arab countries where the claim "for rights based on western women's rights is not very widely spread among women" (Beckett, 2003; Mahmood, 2006; Abu-Lughod, 2013; Khalid,

2015; Ventura, 2017:292). Arab protestors regarded the language of women's rights with great suspicion and as a "western import" (Ventura, 2017:292) since it is a familiar discourse perpetuated after 2001, and more so after 2011, with Obama's administration rejuvenating the liberal-secular (feminist) discourse disseminated for decades by local Arab *compradors* located in Egypt (i.e., Suzanne Mubarak) and Tunisia (i.e., Leila Ben Ali).

Conclusion

The importance of deconstructing the positivist legal-history interpreting Arabia since 2001 and 2011 is revealed in this chapter when analyzing the reductionist discursive imaginaries constructing Arabia as inherently resistant to modernity but receptive to terror. Both momentous junctures were critiqued not as disconnected linear moments, but a multiplicity of sequential instances that share a continuous deterministic perception of Arabs as embodying irregular and irrational cultural bodies. Situating the Arab – from a neo-Orientalist imaginary – as an "irregular" and "irrational" body allows us to excavate *past* and *present* political events and race war discourses that actualize the idea that *jus gentium* not only continues to be animated by a dynamic of cultural differences to lubricate a liberal civilizing, but that Western modernity is *constituted* by, and *reproduced* in, constructing a threatening Arab body. This construction reifies positivist scholastic logic identifying Arabia and the West through irreconcilable opposing binaries to adjudicate a *redemptive* war that fundamentally revitalizes and secures Western modern liberal-secular epistemology. The adoption of Arab imaginaries founded on "culture talk" during the Arab uprisings was critiqued by reverting to *past* historical characterizations of the Arab world in cannons of international law, and more recently, to the reformulations of *jus gentium* after 9/11 with the doctrine of PEDS accompanying neo-Orientalist Islamophobic discourses informing the Arab barbarian thesis, despotism, and Arab mental incapacities. Just as past colonial encounters emphasized cultural differences to adjudicate a civilizing mission, the Bush Doctrine of defensive imperialism also sought to transform supposed stagnant Arab bodies contaminated with a premodern culture in the name of modernity, civilization, democracy, and human rights.

The "liberation" of Iraq in 2003 in the name of protecting *jus gentium* by "democratizing" Arabia, and Arabs finally "awakening" to democracy in 2011 – but swiftly falling "asleep" – are analogous to naturalist and positivist jurists forcibly inserting any non-European gesticulation into a "universal" linear progression of time based on the notion that Arab agitations are expressions

that inevitably seek to attain the *telos* of history – Western modernity. The neo-Orientalist discourse engendering the uprisings of 2011 by seeming to "appeal to sameness while recognizing difference" (i.e., Vitorian moment) is clearly a culturalist contingency since it articulates Arab space as having *potential* similarities with modern civilized Western space while reverting to the relativist idea of there being an *essential* temporal lag between the West and Arabia. It is Arabs lagging in time rather than being located in different spatial cartographic coordinates that keeps them backward and stagnant which therefore inevitably and ultimately establishes the authority of the U.S. and the EU to speak on behalf of, monitor, and assist in, the modernization, democratization, and development of the Arab region. Even though emphasizing a temporal rather than a spatial difference highlights that there is no ontological difference between the West and the Arab world, and to a certain degree breaks away from classical Orientalist discourses, it is precisely this artificial recognition of "sameness" (i.e., inclusive exclusion) that legitimates a "colonial trusteeship system" since the universal appeal of *law* in a temporal sense through the protection of human rights and democracy guaranteed that the U.S. and the EU recognized what is best for the Arab world.

Metropole capitals interpreting the Arab uprising using a benevolent civilizing narrative emphasizing the incapacity of the "Arab mind" enables Western responsibility to guide and monitor Arabs by making sure that the "democratic experiment" does not stray too far from the pre-determined goals a "universalization of democratic law" already carries (Borg, 2016). The idea of Arabs *possibly* becoming members of International Society is contingent on a "set of values" that ultimately complement a "set of interests…that drive U.S hegemony in the region" (Hazbun, 2013:228). In other words, a *directum* can be drawn from the naturalist Salamanca school to the positivist neo-conservative school that initiated the War on Terror, including the Obama and Trump administrations, by reproducing discourses that actualized the doctrine of defensive imperialism, with the relationship between all of these moments accentuating an (un)ethical (exceptionalist) relation the U.S. and the EU have in *redeeming* the Arab world (Al-Kassimi, 2017). This (un)ethical relation enables a form of "colonial responsibility" (Borg, 2016:221) whereby the U.S. and EU arrogate moral responsibility for the temporal progression of Arabs. This relation exposes the continued (un)ethical consequences of positivist jurisprudence inherently making a *natural* distinction between what is moral to that which is legal. This *ratiocinated* distinction fundamentally characterizes the legal doctrines developed after 9/11 in actualizing the

idea of a "moral" defensive imperialism being a necessary Western burden transforming and redeeming Arab bodies from being *bad* to *good* Muslims.

While the Bush administration explicitly adhered to a positivist jurisprudent school emphasizing universal law as only spatially located in Western spaces thus actualizing the idea that Arabia is a *premodern* space inhabiting bodies lacking responsible, sociable, and rational skills because of their ill-reasoned culture, Obama was more of a naturalist in that he emphasized the normative universalization of "natural law" in both spaces by recognizing civilizational similarities. However, regardless of such *exoteric* differentiation, both legal discourses give credence to the *esoteric* idea that cultural differences continue to be transformed into legal differences to sanction a civilizing mission. This is noted with political representatives of the U.S. and the EU momentarily recognizing Arabs in the uprisings as "capable of reason" – by demanding ideas furnished in Western spaces such as democracy, non-violence, women rights, freedom, and liberty – only to end up "universalizing" a particular (Western) mode of Being using human rights discourse and international law. This "universalizing" process is maintained and bounded by a pre-determinate set of (European) cultural content that provides the authority for the West to continuously claim responsibility in aiding, guiding, and protecting the Arab world as it *attempts* to transition into a progressive *time* informing a "new beginning" imagined as a "New Middle East".

The *universalism* embedded in the liberal civilizing mission of the Arab uprisings highlights that the "universalization of law" through the "protection" of human rights or democracy denotes the Kantian notion of the U.S. and EU conquering the "lower" self by developing the "higher" self (Borg, 2016). Conquering and managing the "lower-Arab" is essential because an Oriental-despotic representation perceives Arabs as incapable of overcoming their primitiveness by consistently falling back into a degenerative temporality valorizing *revelation* over *reason* (Carter, 2011; Abou El Fadl, 2014). Overall, what these neo-Orientalist narratives silence whether they emphasize spatial or temporal cultural differences is not only the long history of Arab *intifadas* and anti-imperial socialist movements spanning over 100 years from Jerusalem, Damascus, and Beirut, to Baghdad, Sana'a, and Cairo, but more specifically Arab demands enacted during the uprisings by the local population in the name of "human rights" *actually* being "universal". Since Arab epistemology does not naturalize a distinction between morality and law, then, the moral issue with neo-Orientalists is their propagation of a humanitarian narrative based

on distorted reductionist imaginaries that are in turn used to adjudicate a civilizing mission assuming that Western centers of power are *a priori* cognizant of Arab demands since the West is "represented as the bearer of an *already scripted emancipatory discourse* of *human rights* at its *core*, which the Arab world *desires*, but only may *learn from*, rather than *contribute to*" (Borg, 2016:223; emphases added).

The effacing of endogenous Arab demands underlining a common global humanity is muted because it is appropriated into a teleological narrative authored and based on a particular Western experience of *temporality* informing a linear perception of time. Such subjective silencing is the result of a "culturalist" reification recognizing Arab culture as a "bounded whole" thus obscuring and normalizing the power-relations involved in extending the West a monopoly to *speak on behalf of* Arabs by fabricating "what *'the culture'* in question prescribes and proscribes" (Borg, 2016:223; emphases added). This imposed culturalist position seeming to forcibly inject the Arab uprising into a linear Western trajectory of time and space is identified as "epistemic violence" (Borg, 2016:213) with Obama's "new beginning" already imagining the Arab world through a *universal* liberal-secular project that constricts the boundaries and potential of an Arab "version" of the uprisings. This hegemonic discursive restriction not only evaporates local alternative voices but primarily seeks to violently transform "non-conforming" bodies abiding by *threatening* cultural modes of life – by *death* if necessary – to eliminate the chances of "unknown possibilities" (Badiou, 2001:14, 2011). This epistemic violence is legalized by perpetuating a belligerent neo-Orientalist mode of representation to the detriment of killing and casting-away irregular Arab bodies by depoliticizing and transforming their social space – in the name of a "universal culture" – into *death-worlds*. As will be elaborated in the following chapter, the Arab world continues to suffer from epistemic violence with Arab bodies experiencing the most *life-threatening* deadly powers endowed to (Western) *legal* sovereigns. Neo-Orientalist interlocutors claiming that the Arab uprising of 2011 would inevitably become an "Islamist Winter" constructed Arab civilization as the originator of the surge in carnage and destruction transforming Arabia into a *necropolis* (city of the dead).

Chapter IV

The "Islamist Winter" of 2011: The Legal Principles of Bethlehem & Operation Timber Sycamore – Stimulating the Bush Doctrine by Hiring "Arab Barbarians" to Kill Arab *Life*

"The arch-foe, Saladin aroused widespread admiration among the people of the West. He had waged war humanely and chivalrously, albeit with scant reciprocation by the Crusaders, notably by (Richard I) Coeur de Lion." **– Maxime Rodinson (1974)**

"To watch the courageous Afghan freedom fighters, battle modern arsenals with simple hand-held weapons is an inspiration to those who love freedom" – **President Ronald Reagan (1983) describing agents of violence involved in Operation Cyclone**

"Few would fail to notice the growing common ground between the perpetrators of 9/11 and the official response to it called 'the war on terror'. Both sides deny the possibility of a middle ground, calling for a war to the finish. Both rally forces in the name of justice but understand justice as revenge. If the perpetrators of 9/11 refuse to distinguish between official America and the American people, target and victim, 'the war on terror' has proceeded by dishing out collective punishment, with callous disregard for either 'collateral damage' or legitimate grievances" **– Mahmood Mamdani (2004)**

"The truth is, there is no Islamic army or terrorist group called Al-Qaeda, and any informed intelligence officer knows this. But there is a propaganda campaign to make the public believe in the presence of an intensified entity representing the 'devil' only in order to drive TV watchers to accept a unified international leadership for a war against terrorism. The country behind this propaganda is the United States." – **Pierre-Henri Bunel (2005)**

"The power of sovereignty, however, is not just rooted in inclusive and monopolistic practices. The capacity to decide what qualifies as a 'normal' political identity, space, and practice also implies an obverse power – that is, the ability to decide what constitutes the exception. The concept of the 'state of exception' is central to understanding how both sovereign power and refugee identity are constituted" – **Peter Nyers (2006)**

"We've now declared that settlements are not *per se* illegal under international law" **– U.S. Secretary of State Mike Pompeo (2019)**

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Introduction

The purpose of this chapter is to deconstruct the legal-historical significance of sovereign figures and international jurists – adhering to positivist scholasticism – irreflexively assuming that the "Arab awakening" to democracy in 2011 was certainly *momentary* since Arab civilization inherently informs an "Islamist" epistemology. This deconstruction is imperative since hegemonic neo-Orientalist circles of power suggested that Arabs failed at *temporally* "jumping" into *ratiocinated* temporal coordinates characterizing liberal-secular modernity by citing deterministic imaginaries attributing it to the "Arab mind" being averse to *reason* but receptive to *terror*. According to such reductionist narratives forcibly injecting Arabs into a Cartesian linear

perception of *chronos*, Arabia *maintained* an "Islamist Winter" rather than blooming into a "Spring" because their endogenous cultural civilization is constructed as embodying "Islamist tendencies", therefore, *a priori* situated in a degenerative non-discursive epoch resistant to *progress*. Arabs in general, and Muslims in particular, were generalized as inherently incapable of *temporally* progressing from the *past* to the *present* because any *attempt* at becoming "coeval with Europe" resulted in inhabitants of Arabia degenerating (in time) by falling back to their cultural traditions of *Jahiliya.*

More specifically, this chapter seeks to critique one of the least deconstructed consequences of neo-Orientalist mythologies identifying the Arab uprising in 2011 as synonymous with an "Islamist Winter" and that is that an *Islamist* representation *is* the primary catalyst developing *en-masse* carnage in Arabia and a calamity of forcibly displaced millions. Constructing *Arabness* as a (cultural) threatening stranger was a historicist tendency founded on distorted generalizations about Arab civilization and was in the process transformed into a legal threat that formulated legal doctrines adhering to positivist jurisprudence known as the Bethlehem Principles. The principles not only endorsed the Bush Doctrine of *pre-emptive* war strategy, but also legalized a *redemptive* operation known as Timber Sycamore[79] claiming it *rational* and *legal* to hire *death squads* (i.e., war-machines) as the ideal agents of *creative chaos* required to transform an "old" Arab world characterized as *temporally* disorderly and premodern, to a "new" well-ordered and modern Arab world. The *redemptive* legal principles of Bethlehem not only extended legal coverage for operation Timber Sycamore, but also made salient that the power of sovereignty exercised *on* Arab bodies preceding and succeeding the "Islamist Winter" of 2011 continues to valorize a dynamic of cultural hierarchy.

The bodily consequence of such valorization is noticed with sovereign power executed in Arabia featuring that the defense of international society is to be maintained and guarded by legal doctrines situated in a legal regime (i.e., *jus gentium*) necessitating that non-conforming Arab-Others *must die* or at least be managed and maintained by legal principles (re)affirming the unbridgeable cultural gap between the *Athenian* and *Madīnian* man. This reification highlights that Arabia is not only denied legal sovereignty (i.e., a space "outside" law) but that this *a priori* exclusion from *jus gentium* allows internationally "recognized sovereigns" to engage in extrajudicial practices *on* Arab bodies. To deconstruct this necessary violent *exclusion* essential for the coherence of *jus gentium* in general, and *ratiocinated* Latin-European philosophical

theology in particular, it is important to be anachronic and hermeneutically suspicious of the carnage resulting from Western knowledge centers and Arab *compradors* representing Arabia using "race war" discourses. A hermeneutically suspicious reading stresses that the legal doctrines adjudicating *deadly* blueprints of conquest, for instance in 2003 Iraq, were also adopted in subsequent Arabian spaces after the uprising of 2011. Both aforementioned *Vitorian* legal junctures denied Arabs subjectivity in being *reason-able* in writing their history by perpetuating distorted "Islamist" imaginaries of Arabs as *passive* and *violent* objects waiting to be "saved" thus *essentially* incompatible with Western civilization. The consequences of such supposed *natural* antagonism is most readily evident with the legal formulations developed succeeding 9/11 – PEDS and Bethlehem Principles – extending Western sovereign figures the prerogative of making it legal to outsource, demonopolize, and privatize violence by hiring *death squads* as *rational* means to pre-emptively engage terror purportedly *redeeming* Arabia from its "Arab-Islamist" tendencies (Anghie, 2004; Mamdani, 2004; Al-Kassimi, 2015).

This chapter elaborates that these legal doctrines – supposedly necessary to *redeem* Arabs from their contaminated primitive culture – directly perpetuated "ethno-religious" violence by covering the authorization and funding of a(n) (il)legal process in which the de-monopolization of violence *de facto* produced *lawless* Arab spaces using a *fictional* "Arab Islamist" threat (Mamdani, 2004; Chossudovsky, 2005; Al-Kassimi, 2015; Kleib, 2019)[80]. De-monopolizing violence consisted of hiring and authorizing *death squads* involved in either private military companies (PMC) (i.e., BlackWater, Wolf Brigades, Peace Companies, or the Badr Organization)[81] and/or members of "Islamist" groups known as Al-Qaeda in Iraq (AQI), Al-Qaeda in the Arabian Peninsula (AQAP), Islamic State of Iraq (ISI), and the Islamic State of Iraq and Syria (ISIS)[82]. The chapter underlines the point that the deliberate practice of sovereign figures choosing to hire agents of violence – that quite literally violate the "arts of war" – is telling of *ratiocentric* (positivist) jurisprudence continuing to perceive Arabia as a lawless space, or put differently, a *geography* rather than a *political* space (i.e., *society)* where extrajudicial practices are not debated as violating legal doctrines situated in *jus gentium*, but are rather necessary for its epistemological *coherence*.

Therefore, this chapter seeks to deconstruct the reductionist claim stating that acts conducted by *death squads* in Arabia are linked to *endogenous* Arab civilization and "Islamic" cultural traditions, rather than a contemporary *exogenous* violent process of "secular modernity" seeking to reconfigure the demography of Arabia through an esoteric process of *creative*

destruction apparently essential for the "liberation" of Arabia. This chapter does not perceive the Bethlehem principles as novel jurisprudence, but rather, from an anachronic lens, legal doctrines reminding Arabs that *jus gentium* continues to be animated by a dynamic of cultural difference needing to *constitute* Arabia as inept in attaining the *telos* of history for (Western) ontological security. This culturalist dynamic postulating an unbridgeable cultural gap between a *universal* European subject of sovereignty, and a *particular* Arab object of sovereignty is rejuvenated through legal doctrines such as Bethlehem by providing legal coverage for the authorization in Syria – as in Iraq, Yemen, and Libya – of *war-machines* to engage in acts of terror transforming countries remembered for their ancient and modern civilization into areas boasting *necropolises*.

Motivated thus, this chapter is critical of neo-Orientalist speech actors in 2011 adopting a discourse constellating "race war" narratives imagining Arabs as an *external enemy* from which Western *society* must be *defended*. This critique is founded on deconstructing the consequences in interpreting the Arab uprising of 2011 early on as *certainly* metamorphosing into an "Islamist Winter" with Arab epistemology constructed as inherently deficient in "reason", lacking the "spirit of reform", and "anti-democratic" (Arat-Koç, 2014; Ventura, 2017:290). Put differently, this chapter claims that since it is inevitable in the neo-Orientalist imaginary of *ratiocinated* sovereigns that any Arab protest will unavoidably lead to violence, terror, and disorder, it therefore becomes imperative to commit the sin of legal-historical anachronism and suspiciously approach the "Islamist" narrative of the Arab uprisings in 2011 thus deconstructing the subsequent legal-historical consequences making possible *demographic* and *geographic* alterations in Arabia. In doing so, the chapter concludes that *jus gentium* continues to be characterized by a (*necro*) temporal *inclusive exclusion* with legal (re)formulations (i.e., Bethlehem Principles) *legally* catalyzing the perpetuation of *exodus* and *slayed* Arab bodies.

1. Arabia is Incapable of Temporally Attaining the *Telos* of (Western) History: Neo-Orientalism and Islamophilia Sanitize the *Cause* of "Modern" (Arab) Barbarism

Consider the following historical legal event on April 11th 2011 – while the Arab uprisings were still taking place – by Secretary of State Hillary Clinton during the US-Islamic World Forum at the Brookings Institution. Clinton pessimistically declared her doubts about Arabs being culturally capable of "progressing" (in time) by claiming that it depends on whether they embrace Montesquieu's "spirit of reform" and whether they make the most "of this historic moment or fall back into stagnation" (Clinton, 2011; Ventura, 2016). In other words, Clinton is *fond* (*-philia)* of

Arab-Muslims and perceives them as "good Muslims" rather than "bad Muslims" only if they shed away what *ratiocinated* jurisprudent scholastics (i.e., liberal-secular positivist law) perceives as an irrational threat (*-phobia)*. Since almost two decades have elapsed from the onset of the War on Terror, and almost a decade since the Arab uprisings of 2011, it has become evident that implicitly reductionist discourses (i.e., human rights, Arabization, democracy, WMD, minority groups, and/or terrorism) adopted to legalize a redemptive war conquering Iraq in 2003, have also been (re)deployed and (re)formulated after the uprisings "failed" at becoming a "spring" to target and transform inhabitants of Arabia (Mamdani, 2004; Ventura, 2016; Hilal, 2017; Bennis, 2019). It has also become clear that Western speech actors recognizing that an *ontological temporal difference* between Arabs and the West is "non-existent" (i.e., Obama's *Vitorian* moment in 2009 Cairo) was simply a *momentary* legal maneuver of "artificial subjective acceptance". This artificiality in seeming to include Arabs as *equal* sovereign members in *jus gentium* while emphasizing *temporal* cultural differences as legal argument for Arab exclusion from the juridical and social order essentially made possible the extrajudicial *necro* practices *on* Arab bodies by referencing neo-Orientalist discourses veiling the implicit *terror* involved in "modernizing" Arabia.

The inherent technology of racism maintaining a culturalist gap between a *modern-Athenian* and a *premodern-Madīnian* mode of Being informing *modernity* as a *secular* teleological narrative, and *sovereignty* as a figure who *wills jus gentium* into being, is situated in the discursive shift from "Islamophobia" in 9/11 to the recent "Islamophilia" post-2011. While the former narrative imagined Arab space as exclusively inhabited by "bad Muslims" who are passive agents waiting to be saved, the latter constructed Arabs as political subjects who were *fond* of an "Islamist" jurisprudence as their typical preferred *nomos* (Arat-Koç, 2014:1657; Ventura, 2016). Both discourses are symbiotic and are essentially two sides of the same neo-Orientalist coin with Islamophobia recently dominating the domestic scene (refugee "crisis") whilst Islamophilia typically directs foreign policy (*pre-emptive* defense strategy) (Arat-Koç, 2014). Consequently, Arab inhabitants of the *Mashreq* and *Maghreb* – essentialized as the "MENA region" – are perceived as "temporary subjects" *inside* international law only to showcase that they innately revert to irrational cultural traditions when the "opportunity for freedom and liberty" ascends. In other words, Arabs are temporarily intelligible as not "absolutely *irrational*" – similar to the indigenous groups of the New World – only to highlight that they "introspectively" and

"rationally" revert to despotism/primitivism because their inherent cultural dynamics are figured in Western public discourse and foreign policy as *constituting* an *inclusive exclusion* body (i.e., *homo sacer/musulmanner/refugee)* for the coherence of *jus gentium*. Arat-Koç at Ryerson University in Canada argues that while:

> *Islamophobia continues* to *shape* some *domestic* policies of Western states and provide *ideological justification* for the *wars* they *wage abroad, 'Islamophilic'* tendencies in *foreign policy* have also emerged, especially in responses to the *'Arab Spring'*. Not clearly noted in Western public discourse, this represents *a historical continuation of Western support for Islamism common during the Cold War,* but is also a *shift* from the *Islamophobic discourse* of the *post-cold war period, especially since 9/11*. While *Islamophobic* and *Islamophilic* discourses may appear to be opposites…they represent *two sides* of the *Orientalist logic*, continuing to *reduce* understanding of Middle Eastern societies and politics to a *culturalist dimension*. Unlike *traditional Orientalism*, they treat Middle Eastern people as *political subjects* but *approach* them as *defined* by their *culture* and *religion* (2014:1656, *emphases added*)

Marc Lynch from the Carnegie Endowment for International Peace – remembered for coining the term "Arab Spring" and perpetuating the neo-Orientalist narrative of "despotism" – is of the opinion that 2011 was a moment where it "looked as if the *old* Middle Eastern *order* was coming to an *end* and a *new* and *better* one was taking its place". However, he continues by mentioning the cognitive lapse inherent in Arab civilization *temporally* degenerating by declaring that "the *new order* is fundamentally one of *disorder*" (2018, emphases added). Similarly, Seth G. Jones, currently the senior advisor of the Centre for Strategic and International Studies (CSIS) and former director of the Defense Policy Center at the RAND Corporation, generalizes all countries with a majority Muslim population as being "ISIS" and reported that the prospects in the Arab world of Arab-Muslims "awakening to democracy" after the "Arab Spring" is a "mirage" because of the prevalence of a "model of governance that erodes the kind of long-term and inclusive stability the region desperately needs…in place of a functioning government, the countr[ies] host a patchwork of warring militias that are unaccountable, poorly organized, and deeply fractured" (2013, 2016, 2017)[83].

This reductionist neo-Orientalist narrative is problematic as it claims that Arabs reverted to chaos and barbarism because of an inherent culturalist vector linking Arabs and Islam to terrorism without questioning the myriad "modern" origins and sources *of* terrorism, thus

legalizing in the process the violence and domination of "liberal interventionism" or "imperial lite" supposedly vital in transforming Arabs into "orderly" subjects. These neo-Orientalist discourses transforming culturalist imaginaries into legal differences claiming that the uprisings would definitely develop into a chaotic and barbaric episode – thus making *visible* the continued *invisibility* of Arabs to *jus gentium* – is also articulated by Culbertson who in a *Macaulayan* spirit[84] mentions that the Arab uprising was a failure because while it attempted to develop a written "constitution" – a marker of Western modernity – "the region was lacking in the *education systems* to *prepare* people to fully participate in democratic societies" and blending both "*democratic* values and *Islamist* values" was a major failure (2017, emphases added). The neo-Orientalist idea stipulating that the "Arab mind" is inherently incapable of rational and secular epistemic cognition is evident in Kramer's *Arab Awakening and Islamic Revival: The Politics of Ideas in the Middle East* when he quotes former American ambassador to the United Nations and foreign policy advisor Jeanne Kirkpatrick as having said "The *Arab world* is the *only* part of the world where I've been *shaken* in my *conviction* that if you let the *people decide*, they will make fundamentally *rational* decisions. But *there*, they *don't make rational decisions*, they make *fundamentalist ones*" (as cited in Kramer, 1996:269, emphases added). Kramer (2007, 2013) conforms to this neo-Orientalist iteration by explicitly blaming Arab culture for the failings of the Arab uprisings *temporally* transitioning to Western modernity in a conference entitled the *Arab Crisis*[85]. Kramer (2013, emphases added) mentions that the *momentary* "Arab Spring" became an "Islamist Winter" because of a:

> a crisis of *culture*. That is to say, it is more than a political or social or economic crisis. Of course, it has elements of all of these things, but at its most fundamental, it is a *crisis of culture*—to be precise, the implosion of the *hybrid civilization* that dominated the twentieth century in the Arab world. That hybrid was the *defensive, selective adaptation of Islamic traditions to the ways of the West*. The idea was that the *tradition* could be preserved, that its essence could be defended, while making adjustments to *modernity* as needed. The *timeless* character of the political, religious, and social traditions of the region could be upheld, even as upgrades were made to *accommodate modernity*…This *hybrid civilization* pretended to be *revolutionary*, but it permitted the survival of those *pre-modern traditions* that *block progress*, from *authoritarianism* and *patriarchy* to *sectarianism* and *tribalism*. This *hybrid civilization has now failed*, and what we have seen is a *collapse, not of a political system, but of a moral universe left behind by time.*

Kramer and Kepel (2011, emphases added) are a reminder that the *culture talk* perpetuated after 9/11 to sanction defensive imperialism informs the discursive structures of the "Islamist Winter" of 2011 and the succeeding legal reformulations adopted to sanction extrajudicial practices by saying "as the revolutions spread from *homogeneous* countries to more *segmented* ones, they have rekindled not a *spirit of Arabism*, but one of *sectarianism, regionalism,* and *separatism*". Here we notice that the discourse perpetuated after 9/11 emphasizing Arab culture naturally negating democracy and modernity (i.e., *islamophobia*) is adopted and (re)formulated during the uprisings of 2011 by emphasizing that the failure of the uprisings is linked to the temporal positionality of Arab civilization (i.e., *Islamophilia*). This essentialist generalized assumption claims that Arab *temporal* primitiveness inevitably led to the "Arab Spring" developing and/or bringing to the forefront the irrational and chaotic "*jihadists*" inhabiting Arabia who inescapably transformed the "Spring" into an "Islamist Winter". Kramer and Kepel – similar to Bernard Lewis and Samuel Huntington – represent a network of influential academics located in the North and South who develop(ed) and continue(d) to perpetuate the myth of Arabs and Islam being an ontological threat to (Latin-European) *ratiocinated* epistemology and that the Arab uprising became an "Islamist Winter" because of a Manichean vision of a timeless modernized European, and a perpetual awkward and violent Eastern Arab *Saracen* (Kerboua, 2016:14)[86]. These (neo)-Orientalist scholars early on during the uprising expressed that Arabs will not be capable of progressing from their anti-democratic and anti-modern cultural predispositions by grounding their hubris on the "Arab mind" embodying faculties susceptible to *genocide*.

The benevolent humanitarian discourse adopted by neo-Orientalists to operationalize the Bush Doctrine of chaos – as it unfolded in 2003 and after the uprising in 2011 – suggests that *these* premodern "Islamist" Arab spaces, once defeated, must be transformed into democratic states emitting (Western) civil *temporal* coordinates (Anghie, 2004; Borg, 2016; Ventura, 2017). Democratic peace theory and its (il)liberal humanitarian interventionism play a crucial dual role in this process: it "liberates" oppressed Arab people of "Islamist States" followed by the formation of "law-abiding societies" that would be allies rather than threats to hegemonic centers of power. Formulations of democratic peace theory suggest that *democratic sovereignty* is superior to all other ideologies of governance and that "recognized democratic sovereigns" were more likely to uphold law's situated in *jus gentium* (Anghie, 2004). Therefore, the importance in emphasizing Islamophobic and Islamophilic narratives dominating contemporary analyses of the *Mashreq* and

Maghreb region post "Arab Spring" is accentuated when we notice that the *redemptive* measures legally performed by the Bush Doctrine in 2003 Iraq were legally (re)activated by Obama's administration in the early days of the "momentary Arab awakening to democracy" in 2011 through reformulations of international law under legal doctrines known as the Bethlehem Principles.

As will be discussed below, in three interrelated sections, the Bethlehem Principles make "defensive imperialism" legally palatable since Arabs have been essentialized for over a millennium as posing an epistemic threat inevitably *clashing* with Latin-European civilization. The principles are informed by a liberal-secular lexicon including concepts such as democracy, minority rights, human rights, civil society, and responsibility to protect (R2P), to operationalize a civilizing mission with an objective of eliminating "democratic deficiency" and solving a "cultural crisis". The Arab world through the principles is perceived as *constituting* a lawless, backward, and unaccultured space situated in a *pre-discursive* (temporal) epoch where sovereign figures are encouraged to adjudicate a *pre-emptive* war based on (deterministic) *information* rather than (historical) *evidence*. Such doctrines adjudicate exceptional measures in the form of hiring *death squads* exerting the power to dominate and dispose of Arab bodies thus depriving them of *life*. These legal doctrines reveal racial and cultural differences continuing to be recognized and used as legal differences to adjudicate doctrines that highlight *jus gentium* remaining *exclusionary* rather than *inclusionary*.

Stressing the bodily *necro* consequences of "Islamist" discourses transforming Arab space into a *necropolis* discloses how racist representations of Arabs and Muslims, and the destructive transformation that compromised and humiliated Arab inhabitants rendering them *life-less*, are important realities revealing the technologies of racism and mechanism of violence inherent in *sovereignty*. Western sovereign figures finding it necessary to create conditions conducive in producing *life-less* Arabs – by disregarding the barbaric consequences of hiring *death squads à la conquistador* – discloses the inherent racial tendencies of *jus gentium* since it consistently finds it necessary to (re)formulate legal doctrines valorizing a neo-Orientalist mode of representation, thus (re)affirming the inherent *violent* genealogical continuity of sovereignty as a positivist legal concept. Therefore, the carnage and displacement of Arabs is perceived as "constructive consequences" for *ratiocinated* philosophical theology to continue to maintain its constituted identity and its universal position for its *Self* and its values (Pahuja, 2011). The *telos* of history

being Western modernity perceives the *chaos* that ensued following the hiring of *death squads* sacking Arab capitals in 2011 as *constructive* rather than *destructive* because transforming a mentally irrational space requires chaotic and disorderly *means* to attain the *ends* of history. This is manifest with sovereign figures selecting the "death squad" option accenting operation Timber Sycamore to assist in the purification and evolution of "Arab Islamist" objects into subjects conforming to (Western) modernity.

2.1 The "Islamist" Winter and Neo-Orientalism after 2011: Adopting the Reductionist Discourses of the Bush Doctrine to Sanction a *Humanitarian* Intervention in Arabia

The Council on American–Islamic Relations (CAIR) complained in late 2012 that the AP (Associated Press) definition of "Islamist" as a "supporter of government in accord with the laws of Islam [and] who view the Quran as a political model" is a pejorative shorthand for "Muslims we don't like" (CAIR, 2013b). Scholars critical of neo-Orientalist discourses expressed concern over the use of the term "Islamist terrorism" by mentioning that it is not ethical to use the term Islamist and terrorism side by side since such combination of terms assumes that Islam either *is* or *excuses* terrorism (Mamdani, 2004; Tausch, Grinin, and Korotayev, 2018). Ibrahim Hooper – CAIR's National Communications Director – stated that "the key issue with the term 'Islamist' is not its continued use; the issue is its use almost exclusively as an ill-defined pejorative" (Byers, 2013). The revision of the term Islamist by the AP read as follows "An advocate or supporter of a political movement that favors reordering government and society in accordance with laws prescribed by Islam. Do not use as a synonym for Islamic fighters, militants, extremists or radicals, who may or may not be Islamists. Where possible, be specific, and use the name of militant affiliations: al-Qaida-linked, Hezbollah, Taliban, etc. Those who view the Quran as a political model encompass a wide range of Muslims, from mainstream politicians to militants known as jihadi" (Byers, 2013)[87].

CAIR (2013b) commended the AP decision in a statement by declaring that "we believe this revision is a step in the right direction and will result in fewer negative generalizations in coverage of issues related to Islam and Muslims". However, it is important to notice how the reformulation by AP reveals how Islamophobia and Islamophilia are two sides of the same neo-Orientalist coin. For instance, Hezbollah – an elected political party in the Arab-Lebanese government and a guerilla group – is identified as a terrorist group not because it contested hegemonic imperial policies in Arabia, but first and foremost because it is an Arab-Muslim

majority organization[88]. Similarly, the Taliban are perceived as a terrorist group not because they contested U.S. and Soviet hegemony in Afghanistan, but primarily because it is a Muslim majority organization hence the image of "Arab-Afghan" *mujahedeen*[89].

The pejorative term "Islamist" gained recognition during the Cold War with the U.S. and Europe associating the term "Islamist" with "Islamic" prototype fighters derisively named *mujahedeens*[90]. The "Islamist" threat is a "modern threat" designing *death squads* in detention labs located in South-Central Asia, the Balkans, and other European areas known as "*madrasas"* or CIA black sites (Mamdani, 2002, 2004; Chossudovsky, 2005, 2015; Moeller, 2007; Al-Kassimi, 2019)[91]. This neo-Orientalist design began from the 1970s throughout the 1990s during Operation Cyclone and Operation Deliberate Force – covertly funded by the CIA – resulting in Arabs and Muslims becoming imagined as and equated with the "Arab-Afghan rebel", "radical Islamist", or "Arab jihadist" (Mamdani, 2002, 2004; Chossudovsky, 2015; Al-Kassimi, 2019). However, it was the Bush doctrine following 9/11 that revived the term "Islamist" with the Bush administration seeking to give legal justification for the Iraq war by claiming Iraq harbors and is inhabited by "Islamist terrorists" sponsored by Al-Qaeda-in-Iraq (AQI) (Kaválek, 2015). The importance of tracing the term "Islamist" back to the 2003 pre-emptive war in Iraq – before we discuss (Western) sovereign figures adjudicating the Bethlehem principles using an "Islamist threat" discourse after 2011 – is heightened when we notice the fear of "Islamists" becoming in 2003 the preferred neo-Orientalist discourse adopted by the Bush administration to describe, and in the process, *redeem* Arabia (Mamdani, 2004; Altwaiji, 2014; Kaválek, 2015; Ventura, 2016).

The term "Islamist" linking Arab-Muslim civilization with terrorism and the violation of *just war* after 2011 is reminiscent of the legal discourse expounded by the Bush administration following 9/11 – as mentioned in chapter II and III – to sanction a "democratization mission" in Iraq[92]. Essentializing Arab political space by perceiving it as a natural fertile space for terrorism is exemplified in a *National Review* article released on February 13th 2003 describing Al-Zarqawi's "jihadi terror" as being linked to his "Arab-Muslim" identity (Alexe, 2005; Chossudovsky, 2004, 2005, 2015; Kaválek, 2015; Dostal, 2018). Furthermore, neo-Orientalist deductions informed by Islamophobic and xenophobic inclinations are also identified with Northern and Southern knowledge centers associating Arab civilizational concepts such as *Sharia*, *Salafi*, *Jihad*, *Caliphate* and historical Arabic *nom propre* such as *Omar*, *Ali*, *Abu-Bakr*, *Uthman*, and *Mohammed* with barbarism and terrorism[93]. Not only that, the preferred strategic doctrines elicited

to fight "Islamist terrorists" whether in Iraq in 2003 or following the Arab uprising in 2011 was to hire and authorize PMC's or "private terrorists" such as Blackwater and Aegis further exacerbating sectarianism in Arabia. These groups were involved and implicated in training, and/or extending logistics to former "Arab-jihadists" – now-ISIS-members – who are the primary agents of violence involved in pillaging Arab cities, killing civilians, and eliciting the *pathos* of fear needed to forcibly displace Arabs (Chossudovsky, 2015, 2016; Kaválek, 2015; Al-Kassimi, 2015; Kleib, 2019; Raimbaud, 2019).

It should be noted that according to Erik Prince's memoirs, the objective of hiring and developing a "private army" in 2003 Iraq was to liberate Arab-Iraqi "barbarians who crawled out of the sewer" which he identifies as the "chanting barbarians American troops were sent to liberate" (Prince, 2013; Hasan, 2019). Therefore, Iraq is denied sovereignty and perceived as a *geographic* space receptive to *terror* rather than a political *society* because it embodies Arab-Muslim civilizational mores equated with "barbarism". However, the danger of such Islamophobic discourse is accentuated not only in that it generalizes the Arab region as being inhabited by "bad Muslims" – since you do not "liberate" terrorists – but that it is a culturalist discourse transformed into a *legal* threat. This legal threat is *pre-emptively* neutralized by privatizing violence through the authorization and acquisition of "terrorists" (i.e., *death squads* or *PMCs*) that according to the U.S. State Department are "above the law" and free to adopt – while retaining *legal* immunity – any measures necessary to neutralize threats embodying "Arab-Islamist" tendencies (Chossudovsky, 2015, 2016; Dostal, 2018; Hasan, 2019; Kleib, 2019; Raimbaud, 2019).

I equate and designate violence conducted by PMCs[94] with terror(ism) exercised by "Islamist" *death squads* involved in ISI/AQI/ISIS because both categories inform agents of violence that act as *conquerors* rather than *liberators* (Scahill, 2007; Dostal, 2018; Kleib, 2019; Hasan, 2019). Whether an "Arab Islamist" or "Blackwater Privateer", both have been directly implicated in numerous massacres and terror practices exacerbating sectarian violence in the Arab world as highlighted, for instance, in the infamous Nisour Square massacre on September 16th 2007 (Scahill, 2007; Singer, 2007; Dostal, 2018; Hasan, 2019). Peter W. Singer writes in an article released in the Brookings Institution titled the *Dark Truth about Blackwater* in 2007 that the U.S. Army found that contractors such as Titan and CACI were involved in 36% of abuse incidents relating to the Abu Ghraib prison scandal (2007). He also highlights events relating to Blackwater and Aegis "private soldiers" firing indiscriminately on Arab-Iraqi civilians during "joyrides" in

Baghdad and other cities (Singer, 2007). This led an official in the Iraqi Interior Ministry to declare that private military contractors "consider Iraqis like animals, although actually, I think they may have more respect for animals. We have seen what they do in the streets. When they're not shooting, they're throwing water bottles at people and calling them names. If you are terrifying a child or an elderly woman, or you are killing an innocent civilian who is riding in his car, isn't that terrorism?" (Singer, 2007). Journalists such as Fahmy Howeydi working in *Al-Sharq Al-Awsat* and *Al-Jazeera* equated the terror of hired private military contractors to Al-Qaeda mercenaries by stating that they represent groups that proliferate chaos and an "army that seeks fame, fortune, and thrill, away from all considerations and ethics of military honor" (Singer, 2007). One can readily notice how the terror of "private mercenaries" being "above the law" is similar to the sovereign authorized legal violence endowed to privateers/pirates involved in *conquistador* exhibitions sanctioned during the "Age of Discovery" after the establishment of *jus gentium* in the 15th-16th century (Thomson, 1996; Anghie, 2004; Al-Kassimi, 2015).

Important for our discussion on the "Islamist Winter" of 2011 is that "Islamist leaders" supposedly representing a "Caliphate" in Iraq and Syria prior to and succeeding 2011 were revealed through declassified documents as individuals whose actions were exaggerated and mythologised (Chossudovsky, 2004, 2005, 2015; Mamdani, 2004; Ricks, 2006; Yates, 2007). Recent declassified documents reveal that Al-Qaeda in Iraq (AQI) headed at different times by leaders known to the world by their *nom de guerre* such as Abu-Musab Al-Zarqawi (d.2006?), Abu-Omar Al-Baghdadi (d.2010?), and Abu-Bakr Al-Baghdadi (d.2019?) not only flourished under the surveillance of the U.S., France, and Britain in Northern Iraq since a no-fly zone was declared in 1991 (Chossudovsky, 2004, 2005, 2015; Alexe, 2005; Kaválek, 2015; Kleib, 2019), but that they were "fictitious" figures with their affiliations with "Al-Qaeda" being "just a front" used to propagate the "fear of Islamists" striking Western civilization (Ricks, 2006; Yates, 2007; Chossudovsky, 2015; Raimbaud, 2019; Kleib, 2019). Back in 2007, Brigadier-General Kevin Bergner explicitly declared – using AQI operative Khalid al-Mashadani as his source – that the "Islamic State of Iraq is a front organization that masks the foreign influence and leadership within al Qaeda in Iraq in an attempt to put an Iraqi face on the leadership of al Qaeda in Iraq" (Yates, 2007)[95].

According to Mamdani (2004), Ricks (2006), Chossudovsky (2015) and Kleib (2019), while the "Islamist military propaganda program" cost the U.S state department over $24 million

by largely being aimed at creating distorted images of Arab-Iraqi citizens as being "Arab jihadists" thus justifying pre-emptive war, a briefing prepared by Army General and top U.S commander in Iraq George W. Casey Jr. stated that the American "home audience" was one of six major targets of the American side since a pre-emptive war demands a "good scoop" (Ricks, 2006). The bodily violence committed *on* Arab bodies made possible by a "good Islamist scoop" is made evident when we consider a report released in November of 2005 by the US Joint Special Operations University (JSOU) entitled *Dividing Our Enemies* noting the importance of psychological operations (PSYOP) promoting AQI's "Islamist" ideology to "defeat it" (Ahmed, 2014; Kaválek, 2015; Dostal, 2018). The report highlights how PSYOP "warriors crafted programs to exploit Zarqawi's murderous activities – and to disseminate them through meetings, radio and television broadcasts, handouts, newspaper stories, political cartoons, and posters" thus pinning different religious sects against each other (Ahmed, 2014, 2015c, 2015d; Kaválek, 2015). For instance, the U.S. operation in 2004 Fallujah, Iraq, was largely justified using the "Islamist threat" of Al-Zarqawi *death squads* having ambushed Blackwater even though it was later confirmed by U.S. intelligence agencies that the ambush was conducted by local Arab-Iraqi citizens resisting terror activities conducted by PMC and Al-Qaeda terrorists (i.e., shooting joy rides, torture, kidnapping, and massacres) (Scahill, 2007; Singer, 2007; Ahmed, 2014; Chossudovsky, 2015; Hasan, 2019). The myth of an "Islamist threat" in Fallujah was used as *casus belli* for the U.S. and contracted terrorists to justify the use of white phosphorous, cluster bombs, and indiscriminate strikes that pulverized over "50,000 homes", killing "nearly a thousand civilians", terrorizing at least half a million inhabitants into forced displacement, and culminated in an increase in birth defects caused by cancer and environmental consequences of the operation (Scahill, 2007; Ahmed, 2014)[96].

It is important to recall that after the operation, the threat of "Islamist fanatics" striking Western civilization by developing a "Caliphate" became a symptomatic narrative the U.S. administration adopted seeking to justify its pre-emptive war disguised as a "humanitarian mission" in the Arab world. On December 5th 2005 former Defense Secretary Donald Rumsfeld clairvoyantly declared that "Iraq would serve as the new base of a new *Islamic caliphate* to extend throughout the Middle East and which would threaten legitimate governments around the world…This is their plan. They have said so" (as cited in Acharya, 2007:281, emphases added). Similarly, former Vice President Dick Cheney predictively stated in 2005 that Islamists "talk about wanting to *re-establish* what you could refer to as the seventh-century *Caliphate* to be governed

by *Sharia Law*, the most rigid interpretation of the *Koran*" (Bumiller, 2005; Acharya, 2007:282, emphases added). Motivated thus, the neo-Orientalist mythical narrative perceiving the Arab world since the conquest of Iraq in 2003 as gradually becoming more "Islamist" is important for our next discussion which seeks to emphasize how *speaking* of the threat of "Islamists" while *funding* "Islamists" through operation Timber Sycamore is a *raison d'être* adopted to (re)adjudicate a redemptive privatized war. The authorization of *death squads* was an essential *creative redemptive* measure for the establishment of a "new" and "modern" Middle East similar to the *conquistador* being authorized by sovereign figures in earlier centuries to "civilize" non-European peoples and create a "New World" across the Americas. Therefore, the essentialization of terms such as *Caliphate* and *Sharia* while perpetuating an imaginary figuring a "savage Arab" is important to keep in mind when seeking to deconstruct how such culturalist differences were transformed into legal differences to (re)formulate legal principles known as Bethlehem to sanction a defensive imperial war in the Arab world after 2011.

2.2 The Bethlehem Principles – A Legal Conduit Rejuvenating the *Terror* of the Bush Doctrine

While it seemed that former U.S. President Obama was in disaccord with the Bush Doctrine claiming that there is an unbridgeable cultural gap between civilized Western values and uncivilized Arab values, it nonetheless became evident that Obama's *Vitorian* moment seeming to "appeal to sameness while recognizing difference" was essentially a legal manoeuvre emphasising the continuous *inclusive exclusion* nature of *jus gentium*. Obama's administration along with the Attorney-General of the UK and Australia explicitly endorsed the Bush Doctrine by 2012 (Feaver, 2013; Goldsmith, 2016a, 2016b, 2016c; Kattan, 2018). Amongst Western governments, the U.S and the UK were among the first sovereign states to officially describe and identify the successor of AQI and ISI known as the *Islamic State of Iraq and Syria* (ISIS) or *Islamic State of Iraq and the Levant* (ISIL) as an "Islamic" terrorist organization seeking to establish a "Caliphate" based on "Sharia", to produce "jihadists", using local "madrasas", with the objective of targeting Western "progress" (Dostal, 2018; Majozi, 2018; Bassil, 2019).

This reductionist choice of words led to widespread international condemnation from the North and South since it effectively equated all Arab civilizational values and Islamic jurisprudent schools with barbarism, and its adherents, as terrorists (Mark, 2015; Majozi, 2018; Bassil, 2019). Amid criticism, President Obama and Prime Minister Cameron had to modify their "choice of

words" with Cameron advising British parliament to start identifying the organization as "DAESH" rather than "ISIS" or "ISIL" (Mark, 2015; Majozi, 2018). He said, "I feel it is time to join our key ally France, the Arab League, and other members of the international community in using as frequently as possible the terminology *DAESH* rather than *ISIL*. Because frankly this *evil death cult* is neither a true representation of *Islam* nor is it a *State*" (IBT, 2015, emphases added; Majozi, 2018; Bassil, 2019). Western executives doubling down on their latent neo-Orientalist categorization – effectively characterizing Arab space as breeding "Islamo-fascists" – was drivel for two simple reasons (Bassil, 2019:90). First, pronouncing *DAESH* in English is literally the Arabic pronunciation and translation of the acronym *ISIS* and/or *ISIL*. That is, the pronunciation of *DAESH* in English is the acronym د.ا.ع.ش in Arabic which literally reads الدولة الإسلامية في العراق والشام or *Islamic State of Iraq and Syria/Levant* in English. Secondly, since 9/11 and more so after 2011, discourses and legal doctrines articulated and developed by Western political executives consistently describe the Arab world through an "Islamist lens" and adopt neo-Orientalist imaginaries to operationalize legal doctrines based on a "humanitarian" discourse to adjudicate another episode of *redemptive* (il)legal warfare (Mamdani, 2010; Majozi, 2018; Bassil, 2019).

On April 1st 2016, Brian J. Egan, US State Department legal adviser, announced that the Obama administration had endorsed and adopted legal principles listed in Sir Daniel Bethlehem's article published in 2012 in the American Journal of International Law (AJIL). Egan informed the audience at the American Society of International Law (ASIL) that "when considering whether an armed attack is imminent under the *jus ad bellum* for purposes of the initial use of force against a particular nonState actor, the United States analyzes a variety of factors, including those identified by Sir Daniel Bethlehem in the enumeration he set forth in 2012" (as cited in Kattan, 2018:98, emphases added). The words of Brian Egan prompted American international lawyer Jack Goldsmith – former Assistant Attorney General for the Office of Legal Counsel (2003-2004) – to mention that the endorsement of the principles enumerated by Sir Bethlehem highlights Obama's embrace early on during his presidency of the pre-emptive legal doctrines enumerated in the National Security Strategy (NSS) of the Bush Doctrine (Goldsmith, 2016c; Kattan, 2018).

According to Sir Daniel Bethlehem – former legal adviser at the UK Foreign and Commonwealth Office – the NSS articulated by the Bush administration "invented *new language* and, in doing so, suggested that the United States was *moving away*, with *deliberate thought* and *careful consideration*, from *established tenets* of *international law*" (Bethlehem, 2016, emphases

added). In Bethlehem's publication of the principles he clearly highlights that the debate about the scope of sovereign state's right of self-defence against armed attacks by non-state actors "predates 9/11", but that the attacks gave it "operational urgency" (Bethlehem, 2012:770). This is reminiscent of Condoleezza Rice – following the publication of the NSS-2002 – demanding an explicit pre-emptive defense strategy to fight "Islamists" threatening Western civilization. She explicitly mentions in relation to "Islamist terrorist networks" that "new technology requires new thinking about when a threat becomes 'imminent'…if there is rattlesnake in the yard, you don't wait for it to strike before you take action in self-defense" (Rice, 2002). Therefore, the Bethlehem Principles like the Bush Doctrine (re)affirms the violent positivist juridical mechanism(s) of *sovereignty* and attempts to rejuvenate a parallel objective – albeit with different technical legal maneuvers – in *banning* the Arab body from the juridical and social order by making *redemptive* extrajudicial practices *law*. The principles legalizing pre-emptive measures *on* Arab bodies after 2011 became *law* with the U.S., UK, Israel and Australia explicitly endorsing Principle 8 which claims that:

> …whether an armed attack may be regarded as 'imminent' will fall to be assessed by reference to all relevant circumstances, including (a) the *nature* and *immediacy* of the threat, (b) the probability of an attack, (c) whether the anticipated attack is part of a concerted pattern of continuing armed activity, (d) the likely scale of the attack and the injury, loss, or damage likely to result therefrom in the absence of mitigating action…*The absence of specific evidence of where an attack will take place or of the precise nature of an attack does not preclude a conclusion that an armed attack is imminent for purposes of the exercise of a right of self-defense, provided that there is a reasonable and objective basis for concluding that an armed attack is imminent* (Bethlehem, 2012:776-777, *emphases added*).

The speech act delivered by UK Attorney General J. Wright in 2017 entitled *Modern Law of Self-Defense* explicitly draws upon Principle 8 and is quite similar to the speech act articulated by UK Attorney General Lord Goldsmith in 2004 during Tony Blair's ministerial tenure who specified that "the concept of what constituted an *'imminent' armed attack* will *develop* to meet *new* circumstances and *new* threats…it *must be right* that states are able to act in *self-defence* in circumstances where there is *evidence of further imminent attacks by terrorist groups, even if there is no specific evidence of where such an attack will take place or of the precise nature of the attack*" (Goldsmith, 2004; emphases added*;* Kattan, 2018). Sir Daniel Bethlehem belongs to a school of thought that highlights 9/11 rekindling a longstanding legal debate concerned with addressing the

issue of whether the UN Charter remained sufficient in addressing "modern" threats such as terrorism and whether a different law was required to address "new" threats (Bethlehem, 2012, 2016). While Bethlehem has explicitly mentioned that he is "deeply uncomfortable with the neo-con view of the world", he nonetheless has "long been persuaded of the inadequacy of the law and of international institutions to coherently address and control the use of force" (as cited in Kattan, 2018:113). According to Bethlehem, the legal principles adhered to by the U.S. and the EU to advance a legal argument for the war on terror were "informed by detailed discussions over recent years with foreign ministry, defense ministry, and military legal advisers from a number of states who have operational experience in these matters" (Bethlehem, 2012:774, 2016; Kattan, 2018).

Regardless of how the principles came to being, the principles pay homage to positivist jurisprudence and the culturalist idea that *temporal positionality* is an appropriate legal argument to sanction a pre-emptive war based on reductionist *information* rather than historical *evidence*. This is explicitly revealed in Principle 8 in the way it attempts to "reinvent the Bush doctrine" of defensive imperialism by bringing it through the "back door" (Kattan, 2018:131). To understand this legal maneuver, one needs to evoke Obama's Vitorian moment identified in Cairo attempting to eliminate the ontological threat between Arabs and the West by recognizing cultural similarities, while at the same time using this seemingly inclusionary act of including the Arab world as member of *International Society* to exclude them by reverting to their *temporal positionality*. The rejuvenation of the *inclusive exclusion dispositif* of *jus gentium* is identified in the Bethlehem Principles in how it (re)formulates international law by defining "immanence" in a way that does not focus on the "temporality of an actual attack" but rather *presumes* the wider circumstances in not acting if an *imagined* threat manifests in the future as an *actual threat* (Kattan, 2018:131). Also, the principles dispense with – similar to the Bush Doctrine – the requirement there being *evidence* that an armed attack will manifest in a temporal sense when it declares in Principle 8 that in "the absence of *specific evidence* of where an attack will take place or of the *precise nature* of an attack *does not preclude* a *conclusion* that an armed attack is *imminent* for the purposes of the exercise of *a right of self-defence*" (Bethlehem, 2012:776; emphases added; Deeks, 2016; Goldsmith, 2016c).

In other words, the presumption or simply the thought of Arabs and/or Muslims *possibly* becoming active subjects in *making* their history *legally* activates Principle 8 since Arabs are mythologized as inherently embodying primitive temporal coordinates that inevitably lead them

to stagnate and revert to barbarism when attempting to transition *into* modernity. Neo-Orientalist reductionist "information" equating all Arabs as Muslims, essentializing Islam by linking it to terrorism, and finally perceiving Arab resistance as an act revealing "Arab irrationality" in not knowing what it is "best for them" are culturalist differences lacking historical evidence. These essentialist imaginaries *legally* transformed the Arab uprisings into an *Islamist* episode – using the Bethlehem Principles as a legal conduit – since Arab subjectivity was denied early on during the uprisings in 2011 as noted in chapter III. Arabs being active makers of their history was *presumed* as a 'dangerous risk leading to unknown possibilities' with the West claiming to be the originator of "Arabs momentarily awakening to democracy" since Arabs – according to neo-Orientalists – will inevitably fail at *temporally* transitioning to (Western) modernity because they need "training in non-violence", embody "despotism", are deficient in "reason", and lack the "spirit of reform".

The Bethlehem principles are therefore consistent not only with the Bush Doctrine but also with the Israeli Supreme Court's (ISC) legal policy articulated in relation to *Targeted Killings* or *Targeted Prevention* cases of Arabs in 2006. The legal policy declares that "*information* which has been most *thoroughly verified* is *needed* regarding the *identity* and *activist* of the civilian who is *allegedly* taking part in the *hostilities*" (as cited in Kattan, 2018:132, emphases added*)*. It is telling that the Israeli Supreme Court – an adherent of the Bethlehem Principles – does not find it necessary to possess "evidence" but rather is content with alleged "information" being enough to evoke judgment on killing Arab inhabitants[97]. Finally, the principles of the ISC, highlighting "operational experience", neatly disguise the inherent violence and subjugation informing "sovereignty" as a positivist juridical concept and figure who *wills jus gentium* by giving undue deference to "*the state* by claiming *preventive* self-defence, which becomes the *judge*, *jury* and *executioner* of its *own* actions" (Kattan, 2018:134, emphases added). The moral issue with the principles is manifest in that it is "very difficult, if not impossible, for a third party to assess when a *state* has breached Principle 8, since it is not possible to assess *information* or *evidence* that the *state chooses not to disclose*" (Kattan, 2018:134, emphases added).

2.3 The Bethlehem Principles and Operation Timber Sycamore – A Pre-Emptive Mission *(Citing Information)* Legalizing the *Death* and *Displacement* of Arabs

Timber Sycamore was a classified weapons supply and training program authorized and officially activated in the summer of 2012 by the U.S. Central Intelligence Agency (CIA), the United Kingdom's Secret Intelligence Service (SIS), the Israeli Intelligence Community (IIC), and

satellite *comprador* intelligence services including amongst others Iran, Iraq, Turkey, Qatar, Saudi-Arabia, and several Emirates (Cartalucci and Bowie, 2012; Sanger, 2012; DeYoung and Sly, 2012; Cockburn, 2016; Binnie and Gibson, 2016; Mazetti and Apuzzo, 2016; Pichon, 2017; Dostal, 2018; Kleib, 2019; Raimbaud, 2019). While early reports indicated that during the early days of the "Islamist Winter" in 2011, for instance in Syria, the U.S. did not send "arms directly to the Syrian opposition", it did however provide "intelligence and other support for shipments of secondhand light weapons like rifles and grenades into Syria, mainly through Saudi Arabia and Qatar" (Sanger, 2012). The reports indicated that "shipments organized from Qatar, in particular, are largely going to *hard-line Islamists*" (Sanger, 2012; emphases added). More recent research highlights that the main objective of the program was to supply funds, weaponry, and training to *death squads* (i.e., "modern" *conquistadores*) to proliferate chaos and its (terrorizing) consequences (i.e., carnage and displacement) across the *Mashreq* and *Maghreb* thereby furthering the disintegration of endogenous governing institutions situated in Arab spaces praised by its practitioners and inhabitants as knowledge centers of Arab civilization[98], a bastion of anti-imperial politics, and Third World liberation (Salt, 2012, 2017; Al-Rawashdeh and Abdulkareem, 2014; Cockburn, 2016; Hersh, 2014, 2016; Pichon, 2017; Kleib, 2019; Raimbaud, 2019; Al-Qassimi, 2019).

A report released in 2017 by the Conflict Armament Research (CAR) highlights that weapons in possession of "Islamist groups" goes "beyond those that would have been available through battle capture alone" and that over 90% of the weapons supplied by the U.S., Israel, and Saudi-Arabia were mostly manufactured in EU countries thus violating not only contractual clauses prohibiting *international* weapon transfers, but *international law* (Petkova, 2015; Meyssan, 2017; McKernan, 2017; Dostal, 2018; Levy, 2019; Kleib, 2019). To give an indication on how sophisticated the operation was one needs to look no further than at the hundreds of *international diplomatic flights* involving loading operations in *international ports* and/or NATO bases located in Croatia, Azerbaijan, Bulgaria, Germany, Romania, Italy, Czech Republic, and Israel utilized to transfer weapons to *death squads* (Chivers, and Schmitt, 2013b; Žabec, 2013; Petkova, 2015; Binnie and Gibson, 2016; Mazetti and Apuzzo, 2016; Pichon, 2017; Dostal, 2018; Raimbaud, 2019; Kleib, 2019; Levy, 2019). For instance, the government of Croatia in 2012 delivered 230 tonnes of weapons to Turkey, then the transfer was handled by Ilyushin – a Russian aviation company – from Jordan's International Air Cargo which managed the delivery of the

weapons to *death squads* at the border between Turkey and Syria (Žabec, 2013; Mazzetti and Apuzzo, 2016; Meyssan, 2017). In 2016, a contract won by Transatlantic Lines (TL) involved the US Navy Military Sealift Command launching two tenders in 2015 for the transport of arms from the Romanian port of Constanta to the Jordanian port of Aqaba (Binnie and Gibson, 2016; Meyssan, 2017; Pichon, 2017; Dostal, 2018; Kleib, 2019; Raimbaud, 2019). Similarly, Azerbaijan early on in the year 2014 and continuing into 2015 placed a whole state-run airline company known as Silk Way Airlines (SWA) at the disposal of the CIA and by 2015-2016, more than 350 flights had transported hundreds of tons of weapons to *death squads* in Syria (Gaytandzhieva, 2017; Meyssan, 2017; Kleib, 2019; Raimbaud, 2019). Finally, even so-called "humanitarian flotillas" such as *Lutfallah II* inspected by the Lebanese Navy on April 27th, 2012, or the Togolese registered cargo ship named the *Trader* – formerly *Kuki Boy* – inspected by the Hellenic Coast Guard off the island of Crete in Greece on February 28th 2016 were also involved in transporting arms and explosive ammonium nitrate grade to *death squads* who were ironically the primary catalysts of the "humanitarian displacement crisis" (Nord, 2016; Pichon, 2017; Meyssan, 2017; Kleib, 2019; Raimbaud, 2019)[99].

CIA director David Petraeus (2011-2012) first proposed a covert program of arming and training *death squads* in the summer of 2012. A Defense Intelligence Agency (DIA) memo confirms on August 12th 2012 that the DIA was informed that the US-backed "insurgency" in Syria was dominated by "Islamist" militant groups including "the *Salafists*, the *Muslim* Brotherhood, and *Al-Qaeda in Iraq*" (Ahmed, 2015, emphases added; Dostal, 2018)[100]. This highlights sovereign figures adopting an identical neo-Orientalist narrative reminiscent to 2003 Iraq suggesting that the "threat" of "Arab-Islamist" groups wanting to establish a "Caliphate" is an *endogenous* cultural tendency in Arab civilization causing the destructive transformation of the demography in Arabia (Hersh, 2014, 2016; Salt, 2017; Hoff, 2015; Miller, Entous, et al., 2016; Raimbaud, 2019; Kleib, 2019)[101]. According to Sanger (2012), "…Petraeus's goal was to oversee the process of 'vetting, and then shaping, an opposition that the U.S. thinks it can work with'. According to American and Arab officials, the C.I.A. has sent officers to Turkey to help direct the aid, but the agency has been hampered by a lack of good intelligence about many rebel figures and factions". In addition, the memoirs and admissions of former head of the Pentagon's DIA Michael T. Flynn confirms that White House officials made a "willful decision" to support Al-Qaeda affiliated *death squads* despite being warned by *evidence* extended by the DIA that doing so would develop the "crypto-

Caliphate" Rumsfeld and Cheney warned about in 2005 (Ahmed, 2015a; Cockburn, 2016; Hasan, 2016; Hersh, 2016; Dostal, 2018).

Former DIA director Michael Flynn (2012-2014) confirmed the information in the memo of 2012 as being *evidence* that the U.S. and its allies coordinated arms transfers to "hard-line extremists" and that U.S. intelligence as early as 2008 was fully aware of the threat posed by "AQI" and other "Islamist militant groups" (Ahmed, 2015; Flynn, 2015; Hasan, 2016; Pichon, 2017; Kleib, 2019; Raimbaud, 2019). More explicitly, Flynn stated that the "rise of ISIS was a direct consequence of the US support for Syrian insurgents whose core fighters were from al-Qaeda in Iraq [AQI]" (Ahmed, 2015a; Flynn, 2015; Dostal, 2018)[102]. The words of Flynn are in line with former senior civil servants such as French foreign minister Roland Dumas who said in 2013 that as early as 2009 the U.S. and Britain had planned covert action in Syria (Ahmed, 2015a; Kleib, 2019; Raimbaud, 2019)[103]. These admissions are also confirmed in prestigious think tanks such as RAND Corporation stating back in a 2008 study by Nichiporuk, Stahl, et al., entitled *Unfolding the Future of the Long War*, and in a succeeding study in 2017 entitled *Managing the Long War* written by Seth G. Jones, that the U.S. would attempt to use the "Islamic State", "Afghan Arabs", or "Salafi-Jihadists" as an ideology to foment sustained sectarian violence as part of its tactics in transforming the Arab region (Ahmed, 2014, 2015c, 2015d; Jones, 2017; Kleib, 2019; Raimbaud, 2019).

Daniel Ellsberg[104], former Pentagon official and U.S. military analyst, highlighted the importance of RAND's 2008 report in that it advocated a range of policies including a strategy of "divide and rule" fomenting sectarian clashes between Arabs and Muslims by making alliances with "Arab Jihadist" groups such as AQI/ISI, or later, ISIS (RAND, 2008:113; Ahmed, 2015d; Dostal, 2018). Wheeler (2015) reveals that the large corpus of secret DIA documents obtained by Judicial Watch (JW) in Washington D.C demonstrates that:

> The Intelligence Community (IC) knew that AQI had ties to the rebels in Syria; they knew our Gulf and Turkish allies were happy to strengthen Islamic extremists in a bid to oust Assad; and CIA officers in Benghazi (at a minimum) watched as our allies armed rebels using weapons from Libya. And the IC knew that a surging AQI might lead to the collapse of Iraq. *That's not the same thing as creating ISIS. But it does amount to doing little or nothing while our allies had a hand in creating ISIS. All of which ought to raise real questions about why we're still allied with countries willfully empowering terrorist groups then, and how seriously they plan to fight those terrorist groups now.*

Because while the CIA may not have deliberately created ISIS, it sure seems to have watched impassively as our allies helped to do so.

While Wheeler's report is imperative, it assumes that the authentic creators of AQI and ISIS must exclusively be Arabs and especially Muslims since civilized nations cannot possibly be the source of such immoral practices and ideas (Ahmed, 2015c). Various junctures during the Cold War implicating Western powers and more specifically the CIA in covertly hiring and developing *death squads* in Africa (i.e., Congo and South Africa) or the Americas (i.e., Chile and El Salvador) attests otherwise (Mamdani, 2004; Al-Kassimi, 2019). Terror activities practiced on local Third World bodies are deemed a necessary practice for the "rite of passage" into "modernity" and "development" reifying a *ratiocinated* positivist philosophical theology (Mamdani, 2004; Forte, 2013; Al-Kassimi, 2017, 2019). Regardless of Wheeler's intentions, the discipline of Orthodox Terrorism Studies (OTS) relying primarily on positivist logic and problem-solving methodology continues to emphasize the cultural relativist idea that (Western) sovereign states are *never* perpetrators of terrorism but *always* victims (Mamdani, 2004; Blakeley, 2010; Al-Kassimi, 2019). The point to note here in relation to Arabia is that just like PEDS developed and reformulated legal principles to sanction a "humanitarian mission" employing terrorists as agents of transformation to "save" primitive Arab bodies, similarly, the Bethlehem Principles after the Arab uprisings (re)affirmed the defensive imperial strategies characterizing PEDS – legalizing extrajudicial practices – by funding and training agents of violence that clearly lack the "arts of war"[105]. Sovereign figures facilitating the development and/or overlooking the expansion, funding, and training of *death squads* is indicative of the "human value" they confer to inhabitants of Arabia, and more importantly, discloses the original activity of sovereignty – therefore *jus gentium* – in legalizing *necropower* by figuring the Arab as *homo sacer* living their life as *bare-life* (more on this in chapter V).

It should be noted that it is the Chilcot report chaired by Sir John Chilcott in 2009 – published in 2016 – inquiring about atrocities in Iraq that disclosed the direct implication of the CIA and MI6 and other Western intelligence agencies in (re)applying the "Salvador Death Squad Option" in 2003 Iraq – previously established and adopted in Latin-America during the Cold War throughout Operation Cóndor. The *death squad* blueprint was replicated in Arab spaces such as Syria, Iraq, and Libya in 2011 and was crucial in creating and perpetuating the psychological sentiment of *fear* amongst the Arab population resulting in *en-masse* forced displacement and

human carnage (Bump, 2013; Forte, 2013; Chossudovsky, 2016; Pichon, 2017; Dostal, 2018; Kleib, 2019; Raimbaud, 2019). The "Salvador Option" was initially a terror campaign in El Salvador with the objective – under Operation Cóndor – of training *death squads* during the *Contra* period in Latin-America to eliminate a supposed "Communist threat". The operation resulted in targeted assassinations, the deaths of over 70,000 civilians, and the displacement of millions (Bump, 2013; Chossudovsky, 2016).

It is important to be anachronic and trace the formative genealogy of specific personnel involved in developing the *death squad* option during Operation Cóndor to foment "divide and rule" across the Americas during the Cold War because they are the same architects of Operation Timber Sycamore which (re)exercised the option in 2003 Iraq, and *across* Arabia after 2011. The *death squad* option in Iraq after 9/11 was applied under the helm of U.S. ambassador to Iraq John Negroponte (2004-2005) who was also the U.S. ambassador to Honduras from 1981 to 1985 during Cóndor. Negroponte not only oversaw the activities of *death squads* across Latin America, but he appointed Colonel James Steele – an important figure during Cóndor in the 1980s – to aid him in setting up the "Iraqi (Salvador) Option" in 2003 (Mahmood and O'Kane, 2013; Bump, 2013; Chossudovsky, 2016). In El Salvador, along with Steele and Negroponte, it was none other than General David Petraeus – then a Ph.D. candidate at WestPoint – who also assisted in setting up the *death squad* "counter-insurgency" program in the Americas (Mahmood and O'Kane, 2013; Bump, 2013; Chossudovsky, 2016). Interestingly enough, in 2004 Iraq, Negroponte and Steele hired General David Petraeus to support them in establishing "interrogation centers" further exacerbating sectarian violence through selective torture and violations of human rights (Bump 2013; Chossudovsky, 2016; Pichon, 2017; Kleib, 2019; Raimbaud, 2019). Robert S. Ford was also appointed by Negroponte in 2005 as the Minister Counselor for Political Affairs at the U.S. embassy in Iraq along with General Petraeus to help him oversee the establishment of a *death squad* group known as the "Wolf Brigades" which tortured and killed Arab-Iraqis across religious sects. The Chilcott Report and other reports documenting atrocities committed by *death squads* sponsored by the U.S., Iran, Arab *compradors,* and the Coalition of the Willing first appeared in May of 2005 where "dozens of bodies were found casually disposed…in vacant areas around Baghdad. All of the victims had been handcuffed, blindfolded, and shot in the head and many of them also showed signs of having been brutally tortured" (Fuller, 2005; Chossudovsky, 2016).

The importance of deconstruction, anachronism, and suspicion in tracing the genealogy of the *death squad* option in Iraq relates to prominent figures such as David Petraeus later becoming CIA director (2011-2012) and Robert S. Ford becoming ambassador to Syria (2010-2014). Both figures were vital in implementing the "Syrian death Squad Option" which trained and funded – through Operation Timber Sycamore – *death squads* in "madrassas" or "CIA black sites" in the UAE, Yemen, Iran, Turkey, and other parts of Europe (Žabec, 2013; Ahmed, 2014; Cockburn, 2016; Chossudovsky, 2016; Al-Kassimi, 2019)[106]. These *death squads* were members of terror groups known as the Free Syrian Army (FSA), Jabhat Al-Nusra Front, Liwa Al-Islam, Badr Organization, Mehdi Army, Peace Companies, Malhama Tactical[107], and Academi. Also, several of these groups were trained in using chemical weapons as early as 2011 against Arab civilians and conscripted Arab soldiers as highlighted in the attacks in the Syrian city of Khan Al-Assal and Ghoutta in 2013 (Schmitt, 2012; Labott, 2012; Soloman and Malas, 2012; Žabec, 2013; Ahmed, 2014; Cockburn, 2016; Chossudovsky, 2016; Postol, 2017, 2019). As a matter of fact, the *death squads* trained and overseen by former ambassador to Syria Robert S. Ford in Da'raa and Hama – framed as "freedom fighters", "moderate rebels", or "protestors" – were the same groups who during the first few weeks of the Arab uprising in March 2011 blew up police stations, hospitals, fired at Arab Syrian civilians, and killed dozens of Arab Syrian soldiers in Da'raa (Salt, 2012, 2017a, 2017b; Pichon, 2017; Raimbaud, 2019; Kleib, 2019). A report published by *Der Spiegel* discussing deaths committed by *death squads* in the Syrian city of Homs confirms that in the summer of 2011 an organized sectarian process of mass-murder and extra-judicial killings paralleled the "Salvador Option" applied in 2003 Iraq – as described in the Chilcot Report – with dead Arab bodies being randomly found and dispersed across different cities in Syria (Putz, 2012; Cartalucci and Bowie, 2012; Chossudovsky, 2016; Kleib, 2019; Raimbaud, 2019).

The *death squads* were the primary agents of violence responsible for transforming the peaceful Arab citizen protest in 2011 into a proxy war as highlighted in the tragic events of July 18th, 2012. On that day in the Rawda Square in Damascus, *death squads* from the FSA and the Liwa Al-Islam killed the Syrian Defense Minister Dawoud Rajiha and Deputy Defense Minister Assef Shawkat, the assistant to vice president Hasan Turkmani, and the head of investigations at the Syrian Intelligence Agency (SIA) Hafez Makhlouf. While it is beyond the scope of this chapter to mention each massacre perpetrated using conventional and non-conventional weapons[108], it suffices to mention a few events that make the case that defensive imperial strategies consisting of

pre-emptively hiring "Islamist barbarians" to "manage", "save", and "purify" Arab *life* was made legally palatable using neo-Orientalist modes of representation with the Bethlehem principles *legalizing* the continuous deadly bodily consequences of the Bush (chaos) Doctrine. The consequences of these essentialist representations made possible the Darraya massacre of August 20th 2012 claiming the lives of at least 400 Syrians, the chemical attack in Khan Al-Assal on March 19th 2013 killing over 30 Arab Syrian soldiers, the Queiq River massacre in January 2013 claiming the lives of over 100 Arab Syrians, the Khan al-Assal massacre in July 22nd 2013 killing over 70 Arab Syrians, the Al-Shu'aytat massacre in August 2014th in Deir-ez-Zor killing over 700 Arab Syrians, the Palmyra massacre of May 2015 claiming the lives of at least 300 Arab Syrians[109], and lastly the As-Suwayda attacks of July 25th 2018 killing at least 300 Arab Syrians (Pichon, 2017; Kleib, 2019; Raimbaud, 2019).

This carnage is evidence that highlights the consequences of neo-Orientalist narratives essentializing Arabs through fabricated "Islamist" discourses based on a dynamic of cultural differences claiming that the source of terrorism is an Arab endogenous cultural trait rather than a "modern" secular *Puritan* exogenous practice seeking the "purification" of Arabia through *destructive* practices deemed *constructive*. This evidence reveals the danger in *ratiocentric* jurisprudence assuming a natural distinction between "legality" and "morality" thus making it acceptable to hire agents of terror to defeat a supposed "uncivilized" subject. It reveals the immorality of a positivist *jus gentium* finding it *rational* to frame as *legal* doctrines informing the Bethlehem principles thereby in the process *absolving* sovereign figures from implementing a *death* operation to engineer a "New Middle East" (Hersh, 2014, 2016; Chossudovsky, 2016, Pichon, 2017; Dostal, 2018; Kleib, 2019; Al-Mayadeen, 2019). An important point relating to the aforementioned disinformation relating to the "source of terror" is that the *en-masse* carnage resulting from *death squad* activities using conventional and non-conventional weapons against the Arab Syrian Army and Arab-Syrian citizens was neo-Orientalized in Western communication centers as being conducted by the *local* Arab government since neo-Orientalist representations *a priori* assume that Arab governments are *despotic*.

While evidence highlights that it is *death squads* that engaged in massacres and terrorizing acts resulting in forced displacement, a neo-Orientalist mythological discourse presumes that Arab leaders – reputed as despotic, authoritarian, and dictatorial – are predisposed in negating the "arts of war" by practicing barbaric acts to uphold their "sultanate". Such essentialist imaginary makes

possible *ratiocentric* assumptions stipulating that Arab leaders "chemically bomb" their own citizens. These reductionist discourses have recently been "demystified" by the Organisation for the Prohibition of Chemical Weapons (OPCW) which explicitly stated that the Arab Syrian Republic did not use chemical weapons in Douma on April 7th 2018 contrary to the claims deliberated by the U.S., France, and the UK based on reductionist "information" rather than "evidence" (Postol, 2019; Norton, 2020)[110]. In addition, it is important to note the immorality of neo-Orientalist discourses deliberately overlooking the number of casualties informing the category of *Arab Syrian soldiers* conscripted in the *national citizen-army*. This careful omission is based on a culturalist perception claiming that Arab governments are ruled by "despots" consisting of "regimes" rather than "governments", and inform an *irrational* space incapable of a civilized "monopoly on violence" upholding a "social-contract" to defend a "sovereign territorial boundary". If hegemonic powers were to acknowledge casualties consisting of Arab Syrian *citizen-soldiers* then it (rationally) legally follows that the Arab Syrian government is *sovereign* and consists of a *civil government* informing a *republican contract* furnishing a *temporally* modern, progressive, and democratic social contractual relationship of governance. The consequence of such unethical *a priori* omission results in deductive reasoning postulating that only a "humanitarian mission" would "save" Arabs since their despotic leaders inherently threaten and persecute their *livelihoods*.

Alastair Crooke, a former senior MI6 officer, highlights how Operation Timber Sycamore and the DIA memo of 2012 confirm the decades of work steered by Western intelligence agencies in transforming through chaos the demography and geography of the Arab world as noted in 2003 Iraq (Ahmed, 2015c; Kaválek, 2015; Pichon, 2017; Kleib, 2019)[111]. Crooke (2014) and Kaválek (2015) note the "modern" reductionist discursive aspects of "terrorism" being unethically described as "Arab Islamist violence" in an article entitled *The ISIS Management of Savagery*. Crooke (2014) states that:

> …the beheadings and other violence practiced by ISIS are not some whimsical, crazed fanaticism, but a very deliberate, considered strategy. The military strategy pursued by ISIS in Iraq, too, is neither spontaneous nor some populist adventure, but rather reflects very professional well-prepared military planning. The seemingly random violence has a precise purpose: Its aim is to strike huge fear; to break the psychology of a people.

Similarly, almost a decade before Crooke, Seymour Hersh in 2007 remarked in an article published in the *New Yorker* entitled *The Redirection: Is the Administration's New Policy Benefitting our Enemies in the War on Terrorism?* that the U.S. administration funding and training "radical extremists" consists of a "redirection strategy" (Hersh, 2007). According to former senior State Department official Martin Indyk, the strategy would push the Middle East to head "into a serious Sunni-Shiite Cold War…The White House is not just doubling the bet in Iraq it's doubling the bet across the region. This could get very complicated. Everything is upside down" (Hersh, 2007)[112]. Recalling the neo-Orientalist representations perpetuated by sovereign figures preceding and following the "Arab Spring" of 2011 indicating the *exclusionary* character of *jus gentium* discloses the importance in deconstructing discourses constellating *Islamophobia* and *Islamophilia*. Both neo-Orientalist discursive representations – stipulating an unbridgeable cultural gap between Europe and Arabia – essentially assume that the chaos engulfing Arabia since 2003 is necessarily linked to a terrorizing *premodern* religion – Islam, and an "Arab mind" that is inherently *irrational* and *incapable* of embodying *civic ethos*.

Since *death squads* officially declared a crypto "Islamic Caliphate" in 2013 by absorbing areas in Syria and Iraq through operation Timber Sycamore, the U.S and its allies including France, Germany, and the UK used this opportunity to declare that the threat of "radical Islam" threatening Western civilization requires the establishment of an official task force. On June 15th 2014, the initiation of a Combined Joint Task Force (CJTF) heading Operation Inherent Resolve (OIR) "officially"[113] marked NATO allies beginning their fight against ISIS (Pichon, 2017; Al-Kassimi, 2018; Kleib, 2019; Raimbaud, 2019). It is telling to note that unlike other operations involving the U.S. and its European allies in the Arab world, the operation against "Islamist" *death squads* remained a *nameless* operation for years – since terror activities in Arabia began in 2011 – drawing severe criticism from political analysts and academics wondering "who are we fighting?" and whether such deliberate act in not naming the operation is linked to powers previously "funding the terrorists" they "finally decided to fight" (Shinkman, 2014, Sisk, 2014; Kaválek, 2015; Pichon, 2017; Kleib, 2019; Raimbaud, 2019).

The CJTP operationalized OIR as a *pre-emptive* mission under Principle 8 of the Bethlehem Principles across Arabia citing the objective of neutralizing "established" terror enclaves and "possible" future havens – *presumed* based on *information* extended to the CJTP – as harbouring "Islamists". These redemptive missions – activated using Islamophobic and

Islamophilic *reasoning* – lead to the full-scale destruction of Arab cultural sites leading analysts to assert that Arab cities now resemble "modern Dresdens"[114] (Allen, 2019). Arab civilizational cities such as Sana'a and Taiz in Yemen[115], Sirte in Libya[116], Mosul and Anbar in Iraq, Homs, Raqaa, and Aleppo in Syria[117] were either completely or nearly destroyed (Jones, 2016)[118]. These official operations declared in 2014 to "fight ISIS" not only accelerated the destruction of Arab cultural civilizational spaces, but also lead to hundreds of thousands of civilian deaths and millions of Arabs becoming displaced (Salt, 2017; Blue, 2018; Dostal, 2018; Magid and Carrié, 2018; Airwars, 2019; Kleib, 2019). It took the U.S. and its allies over 2 years to notice the "evidence" inquiring about the pillaging of the Arab world by *death squads*.

Neo-Orientalist discourses prolonging and making possible the "presumption" of ISIS not being identified as an "immediate threat" to Arab civilization until the year 2014 is telling of the *obscurantism* of the Bethlehem principles especially when discerning the conflicting numbers emerging from top U.S. defense officials such as Justin Siberell who stated in June 2016 that ISIS foreign fighters since the conflict started in Syria 2011 comprised only around 40,000 individuals (RT, 2016). Similar conflicting numbers emerged in July 2017 during the Aspen Security Forum by US Special Operations Command Chief Raymond Thomas who stated that the U.S. led fight against ISIS through OIR has killed "60,000 to 70,000" ISIS militants (Woody, 2017). However, the CIA suggested back in September of 2014 that there are between 20000 to 31500 Islamist fighters in Syria and Iraq, which led senior fellow Thomas Joscelyn from the Foundation for Defense and Democracies to note in August 2018 that the deliberate attempt to give contradictory numbers extended by personnel from the highest echelons of the U.S. government in the past 5 years suggests that the "U.S. government is saying ISIS has the same number of fighters in Iraq and Syria today as when the coalition bombing campaign began" (Keller, 2018)[119].

In any case, already in 2011, for instance in Syria, government forces of the Arab Syrian Republic and Arab-Syrian civilians were among the primary victims of the *death squad* option (Cartalucci and Bowie, 2012; Pichon, 2017; Kleib, 2019; Raimbaud, 2019). According to Enders (2013), the Syrian Observatory for Human Rights (SOHR) declared in 2013 that 43.2% of the 96,431 declared dead since 2011 are Arab Syrian soldiers and their allies, 36.8% are Arab Syrian civilians, and lastly, around 20% are "foreign fighters". As of 2019, the most conservative estimate places the number of individuals involved in *death squads* crossing into Syria from Iraq, Jordan, and Turkey since 2011 at well over 130,000 individuals (Kleib, 2019; Raimbaud, 2019; Al-

Mayadeen, 2019; Al-Qassimi, 2019). These *war-machines* are the primary agents of *death* resulting in the death of over 310,000 Arab Syrian civilians, over 150,000 Arab Syrian soldiers, around 8 million IDPs, and 5.6 million refugees as of the calendar year 2018-2019 (Kleib, 2019; Raimbaud, 2019; Al-Mayadeen, 2019; UNHCR, 2019). Operation Timber Sycamore willfully perpetuated, fueled, and fabricated an "Islamist threat" to instigate a legal *redemptive* war by proxy involving the proliferation of chaos, terror, and death in the Arab world (Ahmed, 2014, 2015a; Chossudovsky, 2015, 2016; Pichon, 2017; Dostal, 2018; Sachs, 2018; Hasan, 2019; Kleib, 2019).

Therefore, the continuous disorder and destruction enveloping Arabia since 2003 resulting in the deaths of over 6 million Arabs and the displacement of twice that number is not to be blamed on Arab civilization "lacking democracy" and being "despotic in nature", but rather on a *jus gentium* that continues to be informed by principles based on a positivist jurisprudent logic using cultural differences as (temporal) *legal* argument to adjudicate extrajudicial treatment. The Bethlehem Principles legalized a *redemptive* war *on* the Arab body founded on mythologized information stipulating that Arabs are situated in a degenerative non-discursive temporal epoch incapable of *society*. The *deadly* consequences of operation Timber Sycamore explicitly reveals that *jus gentium* continues to be animated by an *inclusive exclusion* since it continues to identify Arab cultural differences as legal argument to uphold a *particular* Latin-European personality of *universal law*. The legal developments and covert operations accenting Arabia post 2011 stresses that *jus gentium* not only persists in being animated by a civilizing mission, but that violence and domination over non-European bodies is vital in providing *ratiocentric* Latin-European philosophical theology epistemological *coherence*. Western powers denying Arabs sovereignty by activating a *death operation* reveals the inherent technology of racism characteristic in sovereignty as a positivist legal concept since its denial legalized the (im)moral subjugation of Arab *life* to the power of *death* and transformed Arabia into a *necropolise*. These principles reveal the inherent violence and subjugation – therefore immorality – of (liberal-secular) *modernity* as a *teleological* narrative.

Conclusion

The *ratiocinated* legal assumption informing the Bethlehem principles declaring that *evidence* is not essential but that *information* is sufficient to legally sanction a defensive imperial war highlights how neo-Orientalist discourses during and after the Arab uprisings were (re)formulated

to advance legal doctrines that made it "morally" acceptable to fund agents of violence supposedly necessary in transitioning Arabia from a temporal degenerative *primitive* past, to a temporal *modern* present. What seems to be a legal *contradiction* is essentially (a universal) sovereign *assertion*. The U.S. and Europe authorizing a *death operation* by financing terror groups not bound by any judicial law asserts that the space these groups have been hired to commit violent acts *on* is constituted as a *geography* – a space "outside law" – inhabited by *apolitical* objects incapable of *society*, therefore, denied sovereign civilized treatment. Arab space is imagined as being inhabited by "disposable bodies" because of a reductionist construct comprehending Arabs as embodying *Saracen* traditions. With Arab temporal primitiveness mentally incapacitating their quality of *being*, neo-Orientalist generalizations perceiving Arab inhabitants as inherently *irrational* provides *ratiocentric* jurists legal coverage to hire modern *conquistadors*. It is pertinent to remember Vitoria's argument that with the power to wage war being the "prerogative of *reason-able* sovereigns", Arabs, therefore, can never truly be sovereign or treated as equal members in "international society" because they are imagined as incapable of reason, thus inept in waging a war respecting *just war* doctrine. The immorality with this scholastic logic is evident; sovereign figures hiring *death squads* highlights a historical continuum with *jus gentium* adjudicating legal principles stipulating that a supposed natural unbridgeable cultural gap between civilized and uncivilized peoples requires the development of legal doctrines based on a dynamic of cultural difference that necessitates *different* treatment during conflict. As noted in chapter I, colonel J.F.C Fuller of the British army notes in his work entitled *The Reformation of War* that in "small wars against uncivilized nations, the form of warfare to be adopted must tone with the *shade of culture* existing in the land, by which I mean that against peoples possessing a *low civilization war must be more brutal in type*" (1923:191, emphases added).[120]

Western sovereign figures imagining the "shade of culture" in Arab spaces as "uncivilized" or connotated by "Islamist tendencies" provides legal coverage to adjudicate principles *legalizing* extrajudicial "redemptive measures". These principles regulate and preserve the supposed unbridgeable cultural gap characterizing *jus gentium* claiming that a natural antagonism between a *Madīnian* and *Athenian* man necessitates a *realpolitik* zero-sum engagement because the former is *constituted* as an irrational mode of Being. The antagonism between Europe and Arabia legalizing extrajudicial practices (re)produces the colonial jurisprudence system of the 19th and 20th century (i.e., mandate system) asserting that cultural differences between civilized and

uncivilized states decree that civilized states have the "sacred trust of civilization" – therefore the responsibility – to democratize and protect uncivilized Arabs from their *Self* through any (violent) *means* necessary[121]. The privatization of violence through operation Timber Sycamore is crucial in revealing that while the activities conducted by terrorist groups are blamed on, and perceived as, a "natural" occurrence in a space inhabited by Arab-Muslims attempting to transition to democracy, the war in Iraq, and more recently Syria, Yemen, and Libya reminded Arabs that the catalyst of *en-masse* Arab displacement and human carnage is directly linked to modern *war-machines* engaging in barbaric acts rather than Arabia being inherently "anti-modern". To fathom the inherent violence of juridical concepts such as sovereignty and teleological narratives such as modernity reifying *ratiocinated* Latin-European philosophical theology, the "Arab Spring" forces us to look at the *past* to understand that the *present* terror engulfing the Arab World is not new, but rather is a familiar and necessary violence for the rejuvenation of a *jus gentium* founded on *ratiocentric* epistemology. Put differently, committing the sin of historical anachronism and being hermeneutically suspicious reveals that the legal historical commonality of both *death* missions (i.e., the *conquistadors* of the past and *death squads* of the present) is that both terror groups disclose the integral racialized power of "sovereignty" and "modernity" inherently targeting *death* rather than *life*. Both defensive imperial encounters make salient not only Arabs being imagined as "disposable bodies", but more importantly, the inherent politics of death (necropolitics) and power over death (necropower) sovereignty as a "modern" esoteric concept originally possesses since legal principles adjudicating redemptive wars – when translated *onto the body* – make salient that for a "*universal*" race to live, the body of a *particular* race has to die.

The genealogical continuum situated in the formative phases of *jus gentium* during the16th century and Arabia in the 21st century highlights that if the war in 2003 Iraq was about bringing democracy to an "undemocratic body", then "springing" the Arab uprisings in 2011 provided Western philosophical theology ontological security. Neo-Orientalist interlocutors perceiving the Arab uprisings as inevitably becoming an "Islamist Winter" essentially distorts reality and perpetuates "epistemic violence" by constructing a reductionist imaginary claiming that the Arab subject has failed at "jumping" into modernity after 8 years since a Western "humanitarian mission" in 2003 attempted to aid Arabs in "awakening" to democracy and modernity. Framing *organic* Arab agitation as an "Islamist uprising" is therefore a moment of *raison d'être* not simply for neo-Orientalist scholars, but more importantly, international positivist jurists who used such

framing to rejuvenate the inherent cultural *necrometric* of *jus gentium* claiming Arabs as naturally incapable of temporally embodying Western epistemic cultural mores. The Arab uprising "naturally" becoming an "Islamist Winter" according to Western and local Arab *compradors* confirms that international law continues to be animated by technologies of racism and enmity demanding the identification of a cultural threat for epistemological coherence.

Jus gentium adhering to a positivist jurisprudent school by continuously requiring a bodily threat for ontological security necessarily rejuvenates and maintains the "natural" unbridgeable gap between the (Occidental) universal subject as civilized and sovereign, and the (Oriental) particular uncivilized object *denied* sovereignty. Analysing the consequences of neo-Orientalist symbolic power being applied *on* the Arab body using a bio/necropolitical paradigm of analysis – as will be discussed in chapter V – will further deconstruct deadly events succeeding the "Arab Spring" leading to *en-masse* Arab displacement and the creation of zones of exception with Arabia imagined *a priori* as inhabiting *muselmänner*. Both paradigms will attempt to suggest that the racist roots of international law continue to be (re)produced and identified in Arabia. Deconstructing *jus gentium* as such accentuates that Arabia remains – since the formative phases of *jus gentium* and the conclusion of the mandate system after WWII – a laboratory where sovereign figures reveal the inherent *deadly* bodily consequences of an international law adhering to a positivist jurisprudent school.

With bio/necropolitics claiming that the original activity of sovereignty demands the production of *muselmänner* (i.e., *homo sacer*), and since *jus gentium* is *willed* by a sovereign figure to maintain and police the unbridgeable cultural gap between Arabia and Latin-Europe, then, the proliferation of *necropolises* (i.e., abject zones/death-worlds) is therefore conceived as a prerequisite for *jus gentium* to constantly rejuvenate the "sacred trust of civilization" informing the *inclusive exclusive ethos* of Western modernity. Thus, the European is "always already the non-European", not in the sense that there is no epistemic *difference* between both modes of being, however, "universalizing" a European world-view reifying positivist jurisprudence is essentially an assertion of a "thesis of impurity" (Isin, 2013:110) that makes possible the condemnation of Arab epistemology (Ar. نظرية المعرفة العربية /الحضارة العربية) as threatening the *purity* and *coherence* of an *Athenian* man.

Chapter V

The "Islamist Winter" Through a Bio/Necro-Political Paradigm: Imagining Arabs as *Muselmänner* is Essential for the Coherence of (Latin-European) Modernity

"In Italy, whole regions made it known to their oppressive governments that they would heartily welcome an eventual [Ottoman] Turkish invasion, as some Balkan Christians had done." – **Maxime Rodinson (1974)**

"The violence of positivist language in relation to non-European peoples is hard to overlook. Positivists developed an elaborate vocabulary for denigrating these people, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission – the discharge of the white man's burden" – **Antony Anghie (1999)**

"A humanitarianism that insists that it be separated from politics, but that nonetheless focusses on the sacred or bare human life of individuals to justify itself, can have the effect of working in perfect symmetry with sovereign state power. This is because sovereignty, based on the relation of the exception, is a violent relation in the sense that it is a practice that works to keep things apart, create boundaries, and maintain separateness" **– Peter Nyers (2006)**

"Do you know what a *Muselmann* was? Someone who became nothing, was named a Muselmann. He was exhausted with hunger, weakness, and despair. When there is no despair, you eat something, even grass. But when there is no one to live for, what to live for, no one to support you and no one that you need to support yourself, you don't have anything to live for. When there is no one to look after, there is no answer to the questions: What is it all about? Who am I and what am I?" **– Jonathan Davidov and Zvi Eisikovits (2015)**

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Introduction

The atomized concepts of *life* and *death* need not be rationalized as secular material worldly (re)cycles – as abstracted by Latin-European philosophical theology – but rather *natural* (Ar. فطرة) transcendental moments of revival (Ar. انبعاث) (Guénon, 1924, 1927, 1932, 1945; Abou El Fadl, 2014, 2015). A diligent *mental effort* (Ar. اجتهاد) navigating processes of reasoning and hermeneutics involving legal demonstration, rhetorical statements, and dialectical arguments reveals through the *consensus* (Ar. اجماع) of the Arab *Ummah* (Ar. الأمة العربية) how the perception of life and death as unsacred scientific cycles interrupts socio-political inquiry fundamentally concerned in deconstructing the desecrating consequences of a Godless hubris inherent in sovereignty as positivist juridical concept demarking a hierarchy of bodies worthy of life and bodies worthy of death (Agamben, 1998a; Mbembe, 2003; Foucault, 2003; Braidotti, 2013; Jabri, 2013; Abou El Fadl, 2014, 2015). Since "recognized sovereigns" comprising liberal-secular "civil society" will *jus gentium* into being, the first section of this chapter conveys a theoretical

discussion analyzing the concepts of life and death and their intrinsic relation to sovereignty using biopolitics and necropolitics as paradigms of analysis. By navigating the work of three political sociologists elaborating on the aforementioned paradigms – Michel Foucault, Giorgio Agamben, and Achilles Mbembe – the section identifies sovereignty as a violent relation formulating legal doctrines situated in *jus gentium* that include secular *nomos* maintaining "a culturalist hierarchy of *Being*". More specifically, the section identifies sovereignty as a ratiocinated process that seeks to particularize – therefore separate – non-conforming bodies by ruling and deciding over what (inferior) unworthy life must die in order to defend and protect the purity of a "civil society" deserving of life.

Through these paradigms, sovereignty is then conceptualized as having an original activity of figuring through neo-Orientalist narratives the Arab subject as a "threshold/exceptional" body constructed as *muselmänner/homo sacer* living its life as the *living-dead.* By conjoining the work of Foucault and Agamben regarding biopolitics with Mbembe's work on necropolitics, the natural epistemic inquiry informing this chapter is then founded on a hermeneutics of suspicion reading to deconstruct the application of positivist law adjudicated by sovereign power on Arab bodies thus revealing that the "ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who may live and who must die" with the essential exercise of sovereignty consisting of a "control over mortality and to define life as the deployment and manifestation of power" (Mbembe, 2003:11-12). Motivated thus, sovereignty – as highlighted by Nyers (2006) in the introductory quote – is to be understood as a technology of power and as an exercise of control where life and death become a space where "recognized sovereign" members of *jus gentium* engage in separating – through any rational means necessary – pure from impure modes of *Being*.

It is crucial to note that sovereignty – as manifest in Arabia after 2001 – is conceptualized as an exercise of necropower that targets *death* rather than *life* by fabricating a threatening unaccultured Arab body as *muselmänner* using technologies of racism declaring Arabia an "exceptional space". Sovereign figures "inside" *jus gentium* declaring the exception decriminalizes extrajudicial practices *on* Arab bodies since such declaration elevates the Arab subject to a state of exception (i.e., zone of indifference) where their death is not perceived as *homicide*, but necessary for "the order of things". Sovereign power deciding on its *death* targets is recognized in the subject informing neo-Orientalist narratives abstracted as situated in a degenerative temporal

epoch – therefore at the bottom "metric of cultural worth" – thus declaring that Arab *life* is banned from the juridical and social order to sustain the mythical culturalist gap between an *Athenian* and *Madīnian* mode of *Being*. Therefore, life and death analyzed from a necro/biopolitical paradigm allow us to deconstruct mechanisms of control and technologies of racism structuring power-relations informed by a positivist teleological narrative (i.e., modernity as a liberal-secular *telos*) inherently being necropolitical by demanding the subjugation of *Madīnian* life to the power of death.

Furthermore, the second section of this chapter adopts the theoretical discussion alluded to in the first section regarding sovereignty to deconstruct how neo-Orientalist narratives informed by technologies of racism catalyzed *en-masse* Arab displacement and carnage. Analyzing the increased propensity in Enlightened sovereign figures conquering Arabia using war-machines since 2003 points to the Arab body as *muselmänner* being imagined as a necessary inclusive exclusion for the ontological security of *ratiocinated* philosophical theology. The slaughter of Arabs evoking sovereign powers deciding over death (necropower) is *en-masse* because Arabs are imagined as unqualified life whose death is necessary for the "cultural ordering" of *jus gentium*. Injecting necro/biopower into the discussion deconstructing the cultural relativism inherent in *jus gentium* highlights how the (re)formulation, (re)affirmation, and proliferation of exceptional pre-emptive legal doctrines (i.e., PEDS and Bethlehem), terror agents (i.e., death squads/war-machines), and clandestine operations (Timber Sycamore) were central in multiplying and transforming Arab cities into *necropolises* (i.e., death-worlds) thereby revealing the original activity of sovereignty requiring the production of *homo sacer* for epistemological *coherence*. Deconstructing the redemptive measures declared on Arabia after 9/11 and the "Islamist Winter" of 2011 by keeping in mind that the power of sovereignty resides in its power to exercise necropower highlights that the original activity of sovereignty naturally consists in producing abject spaces identifying Arab life as *abject-Other*, therefore, an unaccultured worthless disposable mode of *Being* figured as threatening the (temporal) purity and coherence of *ratiocinated* Latin-European philosophical theology.

The final third section, through three subsections, highlights that the inherent *necropower* of sovereignty and its technology of racism characterising "Islamist" discourses not only catalyzed the Arab displacement catastrophe accenting Arab spaces, but it also reveals how figuring the displaced Arab through technocratic positivist categories such as "refugee" is crucial in

revitalizing and protecting sovereign privileges regulated and maintained by *jus gentium* since a "humanitarian order" – evoked to remedy the plight of Arab displacement – is not a system that acknowledges (Arab) citizenship, but rather has cut its ties with the language of citizenship rights (Anghie, 2004; Nyers, 2006; Mamdani, 2010). The figure of the displaced Arab as "refugee" is subsumed under a humanitarian problem-solving logic that masks and also regenerates the inherent necropower of sovereignty since the Arab identified as *refugee* is none other than *homo sacer/muselmänner* imagined as living their life as *bare-life*. Identifying the displacement problem using a liberal humanitarian perspective of "crisis" and "emergency" emphasizing "human rights" conceals sovereignty's inherent racist *dispositif* comprising the subjugation of "different" life to the power of death, and also in the process, vindicates (sovereign) necropower from *slaughtering* Arab bodies because a humanitarian discourse (unintended or not) exacerbates the perception of Arab subjects as apolitical objects of sovereignty *a priori* living in a "state of exception".

The subsections entitled *'Necro Humanitarian Cases'* highlights the limitation of conventional humanitarian literature irreflexively naturalizing displaced Arabs as *refugee* by not considering that the original activity of sovereignty needing to produce *homo sacer* is the catalyst for *en-masse* Arab displacement and carnage. This limitation is manifest in three necropolitical cases: 1) the politicization of "cross-border aid" by extending "aid" to *death squads* implicated in producing the displacement crisis, 2) the *de-facto* Rukban "refugee camp" housing *death squads* and taking displaced Arab Syrian citizens as hostages, and finally, 3) humanitarian solutions extended by the UN and UNDP such as the Regional Refugee and Resilience Plan (3RP) prioritizing Arab *resettlement* rather than *repatriation*. These *necro* cases highlight how the logic of sovereignty irreflexively subsuming the phenomena and experience of displaced Arabs as a "humanitarian refugee crisis" exposes the violence of sovereignty as a positivist juridical concept needing to subjugate (Arab) life to the power of death for epistemological coherence. Subsuming Arab displacement using a liberal humanitarian hubristic order enacts a "spatial reversal of the binary citizen-refugee to transform the refugee's *lack* into a *positive* presence" (Nyers, 2006:22; emphases added). Therefore, the ontology of Westphalian "belonging" informing Western modernity's modality of citizenship inherently requires the production of imaginaries depicting the Arab as a threatening fearsome body "contaminating" *national* identity for ontological security. Thus, the relationship between the apolitical identity of the Arab as *refugee* and the Latin-European political identity of *citizen* constitutes an inclusive exclusion maintained by modernity as a liberal-

secular project because "*refugees* are included in the discourse of *'normality'* and *'order'* only by virtue of their *exclusion* from the *normal* identities and *ordered* spaces of the *sovereign state*" (Nyers, 2006:xiii; emphases added).

1. The Arab World from a Bio/Necropolitical Paradigm: Imagining the Arab as *Muselmänner* is the Original Activity of Sovereignty

In the framework of Agamben's and Mbembe's critical investigation of sovereignty, both refer to the categories of life and death as central to the functioning of sovereignty by adopting the notion of biopower/biopolitics conceptualized by Michel Foucault in lectures delivered at the *Collège de France* entitled *Society Must be Defended (*1975-1976) and *The Birth of Biopolitics* (1978-1979). According to Foucault, biopolitics is an endeavor referring to the historical transition altering the objective of governance. Concerning biopolitics and its related concept of biopower, Foucault mentions that it began "in the eighteenth century, to *rationalize* the problems presented to governmental practice by the phenomena characteristic of a group of living human beings constituted as a population: health, sanitation, birthrate, longevity, race" (Foucault, 2003:202; Perezalonso, 2010:150; emphases added). The idea of political rationalization inherent to biopolitics – therefore to modernity as an Enlightened secular project – is linked to Liberalism; considered not as an ideology *per se*, but as "a way of doing things" entailing mechanisms, techniques, and technologies of biopower (Perezalonso, 2010:150).

Consequently, by the 19th century, Foucault claims that the very nature of sovereign power evolved from a Hobbesian stance claiming the "sovereign right to kill" or "right of the sword" to "protect the population", to a new *ratiocinative* right stipulating that sovereign power – that is *biopower* – transformed to having the power to "make live" and "let die" (Foucault, 2003:241). Biopolitics, therefore, arrived with the transformation in waging war from the defence of the sovereign right to kill, to securing the existence of a particular (liberal-secular) race (of people) embodying a "living culture" rationally universalized. This entails a radical (re)problematization of security in that the figure of sovereignty no longer acted to defend their borders but rather acted to ensure the biological continuity and conformity of its population according to rational social norms. As declared by Foucault (2003:81), biopower becoming the prerogative of the sovereign meant that "the State is no longer an instrument that one race uses against another: the State is, and must be, the protector of the integrity, the superiority, and the purity of the race". The reformulation

of the role of the state according to Foucault creates a fundamental contradiction between the biopolitical need to make live and the central positivist idea of the sovereign figure having the right to kill. To solve this apparent contradiction Foucault proposes the application of "race war discourse" where he describes racism as "creating caesuras within the biological continuum addressed by biopower" with racism making the relationship of war "if you want to live, the other must die" compatible with biopolitics since sovereignty evolved – by the 19th century – into becoming a mechanism of power, control, and most importantly, purification (Foucault, 2003:255).

According to Foucault, in the age of biopolitics, wars are no longer "waged in the name of a sovereign who needs to be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of necessity" (as cited in Medovoi, 2007:57). The reconceptualization of sovereignty intrinsic to biopolitics in the 19th century needs to be understood in tandem with racism since cultural relativism is central to the continued functioning of biopolitics in contemporary politics with sovereign exercises in Arabia, for instance, providing a "metric by which social norms can be measured, and from which deviants and abnormal individuals can be targeted and eliminated" (Mason, 2009). Similarly, Mutimer mentions in relation to the war on terror that the neo-Orientalist "race war discourse" connected to the war is "essential to maintaining the regulatory functions of the normalizing society – it is this discourse that makes possible the continued expression of sovereignty in an era of biopolitics" (2007:168). Since sovereignty requires the fabrication of (neo-Orientalist) race war discourses imagining a threatening Other-body for ontological security as mentioned in earlier chapters by creating an external enemy from which "society must be defended", then, sovereignty is the ultimate exercise of power to kill in the name of protecting a *rational* idea stipulating that the *particular* history of Europe is the *general* history of the world (Mamdani, 2004; Minda, 2007; Zembylas, 2010; Al-Kassimi, 2018).

It is important to note that Foucault's conceptualization of sovereignty from a biopolitical lens is interested in analysing rationalizations of governance characterizing liberal-capitalist conditions of freedom typical of Western (liberal) societies. While critics hasten to discredit Foucault by claiming that his work on *biopolitics* is limiting when seeking to examine illiberal practices and technologies of racism adjudicated by "sovereign powers" in post-colonial spaces, Foucault is careful to point out that the change from "sovereign power" to "biopower" are *coeval*

with one another (Foucault, 1970, 2003, 2008). That is, by engaging in the *past* archeology of legal-history, Foucault excavates (rational) sovereign governance properties by stating that sovereignty did not shift from one form of power to another, rather, new forms of power took ascendance while earlier forms continued to exist[122]. Foucault's discussion of biopower is vital when seeking to engage in a theoretical discussion of life and death "in Latin-Europe" and "beyond Latin-Europe" for the reason that the exercise and domineering consequences of *biopower* are also identified in the "Free World". Foucault's concern with liberal-secular societies explains why "Foucault paid such scant attention to what Giorgio Agamben has argued is the exemplary form of modern bio-political governance, the concentration camp: Foucault was much less interested in situations of coercive and totalitarian control, than in power relations which operated within the context of, and through, freedom" (Selby, 2007:331). Put differently, sovereign power evolving into biopower demonstrates the gradual rationalization or secularization of revealed *Law* (i.e., *divine-will*) with *sovereign-will* free to make legal that which is immoral[123]. Therefore, the subsequent discussion of biopolitics seeks not to supplant Foucault's indispensable conceptualization of biopolitics, but rather complement and expand his idea of sovereignty as a juridical concept – moving *across* time – involving technologies of racism and mechanisms of control by injecting the works of Agamben and Mbembe into the discussion of how and why sovereignty assesses what lives are worthy of life while others are identified as *musulmanner* or the *living-dead*.

The principal difference between Agamben and Foucault lies in the indistinctiveness that characterizes "modern" politics. That is, according to Foucault politics by the 18th-19th century *evolved* into biopolitics with sovereignty now placing and including natural life in the control of sovereign power, while Agamben claims that (Latin-European) politics is *inherently* biopolitical (Agamben 1998; Foucault, Ewald, and Fontana, 2008; Vaughan-Williams, 2009). This is clearly stated by Agamben (1998:11, emphases added) when he says "…the production of a biopolitical body is the *original activity* of sovereign power. In this sense, *biopolitics* is at *least* as *old* as the *sovereign exception*. Placing *biological life* at the center of its calculations, the *modern State* therefore does *nothing* other than bring to light the *secret tie uniting power and bare life*…". Agamben is of the opinion that liberal-secular jurisprudence since the beginning of Greco-Roman *rei publicae*, was and continues to be, inherently founded upon a constant positivist binary distinguishing between qualified life found in the polis (*bios)*, and unqualified life banned from

the public eye identified as *bare-life* (Agamben, 1998; Perezalonso, 2010:152). The principal difference between both philosophers is crucial for our discussion of international law and its exclusionary related juridical concept of *sovereignty* and *society* inherently reifying Latin-European philosophical theology. Adopting Agamben's logic of "secular politics" being inherently biopolitical validates the idea discussed in earlier chapters claiming that *jus gentium* being animated by a cultural dynamic of difference necessarily entails that for a (civilized) *society* to live and prosper, other (uncivilized) peoples supposedly embodying unqualified life must be purified and separated from civil life.

Agamben enumerates three categories of life: *zoë*, *bios*, and *bare-life. Zoë* is "life common to all living things" meaning that it is life that is vacant of political content, significance, and cultural attributes (Agamben, 1998a:9). *Zoë* is therefore life that resembles the pre-discursive. On the other hand, *bios* is a "qualified life, a particular way of life" that is discursively recognized as politically charged, culturally endowed, and socially esteemed (Agamben, 1998a:9). The third abstract category of *bare-life* is not only vital in further understanding the other two categories of life, but is most relevant in revealing the "secret tie" uniting sovereign power – bio/necropower – in dehumanizing bodies of the Arab world by rendering them *bare*. Since Agamben identifies the original activity of sovereignty with the constant creation of an unqualified biopolitical body using mechanisms of control and technologies of racism, he explains *bare-life* through political devices identified as the *exception* and the *ban*.

Elevating a body to the exception results in the ban of the unaccultured body from the juridical and social order – this racial exercise produces *bare-life*. *Bare-life* denotes neither *zoë* nor *bios*, it is life that has been banned from international society – therefore *jus gentium* – with "recognized sovereign figures" elevating that body to the exception. Because *zoë* cannot be totally separated from *bios* since exclusion reinforces the relationship with the other object that is included, then the state of exception is coterminous with law since it defines the borders of the normative order (Giodanengo, 2016). The paradox is evident, because *bare-life* is excluded and banned from the juridical and social order by the sovereign who declares the exception, then this means that the body elevated to the exception – *bare-life* – is neither fully excluded nor included but rather occupies a "threshold position" vis-à-vis the social and juridical order. Agamben states that the "state of exception is neither external nor internal to the juridical order, and the problem

of defining it concerns precisely a threshold, or a zone of indifference where inside and outside do not exclude each other but rather blur with each other" (2005:23).

Central to this space of indifference characterizing a state of exception identifying *bare-life* as being an "inclusive exclusion" is the concept of the ban. The concept of the ban – identified in earlier chapters as *Vitorian* moments – is a political device that simultaneously excludes an individual from a community while defining that very exclusion through a continued relation with it since not being part of a society defines the banned body in terms of that society from which his/her culture is outlawed/banned (Giordanengo, 2016). The ban is conceptually connected to the state of exception not simply because they "both produce the exclusion of an object from a realm through the continuous reference to that context", but at a more esoteric level it is because, "they both perform the function of constituting a social group by exploiting the fear of the diverse, of the inhuman, the-different-from-us" (Giordanengo, 2016). Agamben argues that *bare-life* is life that can be killed with impunity and disposed of without juridical or social consequences since the state of exception is "not a special kind of law (like the law of war); rather, in so far as it is a suspension of the juridical order itself, it defines the law's threshold or limit concept" (Agamben, 2005:4). He continues by saying that the exception has ceased to be the "threshold that guarantees the articulation between an inside and an outside" as posed by Schmitt (2006), but rather is a "zone of absolute indeterminacy between anomie and law, in which [life and law] are caught up in a single catastrophe (2005:57). Therefore, the consequence of a sovereign figure declaring the exception on the body identified as *bare-life* – the Arab in our case – is the constant possibility of being exposed to death which is a possibility sustained by a sovereign figure who holds the exclusive *legal* right to decide on the exception. Vaughan-Williams accurately states that the meaning of *bare-life* is not in the reduction of *bios* to *zoë*, but in the indistinction between the two. He says that "*bare life* is a form of life that is amenable to the sway of the sovereign power because it is banned from the realm of law and politics…*whenever* and *wherever* the law is suspended" (2008:333; emphases added).

Since we are engaging in a genealogical inquiry that commits to a hermeneutics of suspicion and the legal-historical sin of being anachronic thus making salient the original activity of sovereignty imagining the Arab subject as *homo sacer* living their life as *bare-life*, it is perhaps apt to excavate the term *muselmänner* to further our inquiry in deconstructing *race* as an essential *necrometric* deciding which bodies are vacant of the spirit of *life*. The term *muselmann* (pl.

Muselmänner) was used by prisoners and guards in Auschwitz to refer to prisoners inhabiting the concentration camp who have been reduced to no more than a shadow by starvation, exhaustion, and hopelessness (Agamben, 1998b; Anidjar, 2003; Rana, 2007; Skitolsky, 2012). While the term Muselmann is used in German to mean Muslim, similar to the French language which uses term Musulmane, the usage of the term *muselmann* did not directly refer to inhabitants of the camp practicing Islam *per se* (Levi, 1947). The term muselmann, according to Ryn and Kłodziński (1983), spread across all concentration camps including other similar terms. For instance, in the Majdanek camp, the *muselmänner* were called "donkeys", in Dachau "imbeciles", in Stutthof "crippled", and in Buchenwald "tired sheikhs".

The pressing question however is what happened to these prisoners and/or what was identified in these prisoners that made referencing Islam and Arab cultural mores from a reductionist lens a most appropriate label for this category of prisoners? While it was clear that the *muselmann* were too weak to work since they were suffering from physical and mental conditions caused by hunger, it was also their awareness of the hopelessness of their situation that was grounded in their daily lives by the extreme dehumanization they endured. According to Skitolsky (2012:74), *muselmänner* were also called the "walking dead" because they acted as a deterrent and/or an incentive for other prisoners by reminding them to continue resisting dehumanization at all costs. The *muselmann* was a painful reminder to others of the pain involving the slow process of death, yet at the same time, the *muselmann* was also a body for whom lethargy could be shown since it was supposedly their fault that they lost the *will* to live.

In this sense, the *muselmänner* foreshadows the death of others but also figures to other prisoner's how their death would look like if they lost the *will* to live. It should be evident that the term *muselmänner* relates to the process of "inclusive exclusion" *par excellence* since people in the camp can only keep their idea of humanity by excluding a category of people who according to them have lost all sense of the discursive qualified human spirit. Arab-Islamic philosophical theology was once again abstractedly represented in Latin-European legal-historicism – at the dawn of the 20th century – as representing the ultimate frontier of inhumanity by constructing essentialist imaginaries of Arab civilization reminiscent of reductionist categories adopted in earlier "secular" and "non-secular" centuries (i.e., *Saracen, Mahometan, Mohammedan, Black, Turk*, etc.) (Beckett, 2003; Akbari, 2012). According to Agamben, the most likely explanation for adopting the term *muselmann* can be found "in the literal meaning of the Arabic word Muslim: the

one who submits unconditionally to the will of God. It is this meaning that lies at the origins of the legends concerning Islam's supposed fatalism, legends which are found in European cultures starting with the Middle Ages" (1998b:45). Similarly, Doerr (2009) explains that the *muselmänner* looked from a distance like an Arab-Muslim because of their "kneeling" and "rocking motion" as noticed in Islamic praying rituals[124]. Also, since neo-Orientalist representations and medieval European imaginaries construct the Arab-Muslim as *Saracen* and as surrendering to their fate (*kismet)*, the *muselmann* then refers to those who have resigned themselves to their fate (fatalistic) – literally and figuratively – and have lost the *will* to live (Tolan, 2002; Beckett, 2003; Doerr, 2009)[125].

An anachronic legal-historical "revelation" is apparent when we notice how the word *muselmann* highlights how Muslims and Jews have a common biopolitical history in relation to Latin-Europe. While Arabs in general, and Muslims in particular, were and continue to be seen as an internal and external enemy of Latin-Europe, Jews were perceived as the enemy within (Rana, 2007). In the camps, the terms "Jew" and "Muselmann" stood in relation to death with the latter being the most despised prisoner (Rana, 2007). The term *muselmann* conceptualized as a "double-absence" reveals the lack of visibility and attention in writings about Auschwitz as well as the lack of references to philosophical theology in writing about the phenomenon (Anidjar, 2003). The figure of *muselmann* whether pertaining to Muslims or Jews is essential in understanding the modern *ratiocinated* philosophical idea of belonging such as "citizenship" intrinsic to the Westphalian ontology of the *nation-state* as both culturalist enmities have a long history in actualizing the logic of sovereignty and its inherent technology of racism. However, appropriating the term Muselmann is telling of how Islamophobia and Islamophilia was in the past and continues in the present to imagine Arabs and Muslims using cultural relativist imaginaries as *homo sacer* for the coherence of *jus gentium* and its rational philosophical theology (Anidjar, 2003; Rana 2007; Doerr, 2009). These imaginaries affirm that Muslims are the enemy "inside" and "outside" Europe not simply because of their perceived "weakness of mind", but because their supposed degenerative temporal position would infect Europeans as highlighted for instance with the great Osmanli Caliphate being pejoratively called the "sick man of Europe" (Goffman, 2002; Anidjar, 2003).

Therefore, there is an intimate genealogical relationship between Jews and Muslims in the process of essentialization leading to racial categorization and dehumanization. The *muselmann*

body being classified as the ultimate "Other" in the camp highlights how modes of categorization pertain to a variety of ideas constellating biology, kinship, and culture since it is a term that is not referring to Islamic Jurisprudence *per se*, but is most specifically referring to *Semitic Saracen* mythologized physical qualities and their associated deterministic psychological qualities (Tolan, 2002; Beckett, 2003; Rana, 2007). The "camp" is not merely the place of *death*, but it is above all "the site of the production of the Muselmann" (Agamben, 1998a:85). Agamben further explores the concept of *muselmann* by identifying it as an unassigned "bare naked life/abject life" stripped of all personality (Agamben, 1998a, 1998b). The *muselmann* is the witness who cannot testify and from whom no testimony can be taken, because their "Arab-Islamist mind" mentally incapacitates them, thereby depriving them of the power of "knowing" *life* and embodying the spirit of *life*.

The *muselmann* as an unthinking abject lesson in bare-life situated in the "camp" is "the final biopolitical substance to be isolated in the biological continuum" (Agamben, 1998b: 85). For beyond the *muselmann*, "lies only the gas chamber" (Agamben, 1998b:85; Chare, 2006). The *muselmann* is "the absolutely unwitnessable, invisible ark of bio-power" (Agamben, 1998b:156). The *muselmann* "neither speaks nor thinks; it is no longer human yet is not natural life" (Chare, 2006:45). The *muselmann* is not "an extrapolitical, natural fact" but exists rather as a threshold body elevated to a state of exception situated in a zone of humanity and inhumanity, between *zoë* and *bios* (Agamben, 1998a:171). The *muselmann* is therefore a figure that seeks to identify the "limit of meaning" by combining all the different elements of the camp by having a label for the strongest witness of the atrocity but at the same time refusing to acknowledge its potential meaning (Chare, 2006; Engelke and Tomlinson, 2006). In using the label *muselmann*, WWII prisoners and guards constructed a new category for people slipping into a state of exception positioning the bodies in a threshold space categorizing such prisoners as *homo sacer* or sub-human (Germ. *Untermensch*). The muselmänner, therefore, is *homo sacer*; a figure banned from the juridical and social order by being situated in a space of indistinction where its *bare-life* can be killed without *that* killing constituting *homicide*.

Biopolitics then takes place in a zone of indistinction between violence and law and it is the *camp* – the fundamental biopolitical (spatial) paradigm of *ratiocinated* secular modernity – where sovereign practices of death situate *bare-life*. According to Agamben, the camp is the space unlocked when the exception becomes the norm or the preferred device adopted to "hold together the two aspects of the juridico-political machine…anomie and nomos" (Agamben, 2005:86). Also,

what is characteristic of the camp is the indistinguishability of *nomos* (law) and *anomie* (life), in which *bare-life* becomes the "threshold in which law constantly passes over into fact and fact into law" (Agamben, 1998a: 171). The exercise of *biopower* after the war on terror and more evidently after the "Islamist Winter" showcases Arab spaces becoming in totality imagined as a "geography of exception" or a "camp" within which sovereign decision making is "produced by a permanent state of exception, and where law exists only through its endless strategic (dis)application" (Minca, 2007:78).

The "camp" – or "Arabia" – imagined as a "geography" inhabited by bodies elevated to the exception highlights that sovereignty privileges some bodies over others thereby providing a rationale for the violent demise of Arab-Others to secure "living-life" outside the camp and "inside" *jus gentium* (Campbell, 2007; Isin and Rygiel, 2007; Perezalonso, 2010; Agathangelou, 2011). Since the logic of sovereignty is the production, isolation, and abandonment of *bare-life* as an exception, Agamben identifies the concept of *bare-life* with "sacred life" – a legal form of Roman law known as *homo sacer*. He says concerning *homo sacer* that it is "invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses precisely both life's subjection to a power over death and life's irreparable exposure in the relation of abandonment" (Agamben, 1998a:53). With *bare-life* excluded from the juridical and social order by being the bearer of the sovereign exception and ban, then it is life that can be killed but not sacrificed; life that can be killed without *that* killing constituting murder. With this claim Agamben lays bare the *sub rosa*[126] politics of sovereignty which while sustaining a certain "universal" idea of life, infinitely exposes the figure of *homo sacer* – unqualified Arab life – to death. In other words, the *telos* of history reifying a liberal-secular philosophical theology by having a monopoly on the "particular" mode of *Being* informing modern and civil status requires the *death* of the (premodern) Arab *Saracen* for the (modern) Latin-European *Self* to ontologically be a-live and structurally possible.

The body of the Arab as *muselmann* is excluded both from universal law and divine law by lying at the "intersection of a capacity to be killed and yet not sacrificed, outside both human and divine law"[127] (Agamben, 1998a:48). Therefore, *homo sacer* is a figure that when killed no *legal* consequences can be accounted for, and if it lives, it has no religious value because it cannot be presented as a sacrifice (Chakkour, 2015). The figure of *homo sacer* is therefore a vulnerable figure that leads its life as *bare-life* since it is abandoned by law (its death unpunishable) and

religious order (deprived of sacrificial value). The life of *homo sacer* then exists both inside and outside the social and juridical order simultaneously as elaborated earlier with the state of exception informing the "inclusive exclusion" *dispositif* necessary for the coherence of *jus gentium*. The figure is outside because of the banning device, and inside because the absence of any consequential repercussion of its killing always remains a possibility (Chakkour, 2015). Since the figure of *homo sacer* is the bearer of the sovereign ban, then the space *bare-life* assumes is no longer the infinite possibility of exposure to death but the *de facto* actuality of an exposure to death (Chakkour, 2015). In other words, because the sovereign declares the exception and operates directly on questions of life and death using law's situated in *jus gentium*, then *homo sacer* is a figure that assumes the position of the *living-dead* by representing the line of distinction between life that is worth living, and life worthy of death maintained and policed by *jus gentium*.

While the work of Foucault and Agamben are indispensable in attempting to critically engage how *biopower* figures on the Arab body by rendering it *muselmann*, conjoining the work of Foucault and Agamben on *life* and *death* with Achiles Mbembe's conceptualization of sovereignty as *necropolitical* is equally essential in deconstructing the technology of racism and techniques of subjugation evident in social realities located in post-colonial Arab space particularly after the "Islamist Winter" of 2011. Mbembe's work does not discredit the Foucauldian idea of biopower but rather is an entry to consider how sovereign extrajudicial measures taking place in formally decolonized worlds contain a racist *rationale* revealing political devices activating the sovereign *right to kill* by using racism as a technology of power producing *death-worlds* where sovereignty operates using *necropower* rather than *biopower*. Put differently, approaching neo-Orientalist discourses imagining the Arab world since 9/11 from a necropolitical lens induces that "Arab-Islamist" mythologies elevated the Arab body to the exception thus in the process transformed Arabia into a *necropolis* inhabiting the *walking-dead*. These essentialist constructions made inhabitants of Arabia targets of *death* rather than *life* with sovereign figures exercising *necropower* on Arab subjects because they are relegated to a zone of indistinction banned from the juridical and social order. Therefore, through a necropolitical lens, the doctrine of PEDS, the legal principles of Bethlehem, and covert operations authorizing *war-machines* such as operation Timber Sycamore, are legal-historical moments highlighting sovereignty performing its original activity in needing to produce *muselmänner* by adjudicating legal doctrines that make the violent discarding of Arab bodies and subjugation of Arab life to the power of death (i.e., *necropower)*

necessary for the coherence of *jus gentium*. Arab *life* discursively imagined as temporally degenerative using neo-Orientalist symbolic power develops a deterministic reality making legally palatable the subjugation of Arab life to the power of death. This culturalist narrative constructing inhabitants of Arabia as *homo sacer* living their life as *bare-life*, therefore, makes their *exodus* and *slaying* essentially inconsequential, but necessary for the "order of things" (Bauman, 2003).

Therefore, Mbembe's main break with Agamben generally, but Foucault especially, is that he is interested in revealing how *sovereignty* targets *death* rather than *life* with sovereignty being originally materialized as the ability "to kill and to let live" or as "…the power and the capacity to dictate *who may live* and *who must die*" (Mbembe, 2003:11; emphases added). Mbembe identifies *death* as containing a technological dimension and the "space in which freedom and negation operate" (2003:39). Mbembe's work suggests that we consider *necropower* rather than simply *biopower* as the main analytical tool in seeking to understand how *necropolitics* targets *death* rather than *life* in formally decolonized spaces. This is evidenced, for instance, in Arabia with the founding of Israel in 1948 based on a right-wing nationalist ideology (i.e., Zionism) occurring simultaneously with Mandate sovereign states (i.e., France and Britain) hiring *death squads* (i.e. Haganah, Lehi, and Irgun) to exercise *necropower* resulting in demographic transfers and geographic partitioning of the Arab *Ummah* thus accentuating the inherent violence of a Westphalian *de jure* ontology of governance (Mbembe, 2003)[128].

While Mbembe returns to Foucault's main idea of biopolitics, Mbembe conceptualizes it as *death* being captured and subjugated by *power* rather than *power* capturing and subjugating *life* to make sense of a (neo)liberal era of globalized terror and insecurity. He states that to practice sovereignty is to "exercise control over mortality and to define life as the deployment and manifestation of power" (Mbembe, 2003:12). Mbembe suggests the concept of necropower to identify illiberal practices enacted by "recognized sovereign figures" by stressing that the "generalized instrumentalization of human existence and the material destruction of human bodies and populations" is the central project of sovereign power rather than liberty and freedom, since as mentioned earlier, necropower is the space where freedom and negation operate with necropower taking place in a space where technologies of control strategically subjugate Arab life to the power of death (Mbembe, 2003:14). By looking at *death-worlds* imagined as accenting spaces that do not inhabit rational subjects, Mbembe comments on the role of necropower – the space of death – in configuring social, economic, and political relations. The creation of *death-*

worlds dictates that life as a force is not targeted by power, but rather it is death that is being deployed (Mbembe, 2003; Chakkour, 2015). Mbembe's emphases on sovereignty being a mechanism of power and control that targets death rather than life is revealed when he asks: "What place is given to *life*, *death*, and the *human body* (in particular the wounded or slain body)? How are they inscribed in the order of power" (Mbembe, 2003:12, emphases added). Here, Mbembe attempts to sketch out for the reader how *necropower* delineates the place of life and death in the order of power by attempting to identify how some bodies are targeted by *death* because they are not "qualified" bodies. This implies that the life that *lives* and the life that *dies* is inscribed as possessing different value/worth in a liberal-secular hierarchical order of *Being*. Motivated thus, injecting necropolitics as a concept to deconstruct the treatment of Arabs by *jus gentium* since formal "independence" took place is further ameliorated with Mbembe connecting sovereignty – similar to Agamben – to the state of exception.

Mbembe takes up the secular philosophical project conceptualizing the relationship between subjectivity and death inherent to sovereignty as a positivist juridical concept by stressing the intrinsic link between *modernity* and *terror* thus connecting sovereignty to the state of exception. With the main attribute of sovereignty being "to kill and to allow to live" or the power to subjugate life to the power of death (Mbembe, 2003:12), then, the relation of sovereignty to the state of exception becomes a requisite in examining modernity as a liberal secular project and its relationship between life and death as material scientific concepts. Mbembe's necropolitics "draws on the concept of biopower and explores its relation to notions of sovereignty (imperium) and the state of exception" (2003:12) in order to answer questions concerning the politics of *death*. The state of exception activates *necropower* and grants it the energy to dictate which lives must die for modern life to live. Since sovereignty is the manifestation of power by instrumentalizing life and death, then life and death are not just "forces" existing autonomously but rather become domains in which power can circulate and renders them devices by which necropower is conducted. To materially locate spaces of exception informing necropolitics, Mbembe asks: "under what practical conditions is the right to kill, to allow to live, or to expose to death exercised?" (Mbembe, 2003:12).

For Mbembe, the circulation of necropower – accenting a state of exception – requires "racism" as a technology and the "relation of enmity" as a mechanism with sovereignty acting as process of separation by being constituted by the "will and the capacity to kill in order to live"

(Mbembe, 2003:18). Racism serves as a technological filter for sovereign figures deciding what lives are necessary to eliminate for other lives to live. Racism then serves as a "filtering system" separating pure from impure bodies thereby developing the "unqualified profile" put to *death*. Mbembe, similar to Foucault, places racism at the center of his project concerned with necropolitics by stating "Indeed, in Foucault's terms, racism is above all a technology aimed at permitting the exercise of biopower, 'that old sovereign right of death.' In the economy of biopower, the function of racism is to regulate the distribution of death and to make possible the murderous functions of the state. It is, he says, 'the condition for the acceptability of putting to death'" (Mbembe, 2003:17). In addition to the technology of racism, the relation of enmity also characterizes spaces of exception by perceiving the Arab as a danger not only to one's safety, but to one's life. That is to say that the logic of enmity declares that the body of the Arab-Other is not threatening *some* aspects of national safety, but rather is a threat to all the safety of living life. Here, the elimination or quarantining of the ontologically dead body becomes not only necessary, but is one of the "many imaginaries of sovereignty" characterizing its relation with a state of exception (Mbembe, 2003:18).

According to Mbembe, the modern colonial occupation of Arab or other post-colonial spaces serve as "manifestations of the state of exception" (Mbembe, 2003:22) by arguing that formally decolonized spaces are "the location par excellence where the controls and guarantees of judicial order can be suspended" (Mbembe, 2003:24). With ethics of *just war* only applying to "civilized states", then, *necropower* exercised by a sovereign figure is the primary "means of exchange" governing relations with post-colonial spaces (Mbembe, 2001, 2003, 2019; Orend, 2006). Mbembe invokes the example of the native "slave" or "savage" that lies between subjecthood and objecthood to identify the cultural traits of bodies elevated to a zone of indistinction. The establishment of the state of exception invokes according to Mbembe the idea of "inhumanity" by producing the figure of the slave within this threshold position leaving it swinging between subjecthood and objecthood (Mbembe, 2003:20). Designating Arab and African spaces as the location situating the "most accomplished form of necropower" (Mbembe, 2003:27) explains how *war-machines*/*death squads* came to be imagined as a "rational" option supposedly necessary in purifying inhabitants of Arabia from their "Arab Islamist culture". Arabia was transformed into a *death-world* because its inhabitants are perceived not as *living* bodies but *dead* bodies which *necropower* could, and should, target. Since "savage" (premodern) cultures are

viewed as the *living-dead*, "colonial wars are conceived as the expression of an absolute history that sets the conqueror against an absolute enemy" (Mbembe, 2003:25). *Sovereign-will* wielding its right to kill in order to rule post-colonial spaces through terror or the circulation of necropower transforms the liberal-secular conception of sovereignty into "the capacity to define who matters and who does not, who is disposable and who is not" (Mbembe, 2003:27).

While Mbembe argues – *contra* Foucault – that sovereignty includes mechanisms of control and domination that do not target life in its capacity to *live*, but rather in its capacity to *die*, Mbembe, similar to Agamben's concept of the *homo sacer* living its life as *bare-life*, conceptualizes the bodies inhabiting a space of exception evoking *necropower* as the "slained-bodies", "disposable-bodies", or "living-dead" (Mbembe, 2003: 26-27, 39). The slained-body being a product of, and consisting in, sovereign figures exercising necropower emitting admiration to technologies of racism and enmity reveals that the ontologically dead body is *a priori* part of a "structured" positivist juridical system with *necropower* itself structured unfavorably towards *particular* bodies as opposed to others for "structural coherence". That is, *premodern* Arab bodies filtered and hierarchized through technologies of racism and mechanisms of enmity are the bearer of the sovereign ban and therefore are the bearers of the indeterminate exposure to *death*. Therefore, the Arab as *homo sacer*, like the living-dead, is a figure located in a space of exception (i.e., abject space) because their temporal degeneration makes them insignificant in the *rational* order of power as exemplified in their "threshold position" making their slaughter not constitute *homicide* as they are simultaneously *inside* and *outside* the juridical and social order (i.e., *inclusive exclusion*). As bearers of sovereign death, the body of the Arab as the *living-dead* corresponds to the threshold position exemplified in *homo sacer* positioned in an indeterminate position with death and life fundamentally meaning the same thing with the former force being unpunishable and the latter force without value (Chakkour, 2015). The *living-dead* for Mbembe, like *muselmänner* for Agamben, is deprived of both categories of life known as *bios* and *zoë*, therefore, its value is essentially *bare-life.*

The exponential rate of dead bodies produced in post-colonial Arab spaces is the result of a de-monopolization of violence carried out "invisibly" (Mbembe, 2003:30; Al-Kassimi, 2015). The *death* of an Arab subject – whether visibly on land or (in)visibly in the sea – is *legally* inconsequential because the Arab imagined as *muselmänner* holds an indeterminate *inclusive exclusion* position in relation to *jus gentium* situating them in a threshold position for the *coherence*

of Latin-European philosophical theology. The "invisibility" of dead Arab bodies is a result of the modernization of killing being a concatenation of necropower, exception, enmity, and racism with populations put to *death* being neither *just* enemies nor criminals from a positivist jurisprudent sense, but wasted lives. In illustrating that "late-modern colonial occupation differs in many ways from early-modern occupation, particularly in its combining of the disciplinary, the biopolitical, and the necropolitical" (Mbembe, 2003:27), Mbembe evokes the concept of the "war machine" following Agamben, Deleuze, and Guattari to describe violence and domination identified in *death-worlds* situated in formally decolonized (Arab) space. Mbembe argues that rational European jurisprudence, philosophy, and mythological imaginaries always perceive their colonies as sites "where sovereignty consists fundamentally in the exercise of a power outside the law (ab legibus solutus) and where 'peace' is more likely to take on the face of a 'war without end.'" (Mbembe, 2003:23). With post-colonial spaces identified as witnessing the ultimate expression of a state of exception, the violence dominating these spaces is not so much different from former colonial ventures highlighted in earlier chapters since the process of "dehumanization" is the sovereign exercise declaring the "bodily exception" and sovereignty revealing that it is inherently a "killing machine" (Agamben, 2005:86). The idea of *war-machines* killing Arab bodies to uphold the health of *jus gentium* is important to keep in mind thus deconstructing how the Arab uprisings becoming synonymous with an "Islamist threat" essentially elevated Arabia to a state of exception by imagining its inhabitants as populating a *camp* thereby in the process making it legal (i.e., Bethlehem principles) for *war-machines* to pre-emptively overrun Arab bodies (i.e., operation Timber Sycamore).

2. *War-Machines* Exercising Necropower & Forcing Arabs into Displacement: A Liberal Humanitarian Narrative Obfuscates Sovereignty Inherently Imagining the Arab Subject as *Muselmänner* for Ontological Coherence

According to Mbembe, war-machines are "made up of segments of armed men that split up or merge with one another depending on the tasks to be carried out and the circumstances…Their relation to space is mobile. Sometimes, they enjoy complex links with state forms (from autonomy to incorporation). The state may, of its own doing, transform itself into a war machine. It may moreover appropriate to itself an existing war machine or help to create one" (2003:32). Therefore, the *death squad* option discussed in chapter IV using a *necropolitical* paradigm of analysis is more accurately identified as war-machine since they are agents exercising terror and proliferating the *pathos* of fear required for initiating displacement. Sovereign figures

hiring *death squads* involved in operation Timber Sycamore informing technologies of racism are funded by the extraction and looting of natural resources and historical artifacts – a form of "necrocapitalism"[129] – thus highlighting how spaces of exception are "privileged spaces of war and death" (Mbembe, 2003:33; Banerjee, 2008). Death squads, like war-machines, characterize agents of terror authorized by sovereign figures subjugating Arab life to the power of death (necropolitics) thereby multiplying Arab capitals becoming *necropolises* following the "Islamist Winter" of 2011. Hiring killing-machines (re)affirms the original activity of sovereignty being the production of the living-dead thereby making rational living-life "healthier and purer". Since "Islamist" imaginaries figuring Arabs as *homo sacer* are representations that preceded the legal adjudication of operation Timber Sycamore using the Bethlehem Principles, then, selecting war-machines to engage in necropower according to a positivist *jus gentium* was *ipso facto* a rational *legal* possibility assisting in the cultural "purification" and temporal "development" of Arabia.

The human carnage and displacement accenting Arabia after the war on terror in 2001 and the "Islamist Winter" of 2011 featuring sovereign figures hiring *war-machines* to *redeem* Arabia are the most recent legal expressions of *necropower* exercised on Arab bodies. The attacks of 9/11 were founded on hegemonic culturalist imaginaries of Arab civilization that transformed Arab cultural differences into exceptional legal differences thus managing Arabs and Muslims as a "threshold body" threatening not only Latin-European hegemony in Arabia, but also the liberal values of freedom and liberty characterizing liberal-secular modernity. The Bush Doctrine – articulated in the National Security Strategy (NSS) of 2002 and reaffirmed in the Bethlehem Principles of 2012 – explains that "in the war against global terrorism, we will never forget that we are ultimately fighting for *our democratic values* and *way of life"* (Bush, 2002). The reformulation of international law following 9/11 in bypassing Article 51 of the UN charter by expanding the legal use of force is arguably one of the most salient sovereign gestures highlighting that the original activity of sovereignty requires producing *homo sacer* and that "modern" *jus gentium* can scarcely remain coherent without its purpose involving technologies of racism and mechanism of enmity producing deterministic imaginaries making legal the subjugation of Arab life to the power of death.

The doctrine of pre-emptive defense targeting Arab bodies since 2003 is an exceptional sovereign measure highlighting the original activity of sovereignty imagining Arab-Muslims as *muselmänner* with *law* becoming irrelevant and suspended *vis-à-vis* the Arab subject since legal

reformulations essentially decided that Latin-European society *must* be defended from the threat imposed by Arab civilization and the only recourse to saving society is by elevating inhabitants of the *Mashreq* and *Maghreb* to a state of exception. The doctrine of pre-emptive defense reaffirms the inherent necropower of liberal-secular juridical concepts such as sovereignty and just war by claiming that the temporal position of Arab epistemology is an "immanent threat" to the "order" and "structure" of *jus gentium*. This raises compelling bio/necropolitical arguments concerned with critiquing how redemptive self-defence taking the form of exceptional measures such as slaughter, torture, detention, and rendition are cumulatively better understood as instances of necropower willed by sovereign figures, rather than moments addressed as simply "illegal" under international law. The term "illegal" is limiting because Arab bodies are *a priori* imagined as a necessary "double-absence" for the coherence and order of positivist legal principles maintained by (a necropolitical) *jus gentium*. Such "double absence" perceives Arabs as neither legal nor illegal, neither *bios* nor *zoë*, neither "inside" nor "outside" law but rather an abject-Other located in a zone of indistinction banned from the juridical and social realm.

Therefore, identifying consequences of necropower as "illegal" makes possible technocratic language influenced by positivist logic describing, for instance, the death of Arabs as simply "collateral damage" or displaced Arabs consisting of "refugees". The problem-solving lexicon vindicates sovereign figures implicated in authorizing war-machines neutralizing those "outside" law for modern society to live. The war on terror and the "Islamist Winter" reaffirm that *jus gentium* continues to enable a recourse in producing *slain-bodies* by hiring "body-guards" authorized to purify contaminated Arab *geography*. These "body-guards" (i.e., war-machines) exercise necropower on Arabs by referencing reductionist discourses claiming that their bodies constitute a threat, an emergency, or a crisis for the health of a *rational* civilized society. In other words, the recourse to exceptional practices made legal by PEDS and doctrines of Bethlehem are "law" because Arabs and Muslims are necessarily imagined as an inclusive exclusion body permanently located at a threshold (Fiddian-Qasmiyeh, 2015).

While it is accurate to claim that exceptional policies are not exclusively practiced or limited to the international sphere but also found in the domestic sphere – as noted with the (militarized) pedagogy of civil law-enforcement agencies *presuming* national-citizens as a threat to national security – *jus gentium*, however, has continuously imagined and subscribed the realm "outside" its borders, or "outside" Latin-Europe, as *temporally* degenerative for (national) internal

coherence (Aradau and Munster, 2009; Jouannet, 2009; Orford, 2011; Al-Kassimi, 2018). This claim is affirmed when we notice that international law and the *telos* of modernity derived from naturalist and positivist scholastics are based on a liberal-secular intellect claiming that "exceptions may be enacted as a claim about *inhumanity*" (Walker, 2006:76). While exceptional policies are adopted domestically, it is the international space, or more specifically, the post-colonial space that indicates and endures the most extreme deadly practices of *sovereign-willed* necropower. Claims about "inhumanity" is highlighted with sovereign figures designating Arab culture as embodying (foreign) primitive strangers, described as bodies threatening the most progressive rational (Westphalian) imaginary of belonging informing national-citizenship. Authorizing the deadly measures informing operation Timber Sycamore were *legal* according to *jus gentium* because inhabitants of Arabia are excluded from the international community, or more specifically, are not perceived as "qualified subjects" (i.e., citizens) of a society. Arabia was imagined as being inhabited by disposable lives, its subjects treated as human waste that are superfluously unnecessary for international law – but simultaneously a necessary part of its whole (Bauman, 2003).

Bauman (2003:33) alludes to the inevitable inclusive exclusion paradox inherent to modernity as a teleological narrative by stating that its "outcasts or superfluous lives" are the "waste of order-building combined into the main preoccupation and meta-function of the state, as well as providing the foundation for its claim to authority". The technology of racism informing liberal-secular policies such as "imperial lite", "liberal interventionism", or "responsibility to protect" adopted to operationalize legal principles informing PEDS or Bethlehem are prominent legal discursive formulations that preceded the authorization of *war-machines* thus exposing the violent *necropolitical* fact of sovereignty and international law needing to imagine Arab bodies as an inclusive exclusion for the order-making of modernity as a liberal-secular project (Bauman, 1989). After all, Agamben's theory of sovereign power is temporally based on the political device of the "ban" and the "camp" as a paradigm of "modern politics" (Minca, 2007:78). These exceptional mechanisms, devices, and technologies demand *culture talk* for slaughtering machines to operationalize an "exceptional war" claiming that Arab bodies are disposable and reducible to *bare-life* (Perezalonso, 2010; Jabri, 2013 Mbembe, 2019).

The terror, torture, dispossession, and death produced by *war-machines* during the Iraq war, but more evidently following the "momentary Arab Spring" of 2011, developed spaces that

became immune from legal, juridical, and political intervention. The permanent transgression of Arab "sovereignty" became the *rule* rather than the *exception*. Former Arab colonies became spaces where technologies of racism were deployed in the interest of maximum destruction and the transformation of Arab spaces into "modern Dresdens" (Mbembe, 2019; Allen, 2019). Post-colonial geographies are suitable for such form of subjugation of life to the power of death because these spaces are necessarily imagined as "inside/outside" international law. This is made evident with sovereign figures intentionally authorizing agents of violence lacking in the *arts of war*. The *necropower* transforming the Arab world into a *necropolis* is legally sanctioned because in the imagination of *ratiocentric* philosophical theology the savage life is just another form of animal life, a horrifying experience, something alien, beyond imagination or comprehension. The *necro* symbolic power of neo-Orientalist discourses depicting Arabs as barbarians stuck in a state of nature lacking discursiveness makes it that "when European men massacre[e] them they were not aware that they had committed murder" (Mbembe, 2003:24).

One of the features of the creation of *death-worlds* manifest in operation Timber Sycamore is that it is characteristic of the new wars of globalization informing a biometric evaluation testing "cultural purity" before violent engagement. The failure of such *necro* examination rationally permits Western sovereign figures to forcibly de-monopolize violence by hiring private terrorists to kill and obliterate the "Arab-Islamist threat" (Mamdani, 2002; Mbembe, 2003, 2019; Banerjee, 2008; Forte, 2018).) New wars of globalization are characterized by "death-world[s]" whose agents of violence (i.e., war-machines) perform necropower on behalf of sovereign figures thereby making them immune to any judicial process (Mbembe 2003:32, 40). In a *death-world*, the actions of PMC's or "Islamist" death squads are "above the law" because sovereignty has declared the Arab as being located in a state of exception. As highlighted in operation Timber Sycamore in the previous chapter and by Mbembe (2003:32), in post-colonial spaces such as Arabia, violence is bought and sold in a market in which the "identity of suppliers and purchasers means almost nothing…private armies…private security firms…all claim the right to exercise violence or to kill".

According to Bauman (2001:15), an important feature of the age of global violent mobility – inherent to modernity as a liberal-secular project – is that with the exercise of the right to kill being pre-emptive, death squads partaking in this never-ending-war rest "their superiority over the settled population on the speed of their own movement; their own ability to descend from nowhere

without notice and vanish again without warning, their ability to travel light and not to bother with the kind of belongings which confine the mobility and the maneuvering potential of the sedentary people". The usurpation of natural resources and the slaughtering of millions of Arabs using sovereign authorized *war-machines* through operation Timber Sycamore is pre-emptively *legal* because according to Principle 8 of the Bethlehem doctrine their temporal cultural coordinates constitutes an "immanent threat". This *ratiocinated* deduction exposes the inherent racism and violence of (liberal-secular) "modernity" as a *telos* by affirming that sovereignty as a juridical concept is in fact *necropolitical* (Bauman 2000, 2001, 2003; Mbembe 2003, 2019; Mamdani, 2004, 2011; Banerjee 2008; Weheliye, 2014).

The paradox of sovereign power being at the same time the law, and above the law, reveals that positivist jurisprudence permanently imagines relations with Arabia as involving a permanent state of exception (Anghie, 2009). A discourse of a constant state of exception enables intervention to respect no limits since nothing is "too insignificant or marginal to evade intervention" (Perezalonso, 2010:159). Similarly, Borch (2005:102) argues that the idea of pre-emptive and preventative war becoming *law* has no limits as it amounts to a "biopolitical power that contains totalitarian traits…controlling possible forms of behavior and abolishing the uncontrollable before they become a problem". The exceptional Bethlehem legal principles adopted in 2012 by international sovereign figures paying homage to pre-emptive defense strategy (PEDS) highlights the exclusionary *dispositif* of sovereignty as a necropolitical concept in maintaining itself in relation to the norm/rule by accentuating that while the sovereign ban amounts to a zone of indistinction between nature and right, it presupposes the juridical order in the form of its suspension (Agamben, 1998a; Perezalonso, 2010:158). Agamben makes this clear when he says that with the "exception" being the structure of sovereignty this means that sovereignty is not exclusively a political and juridical concept, but "the original structure in which law refers to life and includes it in itself by suspending it" (Agamben, 1998a:28)

Practicing exceptional deadly measures on Arab bodies would not be possible without technologies of racism making it *legally* palatable as highlighted with neo-Orientalist discourses (re)affirming Arab epistemology (Ar. نظرية المعرفة العربية) as a threat to "modern" ratiocinated philosophical theology. Narratives employing technologies of racism and mechanisms of enmity allow redemptive intervention, a liberal civilization mission, and a humanitarian intervention to become a "just" response to a "crisis or emergency" because "every danger may in some sense

evolve into crime or tragedy" (Perezalonso, 2010:158). Through these discourses Western powers elevated the whole of Arabia to a state of exception thereby making the *slaughter* of Arab bodies *legally* inconsequential because they are figured as *homo sacer* living an invaluable wasted-life. Situating the Arab body in a zone of indistinction by being neither *bios* nor *zoë* logically develops the *necro* conditions of war-machines multiplying death-worlds across Arab socio-political spaces. War-machines are the primary agents of violence involved in implementing a *state of siege* depriving Arabs of basic necessities, destroying basic infrastructure including hospitals and water supplies, and finally restricting mobility by forcing terrorized communities into displacement. All of these techniques of violence exercised on the Arab body constitute *necropower*, but more importantly, are made possible because inhabitants of Arabia are perceived as *homo sacer.* The propagation of these *necro* acts in an "invisible way" is telling of terror being connected to modernity and sovereignty since it is the sovereign who declares the exception and decides who must die for modern society to live (Mbembe, 2003).

While chapter IV highlighted in detail the socio-cultural fractures of *war-machines*[130] transforming Arabia into *necropolises,* it suffices to remind the reader of the full or near complete destruction of the city of Sirte in Libya, the city of Aleppo, Raqaa, and Homs in Syria, Mosul in Iraq, Taiz and Sana'a in Yemen. War-machines in Syria and Libya, for instance, developed their own economy by being directly involved in robbing gold reserves and banks (Forte, 2013; Prashad, 2016; Salman, 2019; Rabih, 2019; Daily Sabah, 2019), selling oil to international markets (Forte, 2013; Ahmed, 2015e; Coutroubis and Kiourktsoglou, 2015; Prashad, 2016; Salman, 2019; Rabih, 2019), and looting historical artifacts (Prashad, 2016; Casana and Laugier, 2017). This occurred in tandem with U.S. and European intelligence officers aiding death squads – through Operation Timber Sycamore – in obtaining and controlling large resourceful areas of land stretching across Arabia[131]. By terrorizing and killing local inhabitants, war-machines created a state of exception resulting in the largest recorded numbers of forced displacement since WWII with Syria alone in 2018-2019 having over 5.6 million individuals registered as externally displaced (refugees) and 6.2 million internally displaced persons (IDPs) (Sherwood, 2014; Webb, 2018; Cumming-Bruce, 2019; UNHCR, 2019a, 2019b).

While most speech acts articulated by Euro-Atlantic sovereign figures concerned with the plight of Arabs denies racism and embraces opposite values for intervention such as "democratization" and "modernization", the extrajudicial consequences adjudicated by these same

sovereign figures reveal a stark different reality. By torturing and slaughtering people while speaking of equal rights and universal values explicitly highlights the inclusive exclusion *dispositif* of *jus gentium* since the resulting suggested idea is that the "sovereign state could do this to anyone, even if for the moment it is only to members of the 'other race'" (Perezalonso, 2010:157). Masters (2007:53) emphasizes the *biopolitical* nature of international law and sovereignty uncovered after 9/11 by making salient how the U.S. and Europe using the language of human rights *while* violating human rights is possible because of "the operation of sovereign power that is at the same time the law and above the law". As noted previously, the U.S. in 2003 deciding to bypass the UN by formulating exceptional policies filtered through neo-Orientalist imaginaries to create a *New Middle East* is observed from a necropolitical paradigm of analysis as sovereign gestures arrogating the power over life and death by carving out the Arab as *muselmänner* (Anghie, 2004; Agamben, 2005; Mutimer, 2007; Masters, 2007).[132]

Sovereign-will exercising necropower through war-machines reveals sovereignty needing to form *camps* for epistemological security thus disclosing its inherent totalitarian *dispositif* (Bauman, 1989; Minda, 2007; Banjerjee, 2008; Perezalonso, 2010). Sovereignty's inherent racist and antagonistic technologies dictating "who must die" is evidenced with the killing of Arabs being imagined as deaths that are neither punishing nor sacrificial, but the slaughtering of *bare-life* with the dimension of killing being "neither religion nor law, but biopolitics" (Perezalonso, 2010:156). Elevating Arabia to a threshold position highlights that when the state of exception becomes the rule, "the hidden foundation of sovereignty is *revealed*, exposing the *specificity* of political *modernity*" and the inherent "radical power" of sovereignty (Genel, 2006:53; emphases added). The death of Arabs and Muslims highlighted in the adoption of exceptional policies points to totalitarian power deciding on the value or non-value of life founded on reductionist "information" becoming legal "evidence" for the adjudication of *redemptive* war. The totalitarianism of sovereignty as a racist power inherently requiring the subjugation of Arab life to the power of death for ontological security suggests that the war on terror discloses how sovereignty and bio/necropolitics function together and is one of the most recent expressions of a racist discourse exposing sovereignty's inherent *killing-habits* (Mutimer, 2007; Banerjee, 2008; Perezalonso, 2010:157). Mutimer (2007: 172-173) states that the:

> discourse of the war on terror, while not explicitly racist in the Nazi sense is extensively racialized. It has articulated its enemy as people identifiable not just by their religion…but more particularly

> by their (racial) appearance. Whether it is the often discussed 'racial profiling', or the pervasive, everyday association of Islamist terrorists with the features of Arabs, the war on terror has produced a global discourse more racist than any we have seen since the time of European colonialism.

Because racism acts to create caesuras between races by drawing a distinction between the normal and abnormal, then, a rational philosophical theology reifying positivist jurisprudence finding it necessary to transform Arab cultural differences into exceptional legal differences highlights how race "contributes directly to the triangulation of *biopolitics* with its *necropolitics*" (Dillion, 2008:170, emphases added). This triangulation, as argued above, has found its most "modern" expression in the two decades following the declaration of a "war of terror" on Arabia where sovereign power (re)inscribed into international law the *rational* image of sovereignty as a culturalizing process inherently perceiving inhabitants of Arabia as ontologically dead since such "thesis of (im)purity" is indispensable for the coherence of ratiocinated philosophical theology. The consequence of this triangulation is the transformation of Arab cities into *abject spaces* where there is no "spatial" differentiation between refugees, PMC, death squads, combatants, insurgents, or asylum seekers (Banerjee, 2008). According to Isin and Rygiel, those who are constituted through these *abject spaces* constitute spaces where "international law" and "national laws" are suspended because the bodies inhabiting these spaces are "rendered as neither *subjects* nor *objects* but *inexistent* insofar as they become *inaudible* and *invisible*" (2007:181-182; emphases added).

Perceiving Arabia as an abject space inhabiting Arab *Saracens* situated in a zone of indifference is a declaration of regression into a primal apolitical state where the *muselmänner* is reduced to *bare-life* and managed as an object *a priori* stripped of political rights. One of the features of modernity or the "modern Westphalian state" is that it is precisely the establishment of the *camp* as an event that "decisively signals the political space of modernity itself. It is produced at the point at which the political system of the modern nation-state…enters into a lasting crisis" (Agamben, 1998a:174). In other words, *ratiocinated* sovereign figures practicing *necropower* by creating abject spaces "far away" from their demarcated national territory exposes the power to render *bare-life* as being immanent to the identity of belonging accenting the "modern" (Westphalian) nation-state. Necropower is an assertion that *bare-life* (i.e., the Arab as *muselmänner/refugee*) is temporally positioned "outside" Latin-European *intellect* thus the "explicit language of *citizenship* with *rights* can exist '*within*'" (Isin and Rygiel, 2007; Perezalonso, 2010:164; emphases added)

3. A *Technocratic* Vocabulary of "Crisis" and "Emergency" Characterizing Displaced Arabs as "Refugee": A Rational Humanitarian Order Vindicates and (Re)affirms *Necropolitics*

As discussed, sovereignty's original activity as a positivist juridical concept requires the separation between the *biological* (*bare-life/refugee*) and the *political* (*bios*/*citizen*) for the coherence of *jus gentium*. Agamben (1998:8; emphases added) highlights that the fundamental "categorical pair of Western politics is not that of friend/enemy but that of bare life/political existence, *zoë/bios*, exclusion/inclusion. There is politics because man is the living being who, in language, *separates* and *opposes* himself to his own bare life and, at the same time maintains himself in *relation* to that bare life in an *inclusive exclusion*". The risk in the logic of sovereignty subsuming the phenomena and experience of displaced Arabs using categories such as "refugee" adhering to a liberal humanitarian order is heightened by choosing to adopt "crisis" or "emergency" as the preferred technocratic vocabulary addressing the mobility exodus imposed on Arabs. The problem-solving methods and technical solutions posited by policymakers and international jurists to "quickly" remedy (forced) displacement reinforces "sovereign separation" since it renders Arabs voiceless and motionless. A liberal humanitarian order is not interested in acknowledging the cultural civilizational experiences of displaced Arabs or how it came to be that they were forcibly displaced. A humanitarian order through the liberal-secular category of "refugee" and symbolic discursive power of "crisis" and "emergency" makes the invisibility and banishment of Arabs more humane.

Therefore, the Arab as *refugee* is an *abject* body that rejuvenates the technology of racism inherent in *necropower* by masking the original activity of sovereignty – therefore *jus gentium* – requiring the production of *homo sacer*. Furthermore, the technical and practical solutions extended by a liberal humanitarian order uncritically and irreflexively valorizes positivist jurisprudence and problem-solving logic thereby assuming *a priori* that positivist juridical concepts such as citizenship and sovereignty are "somehow unproblematic, foundational principles of modern political life" (Nyers, 2006:17). The knowledge lost in reifying a positivist humanitarian order dismisses the analysis of Arab displacement from a *necro/biopolitical* paradigm emphasizing the danger in assuming a natural separation between humanitarian and political concerns by signaling a "secret solidarity between humanitarianism and the powers it should fight" (Zembylas, 2010:36). This irreflexive selection masks and (re)affirms sovereignty – therefore *jus gentium* – inherently being *necropolitical* with "humanitarian hubris" exacerbating deadly consequences on Arab bodies induced by a *jus gentium* demanding a "state of exception"

for epistemological coherence. Such humanitarian hubris reinforces the *necrometric* of "cultural difference" animating *jus gentium* and in the process conceals sovereignty's original activity targeting and designating Arab subjects as unqualified dead bodies (*refugee*) threatening the purity of qualified living life (*citizen*).

The international humanitarian order heralded after the Cold War claims responsibility for the protection of populations dubbed "vulnerable" and/or "refugees". The liberal-secular order endowed powerful sovereign figures comprising International Society and liberal institutional agencies such as the UNGA, the IMF, the UNSC, and (a)political civil society groups informing NGOs such as USAID, NED, and Carnegie Endowment, with an objective in developing and extending problem-solving solutions to remedy displacement "emergencies" and/or "crises" (Lloyd, 2006; Nyers, 2006; Pawson, 2007; Mamdani, 2010). The bio/necropolitical idea stating that sovereignty consists in subjugating *life* to the power of *death* is important to keep in mind while examining how biopower/necropower works to tame the contingencies of the refugee figure by subsuming the phenomenon and experience within a "humanitarian vocabulary". The discourse of "crisis" and/or "emergency" constellating a humanitarian order dominates speech acts spoken by governments, "civil" society groups, international human right regimes, and (non)-governmental organizations who view the problems witnessed by refugees as requiring "practical, technical, and operational solutions" (Nyers, 2006: xvi). The general logic informing technical solutions is largely dominated by a problem-solving approach based on positivist juridical assumptions that define displacement as a "technical problem in need of rapid solutions. This perspective is not only largely uncritical of prevailing and unequal global power relations but also discourages critical thinking about what constitutes a 'normal' state of affairs" (Nyers, 2006:3).

A liberal humanitarian order describes as "human" the population to be protected, and "humanitarian" the catastrophe (Ar. النكبة) they suffer from (Nyers, 2006; Mamdani, 2010). Whereas the language of "modern belonging" accenting Westphalian sovereignty is profoundly political, that of a "humanitarian intervention" is not simply *apolitical*, but in most cases anti-political (Nyers, 2006; Mamdani, 2010). Humanitarianism's primary principles – humanity, impartiality, and neutrality – being based on positivist juridical assumptions declaring a natural separation between legality and morality, or as mentioned by Nyers (2006:27) "between the ethical and the political", reveals the often hidden relationship between "coercion, violence, and the political" sharing an immanent relationship with sovereign logic (Nyers, 2006:28; emphases

added). Since sovereignty as a necropolitical concept is concerned in defending and maintaining – through *jus gentium* as a legal regime – the modern purity of a society demarcated using an ontology of a Westphalian nation-state (i.e., citizenship), this affirms that "*humanitarian concerns* and *human rights* still take a *back seat* to the *rights* and *legitimate interests* of *sovereign states* and – by extension – of the *citizens* of *those* states" (Jackson, 1993:581, emphases added).

The Westphalian coin is still the effective currency in international law establishing a moral hierarchy guiding people to place their primary moral obligations with their fellow citizens and not with humanity at large (Nyers, 2006; Mamdani, 2010). Both sides of this coin consist of sovereignty and citizenship and both positivist juridical concepts are not opposites but are symbiotic with state sovereignty embodying the key rights of citizenship. International sovereign recognition – the password to become a member of *jus gentium* – goes hand in hand with the promise of citizenship since it is the essential attribute of membership in an international political community bounded by a social-contract demarcated by abstract borders (Kristeva, 1993; Minca, 2006, 2007; Nyers, 2006; Mamdani, 2010). In contrast, an international humanitarian order is not a system that acknowledges citizenship, but rather, has cut its ties with the language of citizenship rights (Nyers, 2006; Mamdani, 2010).

While humanitarianism claims to stand for rights, these are "residual rights of the human and not the full range of rights of the citizen" denotating that the rights of an unqualified (biological) human pertain to sheer survival and protection, while the rights of a qualified (political) man entails the full range of rights endowed by, and through, citizenship (Mamdani, 2010:54). The language of a "humanitarian order" refers to its subjects not as "bearers of rights" and/or "active agents in their own emancipation", but as passive beneficiaries of an "external responsibility to protect" making them abject bodies of sovereignty. In other words, displaced Arabs, rather than being perceived as rights-bearing citizens, are "beneficiaries of the humanitarian order…akin to recipients of a charity. Humanitarianism does not claim to reinforce agency, only to sustain *bare-life*. If anything, its tendency is to promote dependency. Humanitarianism heralds a system of trusteeship" (Mamdani, 2010:55, emphases added). The apolitical *ethos* of a humanitarian order is alluded to by Sadako Ogata in 1990, former high commissioner of the UNHCR, when he referred to the humanitarian order as a "humanitarian alibi" in attempting to highlight how it is an order that takes attention away from the inability or unwillingness of recognized sovereign states to take political action (as cited in Jamal, 2016:354).

With *ratiocinated* liberal-secular philosophical theology reifying *citizenship* as the purest political identity of belonging informing the *telos* of "modernity" as a project, it is then not surprising that *refugeeness* – an unqualified non-discursive figure – is *musulmanner* living its life as bare-life. The Arab subject as refugee is categorized and *spoken for* using a vocabulary of "crisis" or "emergency" inferring neo-Orientalist discourses of "saving", "vulnerability", and "survival" (Minca, 2006, 2007; Nyers, 2006; Mamdani, 2010). Therefore, biopower and necropower are valuable concepts aiding in deconstructing and critiquing liberal humanitarian discourses maintaining that the cause of the Arab "refugee crisis" is endogenously linked to Arab civilization being anti-rational, therefore, situated in a degenerative temporal past. A necropolitical analysis highlights that the *walking-dead* exodus is caused by sovereign figures authorizing *war-machines* because the original activity of sovereignty requires the production of *abject spaces* inhabited by the *living-dead* for epistemological coherence. The immoral issue with humanitarianism grounded in human rights is that it overlooks necro/biopolitical aspects alluded to by Agamben and Mbembe seeking to deconstruct how and why one of the largest displacement crises in recent history occurred in spaces inhabited by Arabs. Humanitarianism appropriates the figure of abject-Arab in ways that "elide the substantive *differences* between ways of being displaced from 'home'" (Ahmed, 2000:5, emphases added). Epistemological d*ifferences* figuring alternative modes of *Being* are concealed and transformed into *legal* issues by universalizing the "condition of displacement and by placing all immigrants/refugees/asylum seekers into a singular category, as if they all experience the same thing" (Zembylas, 2010:38).

For instance, Arabs that have been forcibly externally and internally displaced because *death squads* terrorized and threatened their *life* are irreflexively identified as simply "refugees", "asylum seekers", or "immigrants" without any recourse to the exceptional (terrorizing) *necropower* that catalyzed the "crisis of mobility" in the first place. To *only* adopt a humanitarian discourse in attempting to address the situation of displaced Arabs without attempting to think *beyond* discourses charged with irreflexive simplistic binaries (i.e., citizen-refugee) results in failing to recognize that "the fate of human rights and the nation-state are bound together such that the decline and crisis of one necessarily implies the end of the other" (Agamben, 1998a:134). Put more bluntly, sovereign figures authorizing *war-machines* in Arabia discloses not only the racism maintained by a *jus gentium* informed by liberal-secular legal doctrines, but also the consequences of necropower such as carnage and displacement willed by sovereign figures. One of the primary

rational logics deliberated by sovereign figures deciding on whether or not to authorize *war-machines* to conquer Arab space is surely grounded on sovereignty inherently elevating Arab philosophical theology to a temporal "zone of indistinction". Elevating Arabia to a zone of exception perceived as a *geography* or *abject* space inhabited by bodies that are *de-facto* ontologically dead, is sovereignty engaging in racism as an indispensable technology utilized to evaluate different (cultural) bodies worthy of "civil subjectivity" or "modern" enough to belong, and become, "civil" members of a Westphalian political space guaranteeing citizenship rights.

A bio/necropolitical analysis of the displaced (Arab) figure suggests that technologies of racism are endemic to the "bounded" ontological membership connecting a citizen to a political identity reifying a (Westphalian) nation-state. Since the establishment of the UN after WWII and the conclusion of the mandate system in the Arab world, Euro-Atlantic centers of power created complex systems of civic stratifications (i.e., the Commonwealth of Nations) and demographic altering immigration procedures discussed in the famous 1949 Parliamentary Assembly at the Council of Europe (i.e., The Protection of "National" Minorities) that would have not been legally possible had sovereign figures not bounded their nationalist identity *a priori* on the fear of the non-European refugee threatening the purity of their modern "national citizenship" (Tyler, 2006; Zembylas, 2010; Morefield, 2014; Robson, 2017). Therefore, adopting the concept of necro/biopower demonstrates how displaced Arabs are caught up in "mechanisms and calculations" of sovereign power that are revealed in the intersection between fearism and humanitarian discourses of citizenship founded upon abstract territorial traps ignoring the necro/biopolitical Othering strategies used to subjugate "non-citizen" life to the power of death (Nyers, 2006; Zembylas, 2010; Morefield, 2014; Robson, 2017)[133]. The refugee as a "modern" category connotating Arabs is better understood as a "limit-concept", thereby calling into question the fundamental categories of rational governance such as the nation-state, citizenship, society, law, and modernity (Agamben, 1994; Nyers, 2006; Robson, 2017). The idea of the "refugee" as a limit-concept expresses the limits of a "certain logic of intelligibility" thus occupying "the ambiguous divide between the binary citizenry-humanity" (Nyers, 2006:3).

The refugee figure – the brainchild of a humanitarian order valorizing positivist jurisprudence – as a *threshold body* denoting a "temporal limit" situated in a zone of indifference is further deconstructed through the "inclusive exclusion" *dispositif* informing a state of exception since the refugee is constituted through a variety of ontological omissions that bans them from the

juridical and social order by casting them as *bare-life*. Whatever is present to the subject of sovereignty (i.e., citizen) is absent to the object of sovereignty (i.e., refugee). As declared by Nyers (2006:3), the "qualities of visibility, agency, and rational speech of the citizen-subject are conspicuously absent in conventional representations of refugees that cast them as invisible, speechless and above all, non-political". Since the organizing principle and discourse extended by a humanitarian order to analyze the displaced Arab body is "humanity", refugees are then situated at the juridical and social "threshold of statelessness" by being subjected to a range of sovereign technological racist strategies casting them as voiceless and invisible bodies that are less-than-human (Nyers, 2006; Zembylas, 2010; Fiddian-Qasmiyeh, 2015).

The refugee figure being the consequence of a *jus gentium* informed by an "inclusive exclusion" *dispositif* producing *musulmanner* brings to mind Kristeva's concept of the "abject Other" (1982). According to Kristeva, while an *abject* is an *object* that is excluded, it still challenges its "master" because it is simultaneously included in that it continues to disturb borders between what separates *us* (political/citizen body) from *them* (apolitical/refugee body). Young mentions that the abject other "does not stand opposed to the subject, at a distance, definable. The abject is *other* than the subject but is only just the other side of the border" (1990:144; emphases added). That is, Arabs as "refugees" are *abject Others* left behind and excluded from the *racist* territorial governing modality of the nation-state that confers the rights of citizenship exclusively to modes of *Being* embodying *rational* epistemic knowledge structures (i.e., Latin-European philosophical theology). Arabs, then, are excluded from the realm of "modern" citizenship rights because Arab epistemology is imagined as the cultural legal causality relegating Arabs to a state of exception.

The concern with policymakers and academics adopting a humanitarian order informed by problem-solving technical solutions using a lexicon of "crisis" and "emergency" is that it "takes the world as it finds it" (Cox, 1981) rather than critically approaching the hegemonic status-quo by asking questions of power abuse, injustice, and relations of power/knowledge that reproduce it (Nyers, 2006; Peoples and Williams, 2014; Al-Kassimi, 2019). The moral concern with such problem-solving lexicon is the lack of self-reflexivity and self-doubt by its practitioners and the lack of critical questioning relating to the unequal power relations developing "practical solutions" (Nyers, 2006). The effect of this inattention is that "the problem-solving perspective tends to concentrate on realizing practical ways in which order and normalcy can be reinstated…the

desirability of this order are deemphasized, marginalized, or ignored" (Nyers, 2006:6). A discourse involving a crisis/emergency vocabulary operates according to what Foucault called a "system" or "structure" of "exclusion" which is also adopted by Agamben and Mbembe in developing their own analysis on biopower and necropower affecting *jus gentium* (Peters and Besley, 2014:99, 101).

This exclusionary structure casting Arab displacement as an "international refugee crisis" or a "national security emergency" by adhering to "rational" governing techniques of classification plays an important role in structuring and ordering refugee identity "in a way that imprints the qualities of speechlessness, invisibility, and emptiness onto the (non-political) body of the refugee" (Nyers, 2006: xvi). The power of speaking about Arab displacement using a crisis vocabulary is evidenced in the development of oppositional relationships between "order and crisis, the normal and the exceptional" which are dichotomies that categorize and transform cultural-racial differences into *legal* differences thus keeping things apart by policing and maintaining separateness. In other words, as highlighted by Nyers, an "event is considered a 'crisis' only to the extent that it differs in some fundamental way from an 'ordered state of affairs'" (2006:7). Crisis situations declared by liberal interventionists are defined by their capacity for absence in that "they negate order and bring about *disorder, chaos,* and *contingency*" (Nyers, 2006:9; emphases added). That is, the incarnation of the sovereign subject – the citizen – requires the constant resurrection of its extreme opposite abject – the refugee – for the ontogenetic practices of (Westphalian) "national belonging" to continuously be revitalized thus securing the "limit" of a "normal order" informing cosmopolitanism[134]. The Western-Self as *citizen* requires the Eastern-Other as *refugee* for ontological (civilizational) security with refugees and citizens sharing an immanent relationship with each category making the other possible (Anghie, 2004; Nyers, 2006; Pahuja, 2011). The displaced Arab as *refugee*, therefore, is an intentional creative chaos or an "accident" of the modern territorial nation-state that "scars the moral and political landscapes of the international order" (Nyers, 2006:9) because the movement – or lack thereof – of the displaced society is categorized as an "absence made possible by the *insistence* of the *presence* of *sovereignty*" (Nyers, 2006:22; emphases added).

Similarly, Campbell states that "the passage from difference to identity as marked by the rite of citizenship is concerned with the elimination of that which is alien, foreign, and perceived as a threat to a secure state" (1992:42). Such bodily threatening distinction is based on the

necropolitical logic of sovereignty seeping into a (liberal-secular) humanitarian order valorizing technologies of racism. This is precisely what the state of exception is concerned with since it legitimizes itself in reference with an external threat that has to be dealt with using exceptional measures and at the same time "defends society" and strengthens national identity by depicting the refugee as inhumane, unworthy of life, or simply *homo sacer*. Aradau and Munster mention that "exceptionalism does not just play upon public panics, but also institutionalizes fear of the enemy as the constitutive principle for society…exceptionalism…turns fear of the enemy into the constitutive principle of social order" (2009:689). Therefore, the sanctioning of exceptional measures that lead to death is necessary for the logic of sovereignty and humanitarianism in that it creates a sense of danger around which to unite the nation whilst reinforcing the purity of a particular race made universal at the expense of banning and dehumanizing an inferior "nation" (i.e., Arab civilization*)*. The necessity of bare-life figuring refugeeness for the coherence of a *ratiocinated* political realm "inscribes dangerous links among citizenship, nation and biological kinship…legalized in a modern sovereign state" (Zembylas, 2010:37).

A common *necropolitical* gesture making salient the danger in overlooking the secret solidarity between sovereignty and humanitarianism are international humanitarian organizations after the Arab uprising in 2011 declaring neutrality while simultaneously producing technical solutions to the "displacement crisis" founded on benevolent humanitarian rhetoric rejuvenating a neo-Orientalist image constructing Arab refugees as functioning as an "inclusive exclusion" apolitical object separate from political life (Zembylas, 2010). The secret is discernible when we notice the great empathy voiced by Western sovereigns donating billions of dollars through civil society groups and humanitarian organizations to "solve the national emergency consisting of a refugee crisis" while showing great hostility to the same faces when they become threatening *strangers* approaching their shores (Bretherton, 2006; Zembylas, 2010; Khiabany, 2016). Instead of halting the billions of dollars funnelled to *war-machines* who are the root cause of the Arab displacement problem, Western sovereign figures invested in closing their borders (Khiabany, 2016). In 2014, European states offered Turkey €3 billion to stem the flow of refugees from Syria, while Hungary declared that it cannot accept refugees for cultural reasons thereby spending €95 million building a 100-mile razor-fence wall at its border with Serbia (Khiabany, 2016).

Since sovereignty "excludes, displaces, and alienates" that which it "cannot internalize, naturalize, or co-opt" (Nyers, 2006:17), it is then not surprising that the overwhelming response

from liberal sovereign figures has been depressingly illiberal. Refugees are neo-Orientalised as threatening, different, and fearsome increasingly in the context of an ontological insecurity to *our* way of *life* and *existence* (Zembylas, 2010:33). This accentuates displaced Arabs figuring a necessary accident for the project of liberal modernity – therefore *jus gentium* – to constantly refurbish and reaffirm Western civilizational privileges enshrined in a nation-state. Philo, Briant, and Donald (2013) highlight that in addition to the hostile and muddled media accounts of Arab refugees, the silencing of the voice of the refugee is "one of the most important issues in official account of refugees…refugee voices are either ignored or used against them" (as cited in Khiabany, 2016:4). British press referred to Arab refugees as: toxic waste, human flotsam, an unstoppable flood, and a terrorist threat (Khiabany, 2016). In fact, the *Sun* columnist Katie Hopkins stated "show me pictures of coffins, show me bodies floating in water, play violins and show me skinny people looking sad. I still don't care". Former British PM David Cameron stated that a "swarm" of people crossing the Mediterranean seek a "better" life in the UK, British Foreign Secretary Philip Hammond stated that "marauding" refugees threaten our standard of living (Perraudin, 2015), and finally, Hungary's PM Viktor Orban identified refugees as invaders and a threat to "our European Christian Civilization" (Agerholm, 2018; Reuters, 2018).

The common *necropolitical* theme informing these liberal philanthropic messages is their invocation and reaffirmation of a technology of racism and mechanism of enmity inherent in sovereignty as a positivist juridical concept. The politics of fear and strangeness subsumes the important role in essentialist cultural scripts constructing Arab refugees as a bodily exceptional *abject* to maintain and police the purity of a "civil body politic". According to Zembylas (2010:32), refugees are constructed as fearsome because they pose a danger to "our" (civilizational) Self-existence. Fear creates boundaries between the "good" Arab and the "bad" Arab; the former imagined as being pro-Western values, while the latter, resistant to liberal-secular values. Fear works by enabling some bodies to freely move internationally, while restricting the movement of abject bodies to domestic abject locations in developing countries which coincidently includes most *necropolises* (Edmonds, 2017). Once the refugee is constituted as the Other that is a threat to *our* sense of national identity, then *we* learn to desire and demand their exclusion from the sphere of human values, civic rights, and moral obligations (Papastergiadis, 2006; Nyers, 2006; Zembylas, 2010). The effect of seeing the Other as a stranger allows for refugees to be defined as registering a duality of separateness of "us" and "them" or a "twofold lack with respect to the

privileges resolution to questions of political identity (citizenship) and community (nation-state)" (Nyers, 2006:16).

The idea of belonging to a Westphalian nation-state reifying positivist jurisprudence is an effect of how bodies move towards it by creating necrometric boundaries or limits claiming that living-life "inside" society is contingent on the persistence of the *living-dead* "outside" *jus gentium*. The definition of "belonging" to the nation-state then becomes the "state's guiding political preoccupation…it is within this *exclusive inclusion*…that the very principle of citizenship and the idea(l) of belonging are born" (Minca, 2007:88; emphases added). Since the nation-state is a necro/biopolitical spatial structure, when it begins to systematically isolate an imagined bare-life, then citizenship *ipso facto* becomes definable only in terms of the abject space/death-world *(*Zembylas, 2010). In the case of Arab refugees, they are constructed as a threatening (external) body that is fearsome to the extent that their *possible* inclusion would seriously contaminate and damage the purity of civil society. Therefore, the violence against the Arab slained-body abroad or at home is seen as "a justified response toward the threat posed by the state-less Other" (Zembylas, 2010:39) since *refugeeness* signifies an "emptiness, an incompleteness vis-à-vis the meaningful positive presence to political subjectivity that state citizenship provides" (Nyers, 2006:17).

3.2 A Liberal-Secular Humanitarian Order in *Necropolitical* Action – Three Humanitarian Case Studies Highlighting the Original *Necro* Activity of Sovereignty

The temporal Othering strategies humanizing the Arab subject using a humanitarian logic reifying neo-Orientalist imaginaries is a pervasive strategy evident in academic literature constellating Social Studies, Migration Studies, Conflict Resolution, and Security Studies reifying positivist jurisprudence and *realpolitik* principles distinguishing politics as a "science" consisting of a "zero-sum-game" (Buzan and Hansen, 2009; Mamdani, 2004, 2010; Zembylas, 2010). The humanitarian response to Arab 'fearism' becomes complicit in (re)producing the structures that legitimate exclusionary policies identifying Arab populations as *musulmanner*. Nyers (2006, 2015) and Tyler (2006) mention that liberal humanitarian discourses have erased entirely "different" populations using humanistic representations by making refugees seem to be visible to the public as objects of both fear and sympathy. The failure in not questioning the immoral separation between human-citizen or law-morality – exacerbated by a humanitarian technocratic logic – exposes the "secret solidarity" between humanitarianism and sovereignty. As mentioned by Nyers

(2006:42), “Humanitarian organizations face a grave danger of maintaining a secret solidarity with the very powers they ought to fight” with the “relationship between humanitarianism and either violent militarism or politics” not being a legal contradiction *per se* but rather a sovereign legal affirmation.

Therefore, by deconstructing three *necro* cases exposing the power of sovereignty needing to subjugate Arab life to the power of death, the cases highlight the ethical issue in overlooking the importance of *self-doubt* when suspiciously approaching hegemonic (neo-Orientalist) narratives blaming an “Arab refugee crisis” on the degenerative temporal positionality of Arab epistemology involving a “crisis of culture” (Kramer, 2013). Simply opting for a humanitarian logic risks masking the dispositif of sovereignty inherently being *necrophilic* with reductionist narratives computing technologies of racism in circuits of power only to (re)affirm reductionist narratives of Arab civilization and in the process absolve “recognized sovereign” figures from exercising *necropower* on Arab subjects through war-machines and/or (non)-lethal aid.

3.2.2 Necro Humanitarian Case 1 – Mismanaged Humanitarian Funds

In August 2018, USAID Office Inspector General (OIG) Ann Calvaresi Barr reported that food-intended and contracted by USAID to the Catholic Relief Services (CRS) for internally displaced Arabs in northern Syria was willingly diverted to Al-Qaeda groups identifying with Hayat Tahrir al-Sham (HTS) stationed in Idlib (Poole, 2018)[135]. The OIG report reported that “the USAID/OIG investigation found that employees of a U.S.-based NGO *knowingly* diverted USAID-funded food kits to the militant organization Hay’at Tahrir al-Sham (HTS), which has been designated by the DoS as a Foreign Terrorist Organization. The NGO’s employees *allowed* HTS fighters to be included among program beneficiaries in Idlib province” (Poole, 2018; Parker, 2018; emphases added).

The necropolitical *secret* of sovereignty masked by a rational humanitarian discourse could not be more obvious in the aforementioned case since the primary agency in the US designated to administer (foreign) humanitarian aid – the USAID – extended aid to *war-machines* (Al-Qaeda/ISIS militants/PMC) who are simultaneously the main agents of *death* perpetuating the sentiment of fear in the Arab world vital for the operationalization of the apolitical category known as “refugee or “internally displaced persons” (IDPs). The esoteric character of sovereignty subsumed by humanitarianism is further revealed with the chaos and terror induced by *war-*

machines in Arabia being framed as endogenous to Arab-Muslim culture, which is then disseminated by hegemonic international media outlets as a "genuine" *pathos* of *fear* forcing the foreign audience to adopt a false reality stipulating that if Arabs and Muslims were to reach the "shores of Western civilization" barbaric actions await national civil societies[136]. The intersection between fearism and humanitarianism identifying refugees as biological bodies stuck in a "state of nature" threatening citizens in "civil society" continues to revitalize nationalist territorial myths that further exacerbate the divide between *us* and *them*, and most importantly, ignores the *necropolitical* matrix of modern Westphalian spatial governance (Minca, 2006; Zembylas, 2010).

3.2.3 Necro Humanitarian Case 2 – The Rukban Camp and Cross-Border Aid

Classifying the Rukban concentration camp as a "humanitarian crisis" lays bare how a *human* discourse masks the inherent domineering activity of sovereignty needing to produce *homo sacer*[137]. The imperial policies adopted by sovereign figures leading up to the creation of an *abject space* by the name Rukban inhabited by *muselmänner* is perhaps the most explicit spatial case showcasing how a "crisis vocabulary" masks and re-affirms the exceptional consequences of sovereign figures banning the Arab subject from the juridical and social order using mechanisms of violence (i.e., war-machines) in tandem with technologies of racism (i.e., neo-Orientalist narratives). The Rukban camp is a "no-mans-land" located in an arid remote area in Arabia. It is quite literally located at the "threshold" or "extreme" northeastern part of Syria where the colonial borders of Syria, Jordan, and Iraq converge. With machines of slaughter terrorizing and killing Arab Syrians throughout Syria – but more specifically for our case in Homs, Deir- Ezzour, Palmyra, and Raqaa – the number of displaced Arabs inhabiting Rukban by 2016 reached around 75,000 resulting in Rukban becoming a *de-facto* camp in 2014 (HRW, 2015; Yeranian, 2019; Schlein, 2019). What is noteworthy about the camp is that almost 10 miles south, the U.S. Al-Tanf base is positioned. In 2017, the U.S. declared a 55 KM radius "de-confliction/no-fly zone" placing the inhabitants of the Rukban camp under its "humanitarian" protection and survival.

However, by 2018, intelligence reports revealed that the U.S. base hosted, trained, and funded *death squad* factions known as the Revolutionary Commando Army (RCA) or the Southern Front (SF) including amongst others ISIS and Al-Qaeda members affiliated with HTS, the Lions of the East Army, and Forces of Martyr Ahmad Al-Abdo (Abu-Laith, 2018; Al-Kassimi, 2018b). Dr. Bashar Jaafari – the permanent Syrian representative to the UN – mentioned during a United Nations Security Council (UNSC) meeting on October 29th 2018 that the Rukban camp housed

mercenaries involved in the As-Suwayda massacre which took place on July 25th 2018 claiming the lives of 300 Arab Syrian citizens (Jaafari, 2018). In addition, the American "no-fly zone" housed and protected families of rebel fighters who were being "trained and paid for by the U.S. to fight the Syrian government" (Yeranian, 2019; Schlein, 2019). This explains why the Arab Syrian army on May 18th, 2017 was targeted by U.S forces from Al-Tanf for "breaching" the declared radius since the Arab Syrian army had an objective of targeting *war-machines* taking Syrian citizens hostages at Rukban (Al-Kassimi, 2018b).

Death squads under the protection of the U.S. also garrisoned and placed a siege on the *de-facto* camp forbidding any humanitarian aid to enter whether from the UN or Syrian based NGOs such as the Syrian Red Crescent (SRC) (Jaafari, 2018; Yeranian, 2019; Landis, 2019). During a UNSC meeting on October 29th 2018, Bashar Jaafari stated that there has been a concerted effort by the U.S. and European allies to impede and sabotage the delivery of humanitarian assistance to Arab inhabitants of the Rukban camp citing the unsuccessful delivery of aid by the UNHCR and SRC on October 26th 2018 because foreign mercenaries from ISIS and Al-Qaeda threatened to open fire at the convoy as soon as it entered the 55KM radius of the de-escalation zone (Jaafari, 2018; UN, 2018). It was not until February of 2019 that the UN and SRC were capable of entering the camp to process the delivery of a one-month supply of food, basic medical items, sanitation, and hygiene material. The supply extended in February of 2019 was the largest aid extended to Syria by the UN since the conquest of Syria in 2011 began, and only the second aid-package since November 2018 reaching the "outpost" or "frontier" located in Rukban (Yeranian, 2019). According to Corinne Fleischer – the representative of the World Food Program (WFP) in Syria and Rukban convoy – the vast majority of Arabs inhabiting the camp are women and children who live in desperate and "vulnerable" conditions with eight children dying in the span of 2 months because of the extreme cold of the desert (Schlein, 2019; Vohra, 2019). Fleischer stated that the camp being situated in the "middle of nowhere" and in a "desolate region" affects every aspect of "life for the thousands of people trapped there" noting that the health clinic she works in is so basic it is as if she was operating in the "stone age" (Schlein, 2019; Vohra, 2019).

By July 24th 2019, around 17,000 displaced Arabs held hostage in the camp fled to government-held areas with the Arab Syrian government guaranteeing their safe repatriation (Schlein, 2019; Vohra, 2019). Even an article in the *Washington Post* identified Rukban as a "humanitarian crisis" claiming that "about 10 miles from a U.S. military outpost in southern Syria,

some 30,000 civilians are in *crisis* – with almost no food, water or medicine – and, for *complicated reasons*, the *U.S. government refuses to feed them*." (Rogin, 2019, emphases added). Echoing the danger of "humanitarianism" being subsumed by a sovereign (necropolitical) logic, Jaafari plainly stated that "it is very much in bad taste that some delegations, western delegations, are mixing *politics* and the *humanitarian* side of things. These delegations continue to set obstacles in the path of *humanitarian access*...We have heard these same delegations set a number of *political prior conditions* that try to empty *humanitarian action* of all of its content and move it towards a *political instrumentalization* of the *suffering* of the Syrian people" (Jaafari, 2018; emphases added)[138].

Therefore, mismanaged "humanitarian aid", *necropower* exercised in Rukban, and the politicization of cross-border aid assisted in developing *abject spaces* thus transforming a "temporary" displacement problem into a "permanent" humanitarian problem[139]. The relation between the sovereign and its *war-machines* – creating an environment conducive to death rather than life – is manifest since it is exceptional legal doctrines (PEDS and the Bethlehem Principles) and covert operations (Timber Sycamore) elevating the Arab body to a zone of indistinction that led to exceptional consequences such as *en-masse* Arab carnage and an exodus of millions[140]. The fact that internationally recognized sovereign figures provided "legal cover" and "humanitarian aid" to agents of violence forcibly displacing Arabs using a *pathos* of fear and terror is an emphatic empirical case making salient that the original activity of sovereignty is the production of the living-dead since the killing of an Arab imagined as *Musulmane* is inconsequential; for it is banned, and its death – necessary for the order and coherence of *ratiocinated* philosophical jurisprudence. It is important to note that I am not arguing that the work of humanitarian groups or a humanitarian discourse is *a priori* a necropolitical *façade*; however, I am underlining the fact that simply conceptualizing the Arab displacement problem using a technocratic liberal-secular lexicon constellating positivist state-centric solutions hinders reflexive research that would have approximated different causes catalyzing Arab displacement following the "Arab Spring" in 2011 such as, and primarily, international law reifying positivist jurisprudence being animated by an *inclusive exclusion* or a *state of exception*.

3.2.4 Necro Humanitarian Case 3 – The Regional Refugee Resilience Plan (3RP)

High commissioner of the UNHCR – António Guterres (2005-2015) – with the blessings of internationally recognized sovereign powers partnered with the United Nations Development Program (UNDP) and hundreds of (liberal-capitalist) non-government organizations (NGOs) and

civil society groups (CSG) in December of 2014 to launch the Regional Refugee Resilience Plan (3RP)[141]. The cost of 3RP was estimated at US$5.6 billion – almost double the annual budget for assisting refugees worldwide announced by the UNHCR[142]. The declared objective of the program is to develop "a consolidated framework to address refugee protection needs, the *humanitarian* needs of the most *vulnerable*, and the longer-term socio-economic importance of the Syrian crisis on neighboring countries" (Jamal, 2016, emphases added). According to the UNDP, the program consists of two conceptual components – *refugee* and *resilience*. In the case of the former it targets the "most vulnerable among the impacted population [who] are provided with life-saving and immediate assistance, including in camps and host communities", and in the case of resilience, it engages the "most vulnerable impacted households", and seeks to "…enhance their capacities and resources to cope with and recover from the crisis" (UNDP, 2019).

As of 2019, the UNHCR declared that 3RP is approximately 27 per cent funded as of the end of Q1 against the total requirements of USD 5.6 billion meaning that with the program being underfunded "critical programmes face closure or reduction…which will result in more children out of education, more families living in poverty, and fewer people earning a livelihood" (UNHCR, 2019a). The critic of 3RP is founded upon its proposed solutions being technical and practical by reifying problem-solving approaches that prioritize quantitative methods to the point that the voices, experiences, opinions, and perspectives of displaced Arabs are ignored and never taken into consideration (Khallaf, 2016; Jamal, 2016; Fiddian-Qasmiyeh, 2015, 2016; Makdisi, 2019). Professor K. Makdisi (2019) makes this point clear – during a meeting at the American University of Beirut (AUB) – when he states that while the UN is an important organization that has aided Arabs in voicing their concerns and possesses "leeway" in attempting to ameliorate[143] the lives of displaced peoples, programs such as 3R reveal the limit of such "leeway" since the primary victims were "spoken for". The institutionalized positivist-humanitarian discourses extended by 3RP since the initiation of the program (UNHCR-UNDP-3RP, 2015, 2016, 2017, 2018, 2019) risks (re)producing domineering mechanisms of power and technologies that perpetuate necropolitical structures that *a priori* speak on behalf of the Arab, thus perceiving them as *abject*, thereby protracting their suffering. These limited hubristic solutions distance themselves from the life-world of displaced Arabs by violating "Arab conscious subjectivity" by not including their life-experiences as an integral component in the interpretation, development, and implementation of solutions (Nyers, 2006, 2015; Khallaf, 2016; Jamal, 2016; Makdisi, 2019).

The resilience component of the 3R program individualizes responsibility for security and forcibly downloads *responsibility* onto the refugee thereby vindicating sovereign figures implicated in developing the crisis of "refugeeness" by exercising *necropower* using war-machines or extending (non)-lethal aid. Beier (2015:240) indicates that "if 'agency' refers to the capacity to act, 'subjecthood' bespeaks mastery of one's own agency or the idea that actions are products of one's (at least relatively) autonomous choices". Therefore, while an individual with subjecthood has agency, numerous individuals are not subjects since they are not authors of their actions (Beier, 2015; Ager and Qasmiyeh, 2015; Al-Kassimi, 2019). The humanitarian programs extended to displaced Arabs make salient to the observer that *resilience* as a humanitarian component reifying positivist jurisprudence and technocratic solutions is domineering rather than emancipatory in that displaced Arabs are extended artificial autonomy through a reductionist discourse of (neo-liberal) resilience (Al-Kassimi, 2019). Similar to the neo-Orientalist mode of representation filtering the Arab uprisings in 2011 by imagining Arabs taking "matters in their own hands" as a "risk" containing "unknown possibilities", the compact extended by the UNHCR and UNDP highlights resilience as a "logic of governmentality" reversing the relationship between international humanitarian institutions and subjecthood with Arab autonomy appearing in the global compact as the *problem* that requires management (Ager and Qasmiyeh, 2015; Al-Kassimi, 2019). Beier (2015:249) is more unambiguous in his claims when he states "resilience thinking…runs the considerable risk – indeed, may be predisposed toward – downloading responsibility to be resilient in the very abject sense of abiding the naturalized social pathology…those subjects possessed of actual power are absolved of responsibility to address, remediate, and resolve the social pathology". In other words, the component of resilience engineering the 3R humanitarian program extends an artificial form of subjectivity that not only exacerbates the displacement crisis, but further masks the inherent necropower of sovereignty as a positivist juridical concept[144]. The 3R program vindicates sovereign figures explicitly implicated in developing the consequences arising from exercising necropower (i.e., displacement and carnage) while using the "fear of the refugee" as a (pathological) legal exercise absolving sovereignty and modernity from inherently needing to subjugate Arab life to the power of death for ontological security.

Jamal (2016:354) and Makdisi (2019) remind us that the humanitarian solution extended by the UNDP and UN such as the 3RP "does not address the root causes of the problem". At a 2014 conference in Geneva including the Red Cross Movement, and the International Organization

for Migration, one felt that "there had never been so much pressure to politicize the humanitarian agenda" with others noting the "lack of accountability of politicians and the gap between rhetoric and action of Security Council members" (as cited in Jamal, 2016:354). Likewise, Helen Clark, in a conference on January 23rd 2017 in Helsinki entitled *How to build bottom-up community resilience in Syria?* organized by NGOs such as the Crisis Management Initiative (CMI), emphasized the importance of giving primacy to the voices and perspectives of displaced Arab Syrians in furthering social cohesion and the development of innovative outlooks and meaningful partnerships (FCA, 2017)[145]. The importance of these aforementioned critics is that they reflect a genuine humanitarian ethic critical of problem-solving solutions being subsumed within a positivist logic of state sovereignty fundamentally undermining and overshadowing a "resolution between the moral obligations we feel toward the one and the many, the universal and the particular, humanity and citizen-subjects" (Nyers, 2006:23). The global refugee compact identified as 3RP exposes the unethical consequences of a positivist order founded on a "humanitarian hubris" valorizing a "problem-solving" approach when seeking to collect data and analyse information relating to displacement since insight delivered by the displaced is ignored and perceived as irrelevant to the "type of knowledge deliverables demanded by the architects of the global compacts" (Nyers, 2019:176)[146].

What these humanitarian programs reveal is that the rights of a stateless body pertain to "sheer survival and protection" while the rights of a political man entail the full range of rights endowed by, and through, citizenship. Nyers makes this poignantly clear when he says, "without citizenship, refugees are denied not only political rights, but also something more fundamental – the capacity to speak politically and the expectation that they will be heard" (2006:17). The 3RP involves policies employing a liberal humanitarian discourse that portrays Arab refugees as "merely human" (Fiddian-Qasmiyeh, 2015, 2016; Jamal, 2016). This is especially evident with the resilience component of 3RP failing at equipping displaced Arabs with measures seeking to enhance their *resistance* to, and *recovery* from pre-emptive wars which destroyed their livelihood (Al-Kassimi, 2019; Makdisi, 2019; Al-Qassimi, 2019). The resilience component informing humanitarian policies manages and manipulates the Arab displacement problem by masking domination and negligence by refusing to consider Arab recommendations (Jamal, 2016; Al-Kassimi, 2019; Makdisi, 2019; Al-Qassimi, 2019)[147]. As highlighted by Nyers (2006:16), the issue with portraying refugees as "simply human" results in all notions of political agency being emptied

from refugee subjectivity[148]. The programs developed to address the Arabian exodus are not interested in hearing the opinions of forcibly displaced Arabs since they fundamentally prioritize the *resettlement* rather than *repatriation* of displaced Arabs (Harsch, 2018; Fiddian-Qasmiyeh, 2018; Al-Qassimi, 2019). This point is essential since a humanitarian narrative conceals the consequences of *necropower* affirming that the original activity of sovereignty originally produces *homo sacer* thus essentially perceiving Arab demographic transfers as *constructive*.

These humanitarian strategies produce "abject spatial parameters" containerizing and managing the mobility of the Arab as a "threshold-body" by deciding on the geographic spatial "pathway" the body will be transferred and/or resettled to – thus deciding on behalf of Arabs where they will start a "new life"[149]. Nyers (2006:18) warns of the representational practices of the UNHCR reinforcing "an image of refugeeness that negatively establishes the refugee as the inverted mirror image of the citizen" which "reproduce sovereign accounts of the location and nature of 'authentic' political identities and spaces". Motivated thus, the refugee and resilience component of these global compacts perpetuates "domineering coping measures rather than emancipatory or resistance coping measures" in that they force Arabs to "bounce forward" rather than "bounce backward" to a time before they were overrun by killing-machines (Al-Kassimi, 2019:11). These humanitarian programs reveal that Arabs are *banned* from the social and juridical order by rejecting the capability of displaced Arabs being authors of their own lives, bearers of knowledge, and possessors of civilizational experiences that would have suggested alternative paths to recovery.

After all, being heard requires a political identity (citizenship), and necessarily an internationally recognized sovereign – both uncommon in the Arab world since it is neo-Orientalized – through human philanthropic narratives – as a temporally degenerative space inhabited by *homo sacer* and governed by despotic regimes. Forcibly displaced Arabs are stripped of their subjectivity because the category of refugee is already an *inclusive exclusion* category that embodies and symbolizes the threatening non-European body stuck in a zone of indistinction. With the exercise of *necropower* inherently characterizing sovereignty, and since sovereignty is the figure who *wills jus gentium* into being by declaring the exception, then it rationally follows that designating a culture as impure or temporally degenerative is an *a priori* requisite for a *jus gentium* adhering to positivist scholastics. Arabia continues to be imagined as inhabiting unqualified bodies positioned in a non-discursive temporal epoch threatening a liberal-secular order maintained by a

legal regime (i.e., *jus gentium*) seeking to preserve the purity of societies reifying *ratiocinated* philosophical theologies. Preserving *ratiocinated* epistemological purity not only requires a continuous *redemptive* war on Arabs, but for it to be *legal* and *moral*, it necessitates the fabrication of mythologies perceiving Arab Semitic communities as *muselmänner* who *resent(iment)* and mystically seek to infect (Latin-European) modernity by diffusing their impure temporal coordinates into *ratiocinated* secular society.

Conclusion

Approaching the war on terror and the Arab uprising using bio/necropolitics as paradigms of analysis exposes the *deadly* symbiotic relation between sovereignty and modernity as a secular project. Sovereign figures elevated Arabs in general, and Muslims in particular to the exception by banning their mode of *Being* by discursively essentializing them as an unqualified limit-body inhabiting an *abject space* whose "inclusive exclusion" positionality is essential for the coherence of *ratiocinated* philosophical theology. Analyzing *life* and *death* as non-scientific cycles to deconstruct legal doctrinal (re)formulations such as the Bethlehem Principles and state-sanctioned operations involving *war-machines* (i.e., Timber sycamore) furthers our anachronic and hermeneutically suspicious interpretation of sovereignty as a liberal-secular concept inherently separating between a qualified body worthy of life and an unqualified body worthy of death. The idea that sovereignty targets *death* rather than *life* by inherently producing *homo sacer* – especially in the Arab world – is identified with the necropolitical idea that sovereignty since its inception and current practice continues to exercise technologies of racism elevating Arab civilization to a state of exception. This highlights sovereignty's inherent structure of domination and technology of racism reifying a "dynamic of cultural differences" inferring that an unbridgeable cultural gap between the *Athenian* and *Madīnian* mode of *Being* rationally requires the death of the latter unsociable body for the defense of the former *reason-able* body informing modern society.

The transformation of Arab cities into death-worlds reveals the importance of *race* for *jus gentium* contributing directly to the triangulation of biopolitics and necropolitics with racism being a metric determining "what can live and what must die". International law continuing to be animated by a "responsibility to protect" affirms sovereignty's inherent political device requiring the elevation of "non-conforming bodies" to a "state of exception" by banning the Arab subject from the juridical and social order. This space of indifference can also be identified similar to

TWAIL scholars as *terra nullius* since they both denote supposed *apolitical* geographies where non-civilized bodies or the *living-dead* can be killed without any consequence or legal retribution. In addition, it is not an overstatement to mention that TWAIL scholars would contend that secular politics is inherently bio/necropolitical since they agree that "sovereignty did not precede and manage cultural differences; rather, sovereignty was forged out of the confrontation between different cultures" (Anghie, 2004:311). This unambiguous statement affirms that TWAIL scholarship complements and benefits from a necropolitical conceptualization of sovereignty since as an approach to the politics of international law it affirms that positivist jurisprudence is based on "race war" discourses maintaining and policing a supposed unbridgeable cultural boundary between an *Athenian* and *Madīnian* mode of *Being*[150].

Furthermore, Western sovereign figures rehearsing "Vitoria's moment" in the Arab world before and after the "Arab Awakening" of 2011 is approached in this chapter as (sovereign) necropolitical moment(s) revealing that sovereignty is more than a right to kill, but a right to expose other people to death. The sovereign *deadly* consequences of appealing to cultural *sameness* while reverting to temporal *differences* is essentially sovereign figures activating the state of exception by exercising the bio/necropolitical device known as the *ban* by identifying the Arab body as being *included* by virtue of their *exclusion* from the normal/civilized identities emblematic of "modern" rational societies. Sovereign figures constructed and identified the Arab body as an inclusive exclusion or an internal-external enemy from which society must not only be defended, but also a body in which the sovereign is able to exercise the ultimate power to kill, in the name of protecting national citizenship. As noted, humanitarian compacts not only masked, but also (re)affirmed sovereignty inherently being *necropolitical* since they not only gave legal backing for a pre-emptive war authorizing *war-machines*, but also categorized Arab displacement using technocratic language while using neo-Orientalist imaginaries depicting Arab refugees as threatening national citizenship.

By adopting a bio/necropolitical critique of the humanitarian order managing Arab displacement, I was capable of revealing how sovereignty as a positivist concept subsuming the humanitarian order – through positivist logic and problem-solving solutions – works to tame the contingencies of refugeeness by exonerating sovereign figures primarily involved in initiating the "crisis of mobility". The refugee crisis is not only the product of sovereign figures engaging in exceptional (necropower) measures involving slaughter, it is also an exceptional consequence

appropriated by sovereign logic by constructing the Arab refugee as embodying "Islamist" racial attributes threatening "national" identity. Therefore, the refugee as *homo sacer* is an apolitical identity stripped of subjective consciousness and life-world experiences, but a necessary threatening *abject-Other* for sovereign ontological security. Refugees, then, are constituted as a "humanitarian problem" or a "national emergency" because their *biometric* fails to pass the test required for political subjectivity – a prerogative of citizenship only endowed to bodies bounded to, and members of, a *sovereign-willed* nation-state identity based on an ethno-centric Westphalian ontology of belonging.

A bio/necropolitical lens makes salient the paradox of sovereignty and its false promise of "modernity" since the danger of exclusively adopting humanitarianism to describe the exodus of Arabs risks undermining the idea that the problem with a humanitarian approach to the crisis lies in the idea that "humanity is already present within the concept of citizenship; it appears as the 'hidden difference' between birth and nation, bare human life and the political" (Nyers, 2006:41). The violent configuration of refugees as *bare-life* is concealed when we exclusively use a positivist humanitarian discourse because the refugee-as-muselmann exposes the original activity of sovereignty "by breaking the continuity between man and citizen, nativity and nationality, they put the originary fiction of modern sovereignty in crisis" (Nyers, 2006:41). Because humanitarianism targets "inferior races" to define its "universal" humanitarian mission, this reveals the danger in humanitarian logic working in perfect symmetry with sovereign state power it should be contesting. That is, a humanitarian order that insists on being exclusively founded on problem-solving logic and positivist scholastics masks and revitalizes the necropolitical logic of sovereignty being based on its relation with the exception working to create boundaries and keep things apart (i.e., citizen-refugee, subject-object) (Walker, 1993; Bauman, 2003; Nyers, 2006; Minca, 2006). The aforementioned critique should prime us to reflexively deconstruct humanitarianism not as a "neutral, impartial, and non-political concept", but as an order "that is implicated in a fundamentally political – and, when pushed to the limit – violent relationship" (Nyers, 2006:41).

While perpetuating neo-Orientalist imaginaries constructed Arab bodies as incapable of attaining the *telos* of modernity, extending a humanitarian response to "aid" Arabs in becoming "ordered" demonstrates that inside the culture and structure of modernity "good and evil are intensely intertwined" (Alexander, 2013:4). That is, modernity – using *race* as a metric –

distinguishes the "imperfect" and "strange" (premodern) body from the "perfect" and "familiar" (modern) body. The distinction makes salient the "dualistic nature" of modernity as largely being characterized by a need for "order" – a need to domesticate, categorize, and rationalize the world so it would be controllable, predictable, and understandable (Bauman, 1989; Minca, 2007). Since the architect of modernity is a sovereign figure subsumed by a positivist jurisprudence, then we can logically deduce that such "order-making" will always require the "normal/bios/citizen" identity to identify its ontological threatening opposite identified as the "abnormal/bare-life/refugee" figure.

Conceptualizing modernity as a "manager" of different "qualities" of *life* by organising them into familiar and manageable categories would mean – from a necro/biopolitical paradigm – that modernity *a priori* seeks the identification of particular groups as "outcasts"[151]. These unqualified bodies are present yet absent, included while being excluded, inside while being outside, because the figure of *strange-ness* cannot be "purified", "controlled", or "ordered" (Baumann, 1989, 1991). According to *ratiocinated* jurisprudence then, Arabs are perceived as the object of fear and the *living-dead* outside of society's borders which constantly threatens the order promised by a modernity informed by Latin-European philosophical theology. The production of *musulmanner* is therefore an inevitable outcome of secular modernity as manifested with the *en-masse* slaughter and displacement of a *Madīnian Being* since the formative phase of *jus gentium*. With modernity being a "totalized project exclusively articulated and engineered through the voice of the West" (Al-Kassimi, 2018:3), then slaughter and racism *willed* by a sovereign figure to uphold the temporal purity of civilization are unavoidable *bodily-effects* of *progress* and *perfection* since the quest for "order" characterizing the *telos* of modernity is declared by sovereignty.

Au Lieu a Conclusion Let us Deconstruct the Philosophical Theological Schism[152] Mythologized *Entre* a *Madīnian* & *Athenian* Mode of *Being*

"...Our opponent claims that the agent of the burning is the fire exclusively; this is a natural, not a voluntary agent, and cannot abstain from what is in its nature when it is brought into contact with a receptive substratum. This we deny, saying: The agent of the burning is God, through His creating the black in the cotton and the disconnexion of its parts, and it is God who made the cotton burn and made it ashes either through the intermediation of angels or without intermediation. For fire is a dead body which has no action, and what is the proof that it is the agent? Indeed, the philosophers have no other proof than the observation of the occurrence of the burning, when there is contact with fire, but observation proves only a simultaneity, not a causation, and, in reality, there is no other cause but God." **– Al-Ghazali (11th century)**

"Government is an institution which prevents injustice other than such as it commits itself. The past resembles the future more than one drop of water resembles another. Throughout history many nations have suffered a physical defeat, but that has never marked the end of a nation. But when a nation has become the victim of a psychological defeat, then that marks the end of a nation." **– Ibn Khaldun (1377)**

"The *Laws* [Al-Farabi's *Summary of Plato's Laws*] is not a book of whose content one can merely take cognizance without undergoing a change, or which one can merely use for inspiring himself with noble feelings. The *Laws* contains a teaching which claims to be true, i.e. valid for all times. Every serious reader of the *Laws* has to face this claim. Every Muslim reader in the Middle Ages did face it. He could do this in at least three ways. He could reject Plato's claim by contending that Plato lacked completely the guidance supplied by Revelation. He could use this Platonic standard for judging, or critiquing, specific Islamic institutions, if not for rejecting Islam altogether. He could contend that Islam, and Islam alone, lives up to the true standards set forth by Plato, and on this basis elaborate a purely rational justification of both the content and the origin of Islam" – **Leo Strauss (1945)**

"…There have been two very dangerous and incorrect European ideas that have invaded the Arab mind with regards to nationalism and humanism. The first is the European concept of separation of nationalism and religion. This concept is perfectly understandable when it comes to European conditions because religion had entered Europe external to it, that is, foreign to its inherent organic nature and to its natural history. It is an idea based on the after-life and a set of morals that did not come into Europe through Europe's own language, nor did it explain Europe's own environment, and did not intertwine with European history, whereas in the case of Islam and the Arabs, it is not just an idea concerned with the after-life, and is not purely moral teachings for them. It is the best expression of their universal convictions and outlook on life. It is the best expression of the unity of their personality, where the word comes in and unites with the emotional and intellectual sides, where meditation comes in unity with action and the soul with destiny, and above all, it is a beautiful portrayal of their language and social behavior" **– Michel Aflaq (1943)**

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On January 10th, 2019 – after almost a decade had elapsed since Obama's *Vitorian* moment in Cairo – US Secretary of State Mike Pompeo delivered an address at the American University in Cairo (AUC) titled *A Force for Good: America's Reinvigorated Role in the Middle East*[153]. Pompeo declared emphatically that "people throughout the Middle East and the world need to know that America's *involvement* in the Middle East is *absolutely a force for good*. We come here with no intention to oppress or to dominate but rather to *free*, to *create opportunity* for every individual throughout the Middle East to *live their life* and to have the freedoms that *we* are all so blessed to have *in* the United States" (Pompeo, 2019; emphases added). Pompeo went as far as to

declare that Obama's *Vitorian* vision in 2009 stipulating "*a new beginning* between the United States and Muslims around the world" based on "mutual interest and mutual respect" was a failed approach that was "timid, hesitant, and apologetic" with "dire" consequences since it inflicted "shame" and produced "much needless suffering" (as cited by Kirby, 2019, emphases added). However, *la pièce de résistance* in his entire speech act – which lasted less than 26 minutes – was declaring that since Obama's tenure ended the U.S. learned that when "America *retreats*, *chaos* often *follows*" (Pompeo, 2019, emphases added). Arabs in the *Maghreb* and *Mashreq* would seem to disagree with his last statement since it is because *jus gentium* adheres to positivist scholastics *willed* by a sovereign figure that is inherently necropolitical that led to Arabia becoming a space boasting *necropolises* with an environment conducive to *death* and *creative chaos*.

The hermeneutics of suspicion exercised to deconstruct his speech act is legally and historically warranted especially when we recall that faculty members at the AUC voted "no confidence" to the President of the AUC – Francis J. Ricciardone – for an invitation to Pompeo asking him to present a speech at the university (Walsh, 2019). Pascale Ghazaleh, the chairman of the university's history department stated "were any of the members of our community consulted as to whether it was a good idea to bring a former C.I.A director who has spoken in favor of torture to the A.U.C?...I object to the university being treated as an extension of the U.S. embassy" (Walsh, 2019). The frustration of academic members at the AUC is substantiated when we recall that the first TWAIL conference in the Arab world took place at the AUC in 2015. The conference emphasized the incessant neo-Orientalist power-relations structuring *jus gentium* continuing to construct Arab voices as *irrational* interlocutor's incapable of suggesting alternative knowledge structures furnishing ideas seeking to reconstruct and resist the "universalized" legal, political, and economic system reifying a secular (ratiocinative) Latin-European philosophical theology (TWAIL, 2015)[154].

Pompeo's speech is telling but not surprising. It is significant because it makes salient that the philosophical theology dominating *jus gentium* continues to historicize the Arab world as a homogenous geographic apolitical space characterized by an "evil force" (i.e., Arab *Saracen*) inferred by its primordial/premodern culture. This cultural (deterministic) *causal factor* is then translated into *legal* difference followed by sovereign mechanisms of domination and violence exercising technologies of racism and enmity that explicitly highlight Western sovereign figures continuing to perceive the Arab body as an abject-Other denied legal personality – a *muselmänner*.

Also, it is significant because the Trump administration effectively (re)inscribes President Bush's "race war discourse" stipulating that the *telos* of history is spatially and temporally contingent, unlike Obama's Vitorian moment who made it simply a temporal issue by at least "recognizing civilizational similarities" and not simply reverting to "recognizing cultural differences". That is, Pompeo explicitly highlights that the Arab world is resistant to modernity not simply because it is temporally degenerative by holding on to "past" traditions, but also because its spatial cartographical location is essentially dominated by a *primitive* Arab mode of *Being* which demands the *God-given* American "spirit and force of goodness" to transform the Arab *mind* envisioned as inhabiting a New Middle East (NME). More to the point, Pompeo's spoken words in Cairo further accentuate the continued "inclusive exclusion" *ethos* of *jus gentium* when he emphasises that the Middle East *needs* the U.S. and is a "force of good" because a "rational" culture is characterized by "freedom". Therefore, Pompeo's speech not only assumes that Arab civilization originally lacks freedom, but it also supposes that Arabs are mentally ill-equipped to *reason* such "civil trait" because they are deterministically constructed as embodying an "evil spirit". Pompeo's speech makes salient that the Arab continues to only be intelligible to (positivist) sovereign figures by identifying them as naturally lacking cultural coordinates (temporally) required to attain "modern" and "civil" status. In other words, *cultural differences* being filtered using a *necrometric* situates the Arab body simultaneously *inside* and *outside* international law because their "different" epistemology casts them as *homo sacer*. Pompeo places Arab civilization on a linear temporal trajectory of time imagined as failing to attain the benchmark required to transcend *evilness* in tandem with the idea that "recognizing cultural similarities" between Arabia and Latin-Europe – as Obama did – is a failed approach since the *telos* of history – according to the Trump administration – is exclusively attained by adopting, and located in imitating, cultural mores situated in Latin-European *time-zones*.

However, the statements deliberated by the Trump administration are not surprising because a jurisprudence informed by positivist scholasticism – with an original activity consisting in continuously producing *homo sacer* – requires the identification of an "evil" (cultural) force to maintain civilizational purity thus justifying policing the supposed "unbridgeable" cultural gap between a *universal* European subject and a *particular* Arabian object for ontological, and ultimately, epistemological coherence. By suspiciously approaching and deconstructing the legal doctrines reifying a cultural dynamic of difference adjudicated after 9/11 and the "Islamist Winter"

of 2011, the aforementioned chapters made salient that for *jus gentium* to maintain its (sovereign) identity and a "universalized" position for itself and values, the displaced and slaughtered Arab abject-Other fulfills two functions. First, it offers a screen onto which the negative definition of universality/sovereignty/civilization/citizenship itself is projected – since Latin-Europe is the subject of sovereignty – whereby the refugee as object denied sovereignty is framed as the *particular* body defined in *contra distinction* to the "modern" universalized idea of belonging reified by Latin-European philosophical theology (i.e., citizenship) (Guénon, 1924; Pahuja, 2011; Abou El Fadl, 2014). Secondly, the Arab as a bodily exception answers a demand for *inclusion* within the universal without disrupting the assertion of those values as universal; meaning that those who populate the refugee category need to be "torn between exclusion as something radically different to the West and the demand to join and become the same as it" (Pahuja, 2011:24).

Therefore, by injecting bio/necropolitics into the discussion seeking to critique how *jus gentium* has historically dealt with the Arab world and more specifically after 9/11, we notice the paradox of *jus gentium's* claim to being universal since the "exclusion of these *Others* is intrinsically *antithetical* to the West's *arrogation* of the *universal* to *itself*, since this arrogation [or claim] would require the *inclusion within* the West of those *very Others excluded* in its *constitution*" (Darian-Smith and Fitzpatrick, 1999:1-2; emphases added). In other words, *jus gentium* asserts that the European is "always already the non-European" (Isin, 2013:110) not in the sense that there is no cultural *difference* between an *Athenian* and *Madīnian* mode of *Being*, but rather that *jus gentium* requires developing a myth of "natural antagonism" emphasizing a "thesis of impurity" (Isin, 2013:110). This emphasizes that it is an impossibility for a jurisprudence distinguishing between morality and legality (i.e., positivism) in being capable of identifying *itself* with *itself* "without any relation or reference to the other. Europe comes to name itself, is able to name itself, only through the other, or the name inherited from the other. It comes to itself from outside itself" (Isin, 2013:111). The Arab-Other as *refugee* functions in the Westphalian nation-state imaginary as an image to protect the project of national belonging (citizenship) with little to do with the *actual* lived experiences of Arabs and Muslims. Rather, it has everything to do with *sovereignty* inherently banning from the social and juridical order *abject* bodies identified as culturally threatening the purity of secular civil society and in the process becomes a necessary *inclusive exclusion* translated into a host of social anxieties that overlap in a series of (national) fearsome panics (Tolan, 2002; Emon, 2012; Abou El Fadl, 2014, 2015).

An anachronic approach to legal-history demonstrates that since the Council of Clermont in 1095 summoned by Pope Urban II, Latin-European philosophical theology began to excessively rationalize revealed *Law* – referencing *sovereign-will* – by formulating legal doctrines directly contradicting revealed *Law* thereby defining itself in dialectical opposition to Arab civilizational evolution. The beginning of this epistemological schism – identifying the Arab in general, and Muslim in particular as *Saracen* can be found in the infamous medieval epic poem or *chanson de geste* informing "heroic deeds" called *Chanson de Roland* (Beckett, 2003; Akbari, 2012)[155]. While the chanson is written in the 11th century, the aesthetic mythical piece narrates Charlemagne's ill-fated exhibition to the then Muslim city in Al-Andalus called Saragossa in 778 as recounted in the Battle of Roncevaux Pass (Winter, 2011b). The importance of approaching legal-historical events by "committing the sin" of being anachronic to deconstruct and critique the formative phases of Europe clashing with Arabia is observed when we remember that the 11th century was an attempt by Europe to begin developing a "reason-based" philosophical theology valorizing *reason* over *revelation* to characterize Arabs in general, and Muslims in particular (Akbari, 2012; Winter, 2011a, 2011b; Emon, 2012; Abou El Fadl, 2014, 2015).

The legal developments of the 11th century directly influenced the development of a "secular" *jus gentium* in the 15th century with Pope Urban II at *Clermont* in 1095 – like his naturalist and positivist successors at the Valladolid debate in 1550 or Westphalia in 1648 respectively – illustrating the importance of sovereign figures (God-in-flesh) fabricating essentialist imaginaries of the *non-Latin European* for the *coherence* of *jus gentium* (Guénon, 1945; Smith, 1963). The celebrated *chanson de Roland* is based on *mythical* culturalist differences that were transformed into legal differences to adjudicate, perhaps, the first *just war* known to the world as the first crusade (1095-1099) based on *ratiocinated* deductive logic postulating an *a priori* materialistic distinction between law and morality (Guénon, 1931, 1945; Walters, 1973; Riley-Smith, 2000; Tolan, 2002; Grant, 2005; Akbaro, 2012; Emon, 2012; Abou El Fadl, 2014, 2015). While liberal-secular jurists argue that it was a holy war (*bellum sanctum)* rather than a just war (*bellum justum)* since the latter highlights the "secularization of politics" and "sovereign states" do not engage in "religious warfare", the Council of 1095 highlights precisely the violence inherent *in* secularism; that is, the discourse of Pope Urban II *is* the "secularization of religion and science" since no Abrahamic *revealed law* – whether through *Ismael* or *Isaac* – *morally* condones a *war*

founded on *cultural differences* (Guénon, 1931, 1927; Somerville, 1972; Tolan, 2002; Orend, 2006; Beckett, 2003; Abou El Fadl, 2014, 2015).[156]

According to Einhard (d.840) – a Frankish scholar and dedicated servant of Charles the Great (Charlemagne) and a major primary source on the Emperor – the song of Roland is based on *myth* rather than *history* (Einhard, 9th c. [1880]). Einhard's main work is his biographical work on Charlemagne entitled the *Vita Karoli Magni* (The life of Charles the Great) which describes the battle of Roncevaux in 778 (Einhard, 9th c. [1880]). According to Einhard, Charles was not yet emperor in 778, and most importantly, it was not Muslim Moors from the Umayyad Caliphate in Iberia and Al-Andalus who violated *Law* on the Pyrenees, but rather it was the Basques (Einhard, 9th c. [1880]). George Grant similarly highlights in relation to the *chanson de Roland* produced in the 11th century that the "the composer got nearly all the facts terribly wrong: Charlemagne was not yet the emperor; the bandits who slaughtered the rear guard of the army were Basques not Saracens; the invasion of the Spanish Moors was but a brief expedition, not a seven-year-long campaign; revenge for the ambush was never undertaken; and the rivalry between Roland and Ganelon never happened, so far as we know – in fact, there is good reason to suspect that the two men were not even alive at the same time" (2005:144). However, what is vital in the transmission of the *chanson* is that it established and illustrated a *legal* precedent that postulated that the "standard of civilization" informing *just war* possesses a "benchmark of civilization" that essentializes subjects "incapable" of "chivalrous" and "responsible" conduct in war as belonging "outside" law and therefore uncivilized objects (Beckett, 2003; Grant, 2005; Winter, 2011a). Imagining the Arab-Muslim – according to a positivist international law reifying the dynamic of cultural difference – as a soulless infidel who cannot be "saved" but only "conquered" and barbaric and savage when conducting war, therefore makes them a palatable and predictable "barbaric" body in the epic poem since *salvation* is *denied* for individuals inherently irrational and lacking in the arts of war. The song of Roland established the notion that "*chivalry is the ideal code of ethical behavior*…that defines the *limits of proper* action toward *friend and foe alike*. For several generations of European Christians, it was one of the most powerful means by which such *cultural standards* were woven into the heart and lives of the people" (Grant, 2005:144; emphases added).

The writer(s) of the *chanson* reworked the *actual* historical events that occurred in the battle of Roncevaux on August 15th 778 between 1098A.D and 1100A.D to fit a contemporary purpose which according to most scholars was meant to underscore the threat posed by Arabs and

Muslims towards Judeo-Christian Europe (Grant, 2005; Winter, 2011a, 2011b; Abou El Fadl, 2014, 2015; Yusuf, 2019). Therefore, the mixed synod of ecclesiastic clergies and nobles representing Pope Urban II involved in adjudicating legal doctrines informing *just war* scholastics in 1095 anachronically re-contextualized the characters and events of the battle to fit a particular context in the 11th century between a supposed World War between Cross and Crescent (Guénon, 1931, 1932; Smith, 1963; Walters, 1973; Riley-Smith, 2000; Winter, 2011a, 2011b)[157]. Grant makes this point clear when he says concerning the poem that "History can be, after all, not so much what actually happened, as it is what we think happened. As a result, fictionalized legends like this one can often have more influence than careful historiography" (2005:143).

The *chanson de Roland* as an aesthetic artistic piece stood the *test of time* with various versions of the *chanson* remaining at the center of European literary cannon well into the Renaissance and Enlightenment period. The *ethos* of the poem is revealing in that it highlights the *inclusive exclusion* character of *jus gentium* and/or the two-fold European response to the world of Arabs in general, and Islam in particular. On the one hand there is an absolute *pathos* of hatred and enmity, and on the other, there is a sentiment of admiration and envy of an enormously successful and prosperous intellectually advanced civilization (Guénon, 1924; Frank, 1998; Winter, 2011b; Yusuf, 2019). While there is a tone of militancy in the poem, it is primarily a poem commemorating and celebrating the (mythological) defeat of Charlemagne's army at the hands of the Umayyads and Abbasids at Pyrenees. Europe celebrating defeat through the aesthetic art of poetry is indicative not only of early European *schizophrenia*, but that Arabs have historically fulfilled in Latin-European imaginary the "Other-role" (i.e., *inclusive exclusion*) necessary for Europe to define "its-Self" in absolute mirror opposition.

The variety of sentiments animating the *chanson* gives credence to Henri Pirenne's[158] (1937) famous maxim stating that without the expansion of Arab-Islamic philosophical theology across the *Mashreq* and *Maghreb*, the Frankish Empire would have probably never existed, or more specifically "without Mohammed Charlemagne would have been inconceivable" (Pirenne, 2001:234) or as summarized by Andre Gunder Frank "no Charlemagne without Mohammed" (1998:16). An Arab mode of *Being* (Ar. نظرية المعرفة العربية /الحضارة العربية) creates Latin-Europe because Latin-Europe is the antithesis to the world created by an Arab philosophical theology (Al-Jabri, 1994; Tolan, 2002; Abou El Fadl, 2014, 2015; Yusuf, 2019)[159]. Therefore, I argue, that the proliferation of Arab epistemology in the 8th and 9th century on the Arabian Peninsula, parts of

Anatolia, and Northern Africa marks the *temporal* divide between Antiquity and the Renaissance rather than the year 476 C.E usually marking the "fall of the Roman empire" according to Western historicism. The Western Roman empire in the Mediterranean in 476 C.E did not "suffer a psychological defeat" in the sense that "Roman civilization fell" as highlighted in the opening quote by Ibn-Khaldun, but rather 476 C.E was a moment where inhabitants of Rome were attempting to figure out how to *live* with the (Greco) secularization of Judeo-Christian theology adhering to the works of Saint Paul the Apostle (Pauline theology), Augustin of Hippo, and Constantin I. For example, both, Paul and Augustin, "marked an *unnatural* shift by prioritizing the *ratio* to rationalize *God* in three parts thereby disregarding explicit revealed *nomos* on the matter of *omnipotence*" (Guénon, 1931; Smith, 1963; Winter, 2011a, 2011b; emphases added).

Therefore, rather than the 5th century, it is more accurately the 8th century that the Greco-Roman imperium begins to suffer a psychological defeat with the disintegration of its civilization situated around the *Mashreq* and *Maghreb* as noted with the *Reconquista* beginning after the Umayyads captured *Hispaniola* in 711. The 8th century was the moment *Latin-Europe* was forced to begin thinking of itself as a coherent cultural entity and had to cope with the reality that it lacked a *philosophical theology* capable of rationalizing different cultural particularities foreign to a Latin-European interpretation of what constitutes an "Athenian polis". Arab epistemology contested the millennium old Roman hegemony in policing and managing a homogenous cultural flow concentrated around the Mediterranean (Winter, 2011a). Put differently, the 8th century was a legal-historical moment where Greco-Roman communities had to decide on whether to extend "hospitality" to a stranger from a *Madīnian* polity apparently *naturally* incompatible to an *Athenian* polity.

With Arab epistemology splitting the Mediterranean in two halves – a mostly Northern Christian space and a mostly Southern Muslim space – the Western Roman Empire centered around the Mediterranean sea for the first time in over a millennium had to decide on whether it wanted to cloister itself or cooperate with "different cultures" (Frank, 1998; Pirenne, [1937] 2001; Yusuf, 2019). Invariably, the Western Roman Empire decided on the former – as highlighted in the *pathos* of hatred and admiration towards the *Saracen* in the song of Roland – with Western historiography situating the Medieval period as lasting until the 15th century with the year 1492 indicating the transition into the *Renaissance* in tandem with the initiation of the *Inquisition* period (12thc. – 20thc.) which resulted in the expulsion of culturally different groups from *de-facto* Latin-

European space marking the conclusion of the *Reconquista* period (8th c. – 15th c.) (Frank, 1998; Pirenne, [1937] 2001; Fahad, 1989; Winter, 2011a, 2011b; Yusuf, 2019)[160].

One of the main contrasts between the intellectual history of Arabs and Europe is that in (Pauline) Christianity the struggle to know God and Being has been linked to the crown intellectual concern of *ratiocinated theology* while in Islam the struggle to know God and Being has primarily been *mystical ijtihad/mental effort* (Al-Farabi, [9th c.] 2015; Al-Ghazali, [11th c.] 1963:132-140; Ibn-Khaldun, [1377] 2015; Winter, 2011a). Arab epistemology therefore kept the "Greek genie" inside the bottle by rejecting the excessive use of pure reason to *rationalize* God and *Being* (Al-Farabi, [9th c.], 2015; Al-Ghazali, [11th c.] 1963; Ibn-Khaldun, [1377] 2015; Smith, 1963; Winter, 2011a; Yusuf, 2019)[161]. European philosophical theologians involved in developing *jus gentium* based their intellectual theological legal endeavour on *ratiocinated* dialectics to discover and reformulate ultimate truths leading to the *ratiocentric* idea that the particular history of Latin-Europe is the general history of the world, or that to be "inside" rather than "outside" *jus gentium* the "non-European" member had to reify *secular* Latin-European philosophical theology. Then, philosophy in medieval Christendom was the handmade of theology by adhering to the idea that if *revelation* and *reason* collide, then *reason* would have to be given priority since sovereignty is no longer *divinely* or *transcendentally* situated, but rather incarnated in a *material* sovereign figure in *flesh*.

Medieval imaginaries of Muslims as *Saracens* or infidels, and Arabs as primitive and indigenous, is primarily based on the repudiation of Arabs in general and Muslims in particular being capable of fostering a *reason* based theology (i.e., philosophical theology) because Islam – according for instance to orientalist Joseph Ernest Renan – emphasizes practice (orthodoxy) rather than thought (orthopraxy) (Fahad, 1989; Tolan, 2002; Winter, 2011a, 2011b; Abou El Fadl, 2014). The "Arab mind" being incapable of a *reason-based* theology is also founded on the reductionist idea claiming that "Islam" by definition means ultimate submission to the *will-of-God (*i.e., *musulmanner*) rather than the *will-of-a-sovereign figure* (Winter, 2011a, 2011b). Therefore, the *ratiocinated* assumption claiming that Arabs are incapable of reason is based on the idea that the God of (Ishmaelite) Semite races is transcendent to the point that the *mind* cannot reach Him and hence Islam is suited to less intellectually gifted people i.e., Bedouins and desert-dwellers. In contrast, the *triune* Judeo-Christian God informed by Aristotelian syllogisms and inferred by Cicero, Saul of Tarsus, Constantine I, Augustine of Hippo, Albertus Magnus, Thomas Aquinas,

and Vitoria in tandem with the anthropomorphic Pharisaic and Sadduceeic Judaic God (i.e., the Father) is perceived as an intellectual *stimulus* and a challenge in comparison to "Allah" (Tolan, 2002; Winter, 2011a, 2011b; Emon, 2012; Abou El Fadl, 2014, 2015). The Judeo-Christian (slave) morality informing *jus gentium* since the 15th century therefore explicitly perceives Arab epistemology *a priori* as *mindfully* incapacitated because it supposedly emphasizes the idea that it is *evil* to use or abuse the faculty of reason i.e., the intellect[162].

The *chanson de Roland*, Obama's Vitorian moment, and Pompeo's "new beginning" speech in Cairo – while over 9 centuries apart – accentuates that an epistemology adhering to positivist scholasticism deducing *a priori* that "the ends justify the means" or that two contradictory statements can be true such as "that which is legal can at the same time be immoral" will invariably make legal and necessary xenophobic imaginaries, reductionist categories, and most importantly *deadly* practices for epistemological *coherence*. Such "coherence" is based on a philosophical theology that inevitably essentializes some cultures as being a *force of good* while others a *force of evil* for ontological security. An international law that is premised on identifying different cultures as threatening evil bodies that need to be eliminated, purified, or saved for epistemological coherence – by adjudicating *deadly means* of slaughter – is an international law that must be resisted and reformed as exclaimed in 2015 during the TWAIL conference in the Arab Republic of Egypt. A "modern" world informed by European medieval intellectual scholastics constructs a *jus gentium* that is *God-less* hubris with a readiness to *rationalize* religion by reifying the *mind* (i.e., intellect) while completely discounting the *heart* (Al-Farabi, [9th c.], 2015; Ibn-Khaldun, [1377] 2015; Al-Ghazali [11thc.], 1963:185; Yusuf, 2019).

Devotion to divine revealed *nomos* rather than a rationalized *nomos willed* by *sovereign-flesh* does not efface "human freedom" by making its adherent members of a "force of evil" – as Pompeo and former naturalist and positivist jurists of earlier centuries would have us believe. A core element of Arab epistemology is the recognition of God-given human attributes, most notably the ability to "think" or "reason" which ultimately lead to "living in common with culturally *different* human beings" since the epistemological register of *revelation* is infallible while the *mind* is fallible (Winter, 2011a, 2011b; Abou El Fadl, 2014, 2015; Yusuf, 2019). Ibn-Khaldun ([1377] 2005:333) declares "God distinguished man from other animals by an ability to think which He made the beginning of human perfection and the end of man's noble superiority over existing things". Here, Ibn Khaldun advances a complementary approach of intellectual consciousness that

perceives *Dīn* (Eng. Religion)[163] and science symbiotically in that it amalgamates Divinity, human reflexivity, and material forces since humankind is most distinctive from others parts of Creation (Smith, 1963; Pasha, 2018). This manifestation is further illustrated in the following passage by Ibn-Khaldun when he says:

> We say that man is distinguished from other living beings by certain qualities peculiar to him, namely: (1) The sciences and crafts which result from that ability to think which distinguishes man from other animals and exalts him as a thinking being over all creatures. (2) The need for restraining influence and strong authority, since man, alone of all animals, cannot exist without them…(3) Man's efforts to make a living and his concern with the various ways of obtaining and acquiring the means of life…(4) Civilization. This means that human beings have to dwell in common and settle together in cities and hamlets for the comforts of companionship and for the satisfaction of human needs, as a result of the natural disposition of human beings toward co-operation in order to be able to make a living ([1377] 2005:42-43).

A novice acquaintance with Arab jurisprudent history reveals the extensive philosophical theological cannons accenting the importance of the faculty of reason and its continued nourishment for the constant flourishment of a "community/Ummah" (Ar. أمة) and "social solidarity/Asabiyyah" (Ar. عصبيّة). This intellectual nourishment is designated by Al-Farabi, Ibn-Rushd, and Ibn Khaldun as an essential constitutive process in developing a *just polis* according a rational and moral objective characterizing a(n) "ideal/virtuous city" (Ar. المدينة الفاضلة), "civilization" (Ar. عمران), and "human social organization" (Al-Farabi, [11th c.], 2015; Ibn-Rushd, [12th c.], 2008; Ibn-Khaldun, [1377] 2005:45)[164]. However, it is precisely because Arab epistemology is *mystical* rather than *ratiocentric* in that it believes that religion and science are complementary and need not be separated that elevates Arabs – according to positivist jurisprudence – to the exception and therefore *a priori* objects of sovereign *necropower*. It is this metaphysical ontological schism around the idea of *Being* between Arabia and Europe that permits a positivist *jus gentium* in making *legal* what *revelation* has declared *immoral* since a *jus gentium willed* by *sovereign-flesh* identifies (secular) *rational-law* as superior to *revealed-law*.

Arab epistemology adheres to the revealed mystical idea that it is the *heart* (Ar. القلب) rather than the *mind* (Ar. العقل) that ascents to revelation, with the heart *and* mind symbiotically working out the entailments of *revealed nomos* (*Sharia)* through *ijtihad* (Ar. اجتهاد). For instance, Al-Ghazali's, Ibn-Rushd's, and Ibn-Khaldun's critic of Plato's idea of *ex nihilo* and Aristotle's idea

of static "hierarchy of being" and the world it develops is extensively critiqued by Arab-Muslim philosophical theology (Guénon, 1927; Al-Jabri, 1994; Winter, 2011a, 2011b; Yusuf, 2019)[165]. Arab philosophical theology is *a priori anti-universal* since according to revealed law all people (Ar. خلق) began from an identical spatial-temporal site – the Garden of Perpetual Existence or Space of Righteousness. Arab epistemology rejects the racial/nationalist categorizations and/or hierarchies based on reductionist ideas stipulating that some (ethnic) people *a priori* lack intellect. For all three aforementioned Arab theological philosophers, Religion and Science are complementary thus believing that the world is not created *ex nihilo* but that God *willed* the world into [be]coming *(Creatio ex nihilo)* rather than a Platonic idea of *ex nihilo nihil fit* (nothing comes from nothing). The *a priori* separation of Religion and Science makes possible the (Aristotelian) *biopolitical* distinction between *bios* and *zoë* and sovereign *necropower* necessarily imagining the Arab as *Musulmane*. This separation is maintained by a positivist *jus gentium* transmitting benevolent humanitarian discourses and civilizing missions inferring that the *telos* of secular modernity/civilization is exclusively attained by reifying a secular Latin-European epistemology (Smith, 1963; Beckett, 2003; Taylor, 2007; Abou El Fadl, 2014).

Observing Science and Religion symbiotically functions as a *heartful* and *mindful* limit to the *ego* seeking to rationalize different modes of *Being* in absolute opposing binaries i.e., Evil-Good, Saracen-Believer, Modern-Primitive, Subject-Object, Citizen-Refugee, and Bios-Z*oë*. According to secular epistemic knowledge structures, the *a priori* separation between Science and Religion makes possible a *flesh* figure to fill "God's throne" and in the process develop a *necropolitical nomos* that makes legal what revelation has declared immoral. The consequences of such immoral separation are readily noticeable in Arabia with sovereign figures acting as "*Gods-in-flesh*" incessantly requiring *worldly* bodily sacrifices – the production of *muselmänner* – for the constant resurrection of the Western body politic[166]. Accordingly, then, a philosophical theology valorizing the *heart* over the *mind a priori* rejects any law claiming "universality" by stipulating that an *ethos* of "inclusive exclusion" is *irrational*. This rejection is primarily based on the repudiation of a secular (protestant) ethic of *individualism* and *egocentrism* claiming that with sovereignty's original activity requiring the production of *homo sacer*, then the non-conforming abject body is banned from the juridical and social order simply because they are *different-than-I*.

A *jus gentium* that imagines Religion and Science as complementary unequivocally rejects the *ratiocentric* idea stipulating that two opposing propositions and/or contradictory rhetorical

statements involving law can be naturalized as *Truth*[167]. These include – among others – the idea of inclusive exclusion, creative anarchy, transforming cultural differences into legal differences, the ends justify the means, and the distinction between morality and legality. Therefore, because Arab epistemology rejects and cautions about the excessive use of reason – which Latin-European epistemology perceives as a sign of Arab civilization inherently lacking intellect and civility – then inhabitants of Arabia are legally condemned at being the *refugee*, or the *displaced abject body* that can be killed with impunity by being incarnated as *summa malum culpables* (the sum of all culpable evils). This immoral incarnation not only demonstrates the *inhumanity* of sovereignty as a positivist (universalized) juridical concept inherently needing to target *death* rather than *life* for epistemological coherence, but it also discloses that the *en-masse* slaughter and exodus accenting Arabia is "morally" conceptualized as "creative chaos" because sovereignty "rationally" identifies an Arab mode of *Being* as an *ontologically dead* target for *sovereign-will* to exercise *necropower* on the *Madīnian* subject, and in the process, actualize modernity as a liberal-secular *telos*.

While the naturalized epistemological inquiry and suspicious deconstruction of legal-history located in this monograph focussed specifically on the consequences manifest in Arabia resulting from secular (positivist) scholasticism valorizing a philosophical theology reifying *reason* over *revelation*, future research will be concerned in studying responses and alternatives seeking to counter *necropower* proposed and located in Arab philosophical theology. Firstly, these alternatives will seek to emphasize Arab epistemology furnishing an alternative epistemology affirming Arab subjective capability in authoring alternatives countering immoral worldly experiences. For example, it would be vital to research how forcibly displaced Arabs exercised their international legal right of "voluntary return" as political subjects by altering the *technocratic* humanitarian concept of "resilience as domination" proposed by 3RP seeking the resettlement of displaced Arabs, to "resilience as emancipation" with Arabs demanding repatriation and a return to their accustomed life. Secondly, since the year 2016 marked a century since the Sykes-Picot agreement partitioned Osmanli-Arabia, and with the year 2022 marking a century since the Osmanli Caliphate was abolished, it would be vital to research how and why the Arab *Mashreq* and Arab *Maghreb* continues to witness the *development of underdevelopment* (Frank, 1998; Abou-El-Haj, 2005; Akçam, 2012). By emphasizing the civilizational consequences involving enforced geographic and demographic alterations steered by the French and British mandate era – in collaboration with local Arab, Turkish, Kurdish, Armenian, Assyrian, and Chaldean *comprador*

classes – forthcoming research will also seek to approach the legal-history of Ottoman-Arabia at the conclusion of the 19th century and the beginning of the 20th century using an anachronic reading of legal-history thereby emphasizing how Arabia would benefit from reviving (Osmanli-Arab) pluriversal modalities of governance and ontologies of belonging treasuring cultural heterogeneity for over five centuries (Rodinson, 1977; Goffman, 2002; Abou-El-Haj, 2005; Akçam, 2012; Sayyid, 2014; Robson, 2017; Al-Kassimi and Sills, 2020). Lastly, future research will also be interested in analysing how Covid-19 from a *Camusian* lens (i.e., *peste et pestilence*) brought forward the ominous truth that the moral issue with *jus gentium* and its "modern" *telos* is related to temporality, rather than the limited spatiality argument claiming "Eurocentricity" as the primary issue. This is manifest with inhabitants of "Western" political spaces becoming victims of *necropower* by being elevated to the exception with elderly citizens, for instance, treated as *homo sacer* – therefore – *banned* from the juridical and social order by figuring a "sacrificial body" or "disposable life" essential for the restructuring and maintenance of modern (secular) liberal-capitalism[168].

Notes

[1] The military doctrine known as *Dahiya* used by the IDF in Lebanon July 2006 could be identified as being informed by the *Shock-Doctrine* used by the Coalition of the Willing in 2003 Iraq since both military doctrines are asymmetric warfare strategies.

[2] It is important to note that an Arab mode of *Being* or the particularities informing Arab civilization are directly related to the work developed by Arab-Islamic philosophers and/or theologians honoring but also expanding on the four Arab-Islamic schools of jurisprudence known as the *Sunnah* (i.e., Tradition) such as Ibn-Rushd, Ibn-Khaldun, Al-Ghazali, and Al-Farabi. That is to say, I reject the (neo)-Orientalist imaginary constructing "being Arab" as exclusively pertaining to an ethno-religious "Westphalian" category of *being* and *belonging*. Notions such as *Ummah* (Community), *Asabiyyah* (Social Solidarity), *Falsafa* (Philosophy), *Fiqh* (human understanding of *Law* i.e., *sharia*), and *Kalam* (speech) are some notions that founded a coherent philosophical theology identifying what "being" Arab entails rather than simply relegating Arab epistemology to a reductionist "ethnic" or "religious" signifier supposedly excluding peoples who are non-Muslim and/or not born *on* the Arabian peninsula *propre*.

[3] Both of these Arab civilizational spaces are essentialized as the Middle East and North Africa (MENA) region. The acronym M.E.N.A in Arabic literally translates to ports or harbor. The term MENA has no historical or civilizational content except in Western geostrategic circles seeking economic and/or political ventures in Arabia. Since April 2013, the IMF began using a new analytical term designating its shifting regional strategies called MENAP (Middle East, North Africa, Afghanistan, and Pakistan) adding the last two countries to MENA countries.

[4] In the treaty of Lausanne signed and ratified between 1923 and 1924 by the Principle Allied Powers and the Turkish National Movement seeking the partitioning of Ottoman-Arab territory, a population exchange/transfer agreement registered in the *League of Nations Treaty Series* notes from Article 1 to 19 in the *Convention Concerning the Exchange of Greek and Turkish Populations* of the forced displacement and *de jure* denaturalization of over 1.2 million Greek Orthodox Christians from former Ottoman-Arab territories to Greece, and over 300,000 thousands Muslims from Greece to the newly proclaimed Republic of Turkey.

[5] One can further argue that the disintegration of the *Arab Ummah* began in the *Maghreb* with an earlier "mandate system" established by France identified as "Alger", "Algeria", or "Colonial Algeria" in the Arab *Maghreb* during the 19th century.

[6] *Just War theory* states that "(civil) war" is fought between political subjects and civilized societies who recognize each other's "sovereignty" and "respect rules of engagement". According to (neo)-Orientalist discourses, the Arab world lacks both thereby framing conquest as a liberating act.

[7] The emancipatory objective of *deconstruction* as demonstrated by Arab *falasifa* and jurists such as Al-Ghazali, Ibn-Tufayl, and Ibn-Rushd, is the symbiotic relation between Science and Religion thereby "freeing *al-haqq* and *l'écriture* from the shackles of reason" (Almond, 2004:10). Deconstruction could also be understood in Derridean terms – although epistemological and ontological differences are identified with Arab philosophical theologians – as being an approach to reading and listening; but rather than trying to uncover an author's central argument or underlying intentions, it instead intends to the shifting and contradictory patterns that play on the surface of the text. Deconstruction is not a disillusion of the subject; it is first and foremost a historical or genealogical analysis of that subject and an attempt to focus on a universal translation of it.

[8] I am indebted to my colleague Faye Fraser and our discussion concerning the term *muselmänner*.

[9] An important theoretical difference between Foucault and Agamben I revert to in chapter V.

[10] It is important to note that the idea of "springing" Arab protests is an emphatic legal-historical fact highlighting how sovereign figures embodying Latin-European philosophical theology hijacked Arab subjectivity during the uprisings by forcibly injecting the agitations into a Western linear perception of time. That is, the "Spring of Nations Revolution in 1848" occurring in Europe. Hardt and Negri (2011) also make a similar point by stating that "…even calling these struggles 'revolutions' seems to mislead commentators who assume the progression of events must obey the logic of 1789 or 1917, or some other past European rebellion against kings and czars".

[11] The term Third World designates a project, a political reality, and not a geographic space. Therefore, it is a set of political realities that distinguish it from the *jus gentium* informing Occidental or First World political realities. The Third World as a concept demonstrates the oppositional dialectic between a European and the non-European mode of *Being*. In brief, the Third World as a project attempts to deconstruct and dismantle the hegemonic idea that in international rule-making, non-Europeans, especially Arabs in our case, are recipients and not participants (Mickelson, 1998; Mutua, 2000; Beckett, 2003; Al-Azmeh,2009; Prashad, 2013; Al-Kassimi, 2018).

[12] According to Hunter (2007:484), other thinkers include Antonio Gramsci, Michel Foucault, Jacques Derrida, Karl Mannheim, and Georg Lukacs. For an overview of the Frankfurt School see David Kennedy (1986).

[13] David Kennedy himself was the doctoral supervisor of a number of TWAIL scholars such as James Gathii, Balakrishnan Rajagopal, and Antony Anghie (Hunter, 2007:486)

[14] This emphasizes the limiting argument claiming spatial coordinates (i.e., East versus West, or Occident versus Orient) rather than assuming temporal degeneration as argument for the injustices resulting from *jus* gentium being animated by an "inclusive exclusion" *dispositif*. This is a critique of "post-colonial" scholarship I expand on – along with other Arab and non-Arab scholars – throughout the manuscript by

suggesting that the moral issue with *jus gentium* is not that it is primarily Eurocentric, but that it is informed by a promise of "universality" that is contingent on an assumed "temporal positionality".

[15] The work of Al-Ghazali in *The Incoherence of the Philosophers*, Ibn-Tufayl in *Hayy Ibn Yaqzan*, and Ibn- Taymiyah in *Refutation of Greek Logicians* are of vital importance for the development of inductive intellectual reasoning with the help, of course, of the "Ancients" (i.e., Aristotle, Galen, Plato, etc.). Also important to note, I place Aristotle and Cartesian in "scare quotes" since I do not intend to dismiss the work of Aristotle as one of the great Ancients vital for the development of Arab-Islamic philosophical theology, and similarly, in relation to Descartes whose work is deeply reminiscent of the works of Al-Ghazali relating to "doubt" and "certainty". Therefore, the scare quotes simply seek to emphasize a "particular" reading of both philosophers – Descartes and Aristotle.

[16] Since I adhere to the philosophical theological conclusions attained by Ibn-Rushd and Al-Ghazali concerning *reason* and *revelation* and their symbiotic influence in the interpretation of *Law* thus developing a prosperous *polis*, it is poignant to highlight a quick example differentiating between Arab and Latin-European philosophical theology. An *a priori* idea according to ratiocinated Latin-European epistemology is the maxim "the ends justify the means", however, according to Arab epistemology anything assumed to be built on unjust and immoral acts is an unjust project – in totality. Another would be the "rational" idea claiming a natural distinction between Law and Morals thereby making possible a (secular) legal interpretation stipulating that "law" could make "legal" policies inherently perpetuating immoral acts and suffering.

[17] A simple example would be the declaration of a war on Iraq because the country supposedly possessed WMDs and links to Al-Qaeda. Since we now know that the *Coalition of the Willing* did not and does not have proof for any of these claims – which are causal factors used to initiate the war – we can put into question the motives of the expression-maker and the substance of the legal doctrines used to adjudicate the pre-emptive war. Another example by Sunter (2007:498) says the following: "If a political leader states 'I know that an enemy attack is imminent' to justify a pre-emptive strike, and we find out that the political leader will benefit financially from such a strike, we might consider this a relevant causal factor and begin to question whether an enemy attack is really imminent after all".

[18] For Friedrich Nietzsche see *Beyond Good and Evil: Prelude to a Philosophy of the Future.* For Karl Marx see *Critique of Hegel's Philosophy of Right* and for Sigmund Freud see *An Outline of Psychoanalysis*.

[19] Here I am thinking about the hegemonic policies extended by the IMF and the WB which gave rise the group G77, the United Nations Conference on Trade and Development (UNCTAD), and the New International Economic Order (NIEO). See Prashad (2012) and Al-Kassimi (2018) for a detailed discussion about the Third World deliberating decolonial-delinking performances suggesting counter-hegemonic policies or an "alternative to *development*".

[20] See Forte (2013) and Al-Kassimi (2017) for a detailed discussion on how the accusations of the Libyan Jamahiriya – led by brother leader Muammar Al-Ghaddafi – slaughtering its citizens was based on rumors and the culturally relativist idea that Arabs are inherently barbaric and violent – therefore in need of a humanitarian intervention to save them from their Self.

[21] According to Ramina (2018:22), Anne Orford in a conference that took place in Bogota, Colombia on September 2017 declared that she would be happy to be considered a TWAIL-er.

[22] Mutua (2000:33) makes a similar point by stating that international law is "premised on Europe as the center, Christianity as the basis for civilization, capitalism as innate in humans, and imperialism as a necessity".

[23] With TWAIL including a "chorus of voices" and methodologies rather than a monolithic collegium, some are avowed socialists such as B. Chimni, some learn towards post-structuralism such as B. Rajagopol or V. Nesiah, others are critical feminists such as C. Nyamu, S. Tamale, or V. Nesiah. See Sunter, (2007), Gathii (2011), Eslava and Pahuja (2012) for a detailed description and bibliography of academic work conducted by self-proclaimed TWAIL-ers.

[24] According to Dirlik (1994) and Mutua (2000:32) terms like postcolonial and postcoloniality refer to a trend in "Western universities toward reclaiming Third World concerns within the general framework of postmodernism". For this reason, some TWAIL-ers reject attempts and persuasions by some postcolonial scholars in diminishing the importance of scholarship and political movements deployed by earlier Global South and Global North intellectual movements.

[25]The work of Beckett (2003) among other writers, extends an impressive and excellent critique of the historicism rhetorically and dialectically demonstrated in Said's work entitled *Orientalism*. Selectively choosing and reading legal-historical events using a "general sweeping" lens is crucial for the development of the 'reductionist narrative' proceeding in transforming *orientalism* into *Orientalism* by producing different "articulations" of Orientalism – latent and manifest. See pp. 10-26.

[26] As made evident with the British and French implementing the Mandate System using the League of Nations in 1920 to divide the Arab world using ethno-religious categories (Sykes-Picot partitioning program), and after 9/11 former colonial powers adjudicating pre-emptive defense as a legal doctrine to reengineer Arab demography.

[27] One of the everlasting moments at the UN is when Arab Syrian statesman Faris Al-Khoury (d. 1962) sat on France's chair instead of the Arab country he is representing – Syria – attempting to unite it under an Arab-Islamic ontology of *Ummah* rather than a "nation-state". After a few minutes, the French representative to the UN approached Faris and asked him to leave the chair, Faris ignored the Frenchman and just looked at his watch, a couple of minutes later, the Frenchman angrily asked Faris to leave immediately, but Faris kept on ignoring the Frenchman. After over twenty minutes of sitting in France's

chair, Faris left the chair and said to the French representative: "You could not bear watching me sitting in your chair for a mere 25 minutes, Your country has occupied mine for more than 25 years, hasn't the time of your troop's departure come yet?"

[28] The words of Arturo Escobar (2008:311; *emphases added*) encapsulate the way this dissertation proceeds to deconstruct legal-historical moments. He says, "…positing the fact that epistemic differences can be – indeed are – grounds for the construction of alternative worlds; calling on scholars and activists to read for difference rather than just for domination; or imagining that aiming for worlds and knowledges otherwise is an eminently viable cultural–political project…how might one envision the kinds of decolonial societies one wishes to construct – those capable of admitting greater epistemic and ontological symmetry across multiplicities, that is, across diverse worlds and knowledges? These questions are indeed pertinent; after all, the democratic, social, and ecological crisis of the world at the present is not so much a problem of science, but of existence; the crisis calls not for more science, but for different forms of existence.

[29] Imperialism is used as a concept to suggest a set of practices, including those by which a great power in essence governs the world according to its own vision, using a variety of means that may or may not include actual conquest and/or domination. In other words, imperialism is a policy practiced by a great power and/or a coalition of great powers that control, manage, and manipulate the effective political governance of another political society. It can be achieved by force, political collaboration, economic, social, or cultural dependence. Similarly, Biccum (2018:564) mentions that with "Empire" being an "analytic" then "colonialism is only *one* mode of imperial governance; imperial structures occurred *within* Europe and the failure of postcolonial scholarship to consider peripheral histories in imperial terms keeps them insensitive to the complex power structures that European incursions often inserted themselves into".

[30] In Spanish it reads *La Historia Universal de las Cosas de Nueva España*

[31] I use the term "indigenous" or "Indian" even though I am aware of the essentialist connotation it holds especially in geographical spaces that have been historically denied "sovereignty". For instance, the French would call peoples from the Arab *Maghreb* and Arab *Mashreq* – especially Muslims – Indigène, Indian, Sarcaen, and/or indigenous to highlight their cultural uncivility and temporal backwardness. While scholars now use the term to highlight a group of people being the "original inhabitants" of a space *propre*, this produces more intellectual problems than it solves since it mutes different socio-cultural life-experiences embodying different social communities. The term "indigenous" could be assumed to claim that an individual is "ahead" or "behind" another individual or "before" and "after". The term also stipulates that "belonging" to a land – from a Westphalian nation-state ontology – requires the exclusion of "non-conforming" cultural bodies since it is in essence a secularized Judeo-Christian rationalized idea of *Law*. Therefore, "Indigenous" groups for instance in the Americas should be referred to by their folk title since not doing so risks imposing a linear (positivist) ontology of spatiality and temporality. Revert to Hamdani

(1979) for a discussion relating to the term "Indies", "India", and the journey of Columbus having an objective in reaching Jerusalem rather than the "Indies". George Kimble (1938, 128n) in his *Geography in the Middle Ages* observes that the term "Indies" is "a vague term, for in the Middle Ages there were at least three Indias, viz., India Minor, India Major and India Tertia, i.e. Sind, Hind and Zinj of the Arabs. The first two were located in Asia, the last in Africa (Ethiopia)." Kimble's statement "should not be taken to mean that the Medieval Arab geographers considered 'Zanj' to be a part of India" since Arabs were most acquainted with the technology of sea navigation and the geography of countries bordering the Indian Ocean, the Mediterranean, the Pacific, and Atlantic (Hamdani, 1979, 11n).

[32] Here I am referring to *On the Indians Lately Discovered* and *On the Law of War made by the Spaniards on the Barbarians*. They were reprinted in 1964 by Oceana publications; however, it was Carnegie Institution of Washington that undertook the publication process in February 1917 by translating what they called "the leading classics" of International Law. The titles referred to are identified as section *De Indis Noviter Inventis* and *De Jure Bellis Hispanorum in Barbaros* extracted from Vitoria's posthumous work entitled *Relectiones*. It should also be noted that Carnegie uses the name Victoria rather than Vitoria.

[33] It should be remembered that during the initial stages of the Spanish conquest of Mesoamerica, the privateers and pirates led by Hernán Cortés – a *conquistador* – also deceived and killed the respected ruler of Tenochtitlán (Aztec ruler) known as Moctezuma II in 1520.

[34] Bowden (2009) elaborates concerning the term civilization that "while the idea of civilization has been deployed throughout history to justify all manner of interventions and sociopolitical engineering, few scholars have stopped to consider what the concept actually means". Bowden examines how the idea of civilization has informed our thinking about international relations over the course of several centuries and how "civilization" as a stage-managed account of history legitimizes imperialism, uniformity, and conformity to Western standards culminating in a liberal-democratic global order.

[35] It should be noted that several 18th and 19th century jurists tried to reconcile positivism with naturalism such as J. Surland and F. Martens – amongst others – in that a certain universal natural law applied to all nations without the distinction between civilized and non-civilized. See Anghie (2004).

[36] The great Jean-Jacques Rousseau conceptualized the "social-contract" (1762) with a drastically different legal-historical interpretation in mind to that of Hobbes especially when we consider that Rousseau did not believe that a subject should relinquish his natural freedom to a "sovereign" since a "sovereign" is also a subject (i.e., a non-perfect human being). Rousseau claims that a sovereign should prioritize enforcing the "general will" rather than "sovereign-will". Rousseau thinks it soul enriching to navigate between "society" and the "state of nature" rather than identifying, as Hobbes did, a state of nature as "naturally" being nasty and brutish. See also, Rousseau's *Discourse on the Arts and Sciences* (1750), *Discourse on Inequality* (1755), and *Reveries of a Solitary Walker* (1782).

[37] Concepts founded upon a secular Judeo-Christian philosophical theology informed by naturalist or positivist jurisprudence schools imagine the non-European as inhabiting a primitive past vacant of any "civil" historical register allowing it temporal mobility in "progressing" into the "present time". Non-European space is constructed as vacant of "societies", representing a "state of nature", and "deficient in the arts of war". Agathangelou and Killian critique the linear standpoint of time valorized by a (positivist) IR by stating that "IR draws on a multiplicity of temporal metaphors, strategically creating a haphazard way of speaking about or describing time. IR's identity, representation, social imaginaries and discourses stabilize themselves by spatializing time or masking it...IR metaphors are exemplars of an attitude towards 'real time', even if not explicitly so...When we rethink in terms of time and temporality, the parameters of conceptualization and terms of debate over the politics of life change dramatically...Hobbes' temporality is rarely engaged. But temporality allows a different reading of his view of nature as articulated in the *Leviathan*, namely, the manner through which a certain politics is co-produced with a secular order *Leviathan*, as the state, may involve itself in the use of force, is in some sense a substitute for nature. The use of force is some way the art of undoing the old, of unraveling the natural, and of severing the present from the past...the fictions that postulate the existence of a 'before' and an 'after' allow time to become the determining factor of the racialization the world...In *De Cive*, Hobbes invokes temporality to 'suggest that the state of nature occupies an earlier, more primitive historical register than the more developed civil state'...Even though Hobbes engages with the uncivil conditions in Europe, he says about native Americans, 'Europeans encounter the 'savages' as their contemporary ancestors'...In so doing, he prepares the ground for a anew time and new political order, with the Leviathan his example of a firmly controlled, explicitly political present. The state is not just a kind of a solution, according to Hobbes. It is *the* solution." (2016:3,4,6,7)

[38] In other writings Lawrence (1895:1) mentions explicitly that he "regards International Law not as an instrument for the discovery and interpretation of a transcendental rule of right binding upon states as moral beings whether they observe or not in practice, but as science whose chief business is to find out by observation the rules actually followed by states in their mutual intercourse, and to classify and arrange these rules by referring them to certain fundamental principles on which they are based".

[39] Schizophrenia is characterized by Deleuze and Guattari in their second volume of *Capitalism and Schizophrenia* as a self-consciously disjointed style of philosophical inquiry, reflecting the conviction that the "linear" organization of traditional philosophy represents an incipient form of social control. The work is presented as a study in what Deleuze and Guattari call "deterritorialization"—i.e., the effort to destabilize the predominant, repressive conceptions of identity, meaning, and truth.

[40] Since I adhere to a Khaldunian reading of legal-history through a sociological approach using inductive and deductive reasoning, it is important to remember that not every society is a civilization, while every civilization is a society.

[41] Capitulation treaties were signed between Europe and the Osmanli Caliphate in the 15th century. One of the first treaties was with Venice in the year 1454, France in 1535, and England in 1579. However, it was later in the positivist era of jurisprudence that we begin noticing the idea of "unequal treaties" being as a means of "economic warfare" to de-industrialize and dismantle the economic structure of the Osmanli caliphate. Treaties that humiliated the Caliphate were the French treaties in 1740, Spain in 1782, English treaties of 1809 and 1838, and Portugal in 1843 (Rodinson, 1977; Abou-El-Haj, 2005). It should be noted that the great Osmanli Caliphate is arguably one of the only modern civilization to have developed a system of governance that is truly reflective of "social solidarity" and *Asabiyah* as argued by the great Ottoman polymath and literary author Kâtip Çelebi (Abou-El-Haj, 2005). This is highlighted with the Caliphate 1) not having any "colonies", 2) allowing all religious and ethnic persuasions to navigate *Dar-El-Islam*, 3) acquiring land, engaging in commerce, and the freedom of mobility was a legal right extended to all religions and ethnic groups, and 4) positions of Grand Vizier representing the Osmanli Sublime Porte (Ar. مقر الباب العالي) included personal from a variety of ethnic groups and religious persuasions (Goffman, 2002; Abou-El-Haj, 2005). This highlights that the Caliphate did not find it intellectually advantageous, let alone Lawful, to develop a stratification of "different" societies using "citizenship" as a legal process separating "civil" from "uncivil" cultures (Abou-El-Haj, 2005).

[42] An 1866 Osmanli report highlights that the number of textile looms in Istanbul and Uskar fell from a reported 2,730 to only 23, and similarly brocade looms went from a previous 350 to only four, and cotton looms went from 40,000 to only 5,000 in Aleppo (Necla, 2011:25). The rapid influx of cheap British textiles with no Osmanli protectionist policies in place made further economic industrialization a near impossible task for the Osmanli Caliphate after the Balta Liman treaty (Necla, 2011:25). The treaty being commercial in nature was seeking to regulate international trade between the Osmanli Caliphate and British Empire. Duties were set at 3% on imports; 3% on exports; 9% on transiting exported goods; and 2% on transiting imported goods (Urquhart, 1833: xiii). The balance of trade up until the mid-19th century was in favour of the Osmanli Caliphate which, in the years 1820-22, exported goods worth £650,000 to the United Kingdom. By 1836-38, that figure had reached £1,729,000 (Pamuk, 2010:29). Given that the majority of the share of trade was made by Osmanli merchants, the Europeans, especially the British and the French, became irritated and unhappy with this trade arrangement and pushed for intervention and transformation of the economic policies of Arabia. The French foreign ambassador posted a letter to Louis-Mathieu, Comte de Mole in 1837 mentioning: "I realized with pleasure that for our merchants the main question was not so much the amount of the new duties as their equality and stability. For what our merchants are requesting is,

as far as possible, the abolition of monopolies and prohibitions that have diverted almost the whole export trade into the hands of a small number of favored Barataries" (Issawi, 1980:91)

[43] The term was first coined by American naval strategist Alfred Thayer Mahan in 1902 before WWI to "designate the area between Arabia and India". Later on, after WWII it was adopted by former US president Eisenhower in 1957 in his strategy known as the "Eisenhower Doctrine". Unfortunately, the term continues to be used even though such cartographical categorization is "historically empty". More accurate endogenous cultural terms would be the Arabian East, Fertile Crescent, Bilad Al-Sham, Bilad Al-Yamam, Levant, Arabian Peninsula, or Arabian Mashreq.

[44] A frequent historical fallacy deliberated by contextualists. A minor historical acquittance highlights that African spaces were colonized up until the late 70s early 80s. Thus, the establishment of the UN is not the "end" of colonialism. Arabian space called "Palestine", "Golan Heights", and "Shebaa" continues to be *de facto* occupied.

[45] The terms objectivism and contextualism are used tantamount to the terms introduced by Shrader-Frechette equating them with positivism and relativism. More on this see Michael Burkard (2018) *Conflicting Philosophies and International Trade Law: Worldviews and the WTO*

[46] A speech act is the discursive component which initiates the process securitization. A speech act is a securitization move articulated by speech actors when an issue not previously thought of as a security threat (threatening a referent object i.e., a sovereign state) begins being spoken of as a security issue by an official with high political capital. It is important to note that a speech act has the power to construct an issue using the contours of security when in reality the issue does not innately possess any threatening qualities (Al-Kassimi, 2017:303).

[47] Hegemony or more specifically cultural hegemony refers to domination or rule maintained through cultural means. It is usually achieved through local colonial institutions, which allow those in power to strongly influence the values, norms, ideas, and expectations. Consequently then, the idea of a 'counter-hegemonic' struggle – advancing alternatives to dominant ideas of what is "common-sensical" and "modern" – has had a broad appeal in social and political movements in formally decolonized spaces (Gramsci, 1971).

[48] I use Foucault's distinction between archeological and genealogical and/or objective and effective and/or discontinuous and continuous history elaborated by Fendler (2010) and Garland (2014).

[49] While this is the topic of future research, I am tempted to state that the same could be said with the advent of a pandemic by the name Covid-19 in the year 2020. The policies that were rolled out by recognized sovereign figures continue to maintain the hegemonic status status-quo leading to an economic and social "pandemic". The blatant denial of responsibility by sovereigns to their citizens following Covid-19 highlights that *biopower/necropower* was never simply supposed to be exercised "outside" the borders of

the "West" (i.e., Third World), but rather, Covid-19 brought about the ominous truth that the *inclusive exclusion* ethos of *jus gentium* also targets citizens of territories recognized as "sovereign" and located "inside" *jus gentium*. This truth was also evident following 9/11 with citizens of the "free world" being detained and/or having their citizenship revoked because they contested the *will* of their respective *sovereign*. The policies rolled out after 9/11 and more so after Covid-19 foreshadow a *technocratic* future seeking the dilution of anything relating to a "political man" involved in a *polis* (i.e., society, law, community, contestation, etc.).

[50] See Kant (2003). Kant's concept of cosmopolitanism is based on the *a priori* idea that a foreigner or a stranger is permitted into country if they are endowed with citizenship in their country of origin. This concept is limiting since being a citizen requires "sovereign recognition" and in the case of Arabs, they are denied sovereignty which means that inhabitants of the Arab world are not citizens but the extreme opposite (i.e., refugee, denizen, etc.). See also Derrida (1997) for a discussion on how cosmopolitanism is a limiting concept since it envisions a particular culture as naturally informing the cosmopolis. See also Derrida's lectures entitled *Rogues: Two Essays on Reason* (2003) where he discussed how Arabs in general, and Islam in particular, is arguably the only "religious culture" to have continuously resisted a (rationalized) Judeo-Christian secularization of jurisprudence – therefore – politics.

[51] According to Wallerstein (1974:347) a world-system is a "social system, one that has boundaries, structures, member groups, rules of legitimation, and coherence. Its life is made up of the conflicting forces which hold it together by tension and tear it apart as each group seeks eternally to remold it to its advantage. It has the characteristics of an organism, in that is has a lifespan over which its characteristics change in some respects and remain stable in others… Life within it is largely self-contained, and the dynamics of its development are largely internal".

[52] Keegan (1996) also engaged the moral issue relating to cultural relativism when discussing Indigenous warfare tactics in the Northern Great Plains.

[53] We can even go further back with the Council of Clermont in 1095 declaring the first *sovereign-willed* "just war" by transforming cultural differences into a legal argument "morally" adjudicating the act of conquest.

[54] This explicitly highlights the process of "creative anarchy" discussed in the introductory chapter.

[55] As a matter of legal historical fact, Paul Bremer III – the administrator of the authority – was identified by Arabs as being a "colonial viceroy" since he voided Iraq's sovereignty by dismantling the national-army, enforced the neo-liberalization of the economy, and finally, imposed a "constitution" that further disintegrated Arab society by further amplifying ethnic and religious differences.

[56] See *On the Genealogy of Morality* by F. Nietzsche (1998) where he distinguishes between slave and master morality perpetuated by a Judeo-Christian secular idea distinguishing between law and morality.

[57] The creation of a right-wing nationalist nation-state (i.e., Israel) with UN backing in Arabia following the partition and disintegration of the Arab *Ummah* after the defeat of the great Osmanli Caliphate is an emphatic example of the inherent violence and separation connected to positivist juridical concepts such as "self-determination", "sovereignty", and "nationalism" (Abou-El-Haj, 2005).

[58] My emphasis on Islam is related to neo-Orientalist discourses constructing imaginaries claiming all Arabs as Muslim, and more dangerously, identifying terror as an ethno-religious cultural trait inherent to a civilization inhabiting Arabs and Muslims.

[59] As discussed in the methodology section of this dissertation, a hermeneutics of suspicion is a style of interpretation that attempts to "decode meanings that are disguised" (Josselson, 2004:1) or that "circumvents obvious or self-evident meanings in order to draw out less visible and less flattering truths" (Felski, 2012).

[60] I say "in part" because I align with several Arab and non-Arab scholars whose work directly or indirectly highlights Said's own historicism in describing the etiology of *orientalism* becoming *Orientalism* since his polemic seems to be making an *a priori* statement that the "East" and "West" are naturally (spatially) antagonistic thus (re)constituting and (re)actualizing the criticism of hypostatization brought against the "West". Arab-Syrian writer Sadiq Jalal al-Azm directly engaged in a critic of Said's work, while the scholary work of other scholars and/or revolutionary figures such as Naguib Azoury, Hashim Al-Atassi, Shukri al-Quwatli, Michel Aflaq, Mahdi Amel, Mwafaq Mahadeen, Samar Attar, K. Beckett, and most importantly, Yassir Arafat discredit his writings either directly or indirectly thus highlighting the danger in making Said's work an academic referent for a "Western" audience wanting to acquaint themselves with the "mind-set" of Osmanli-Arab culture from the 19th and 20th century – especially in the critical era of the 1970s and 1980s where Said was identified as the "Voice of Palestine". For starters, not only was there never a nation-state called "Palestine" during the great Osmanli, Abbasid, or Umayyad caliphate, but more importantly, Arab civilization is vehemently critical of ethnicity and religiosity being a "legal" argument for cloistering or nationalizing land (Tomeh, 1968). The idea of a space called "Palestine" is a 20th century historicist claim linked to a secular conceptualization of "property" which further legitimized the establishment of an Israeli nation-state *à la Westphalia*. Arab legal-history evidently demonstrates that following the political betrayal at the Paris Conference of 1919 that delegates of the Syrian Congress (SC) in 1920 (Ar. المؤتمر السوري العام) – including delegates from "de-facto Lebanon", "de-facto Palestine", and "de-facto Jordan" – explicitly stated that the Sykes-Picot agreement developed "ethno-religious" artificial "national" enclaves vacant of any Arab-Ottoman historical civilizational content. More to the point, the "Quds Congress" in 1920 continuously backed the final communiqué elaborated at the congress by criticizing and literally ejecting from the conference local Arab beneficiaries of the British and French mandate pushing for the initiation of a "*Palestinian National Congress*" (Mahadeen, 2020). As matter of

fact, "Palestine" as a mythologized fictional "nation-state" was the product of Judeo-Christian sovereign-will imagination during the LON and UN to give legal backing for the establishment of Israel by UN mandate inscribed in res.181 in 1947 seeking the partitioning of Bilad Al-Sham, followed by UN res.273 in 1949 admitting Israel as a member of the United Nations (Tomeh, 1968; Mahadeen, 2020). In other words, it is by claiming that "Palestine" existed as a historical "promised land" that "recognized sovereign" powers situated in *jus gentium* were capable of providing Zionists a property certificate at the beginning of the 20th century birthing Israel as a nation-state on May 14th 1948. It should be noted that Arabs at the SC were cognizant that local mandate collaborators including Arabs and non-Arabs, Muslims and non-Muslims were forcibly ejecting Arabs from their natural historical cultural evolution by unequivocally rejecting abstract geographic alterations based on ethno-religious classifications. What scholars designate as "Palestine" in the 20th century – further exacerbated with discourses concerned with a "two-state-solution" – is historically identified by inhabitants of Arabia informing Arab civilization as Al-Quds, Southern-Damascus, Al-Ard Al-Muqaddasah, Southern Syria, Jund Filastin, Bilad Al-Sham, Jerusalem, Bayt al-Maqdis, Holy Land, etc.

[61] Essentialism according to Herzfeld (2010:288) "appears as both a violation of anthropological relativism and one of the besetting conceptual sins of anthropology. Exemplified by such totalizing ideologies as nationalism and biological determinism, it is also frequently conflated with reification, objectivism, and literalism. All four concepts are forms of reductionism and there is substantive semantic overlap among them. Reification may most usefully be seen as concerned above all with the logical properties of concepts, however, objectivism primarily entails *a priori* assumptions about the possibility of definitive description, while literalism may be specifically understood as the uncritical, decontextualized application of a referential and abstract semantics. The distinctive mark of essentialism, by contrast, lies in its suppression of temporality: it assumes or attributes an unchanging, primordial ontology to what are the historically contingent products of human or other forms of agency. It is thus also a denial of the relevance of agency itself."

[62] In contrast to Al-Farabi's and Al-Ghazali's inductive reasoning method in which "premises" are viewed as supplying some evidence for the truth of the conclusion.

[63] This is affirmed in the historical continuity of Lewis's academic work situating Arabs as inexorably antagonistic towards Western civilization which he emphasized in *The Roots of the Muslim Rage* (1990), *Islam and the West* (1993), *The Revolt of Islam* (2001), *What Went Wrong? The Clash Between Islam and Modernity in the Middle East* (2003) and *The Crisis of Islam: Holy war and unholy Terror* (2004).

[64] This is why they claim that Israel is the *only* democracy in the "Middle East".

[65] These scholars go as far as to claim they are not "Arab". This abstract essentialist claim is based on the reproduction of Orientalist and neo-Orientalist generalizations concerned with equating Arabs with Islam

and *vice versa*. This is a "classic" colonial ethno-religious division endemic to the Enlightenment jurisprudent scholastics informing secular nationalism and the Westphalian ontology of civil governance since it perceives *Arabness* as an ethno-religious category rather than an epistemology in its own right. See also, Abou-El-Haj (2005), Abou El Fadl (2014), and Robson (2017).

[66] Andre Gunder Frank – a renowned dependency theorist – discussed the concept of the "comprador class" in his *Essays on the Development of Underdevelopment and the Immediate Enemy*. He notes that the development of underdevelopment is facilitated by a structure – he calls the comprador class – which creates and sustains the metropole-satellite relationship. The local elite in the satellite countries serve to maintain the development of Western/Metropole affluence by always remaining in a "satellite development" stage. At this stage the national level of development is never self-perpetuating or self-generating. Even though he does not use the term "colonial structures" or "service-class" he mentions on p.7 that the structures that uphold the development of underdevelopment are knowledge structures that were implanted by the Spanish conquest. See also p.20 and 27 of Walter Rodney's *How Europe Underdeveloped Africa (1973)* for an analysis on the paradox of underdevelopment that is exacerbated by a native "tragic elite", and/or a "petty bourgeoisie" that is compliant with the colonizer at a social, cultural, and economical level. He says "Many parts of the world that are naturally rich are actually poor and parts that are not so well of in wealth of soil and sub-soil are enjoying the highest standards of living…..The African revolutionary Franz Fanon dealt scorchingly and at length with the question of the minority in Africa which serves as the transmission line between the metropolitan capitalists and the dependencies in Africa. The importance of this group cannot be underestimated. The presence of a group of African sell-outs is part of the definition of underdevelopment. Any diagnosis of underdevelopment in Africa will reveal not just low per capita income and protein deficiencies, but also the gentlemen who dance in Abidjan, Accra and Kinshasa when music is played in Paris, London and New York".

[67] I am indebted to Agnew (1994, 2017) for the concept of "territorial trap".

[68] The idea of Arabs being conflated with Islam, and Arab epistemology being distorted as an ideology known as "Arabization" rather than a historical philosophical theology with its own social, political, and economic epistemes dates back to the centuries before the year 1092 (Beckett, 2003; Akbari, 2012), however it became legally institutionalized in the formative phases of positivist scholastics representing Arab civilization and adherents to Islam as temporally situated "outside" law. This is especially noticeable in the 19th century between Europe and the Osmanli Caliphate. Reductionist distortions targeting the Osmanli Caliphate – especially during the second half of the 19th and beginning of the 20th century – is evident with representatives of local Arab "minority groups" adopting the colonial idea that Arabness is an ethno-religious identity (Abou-El-Haj, 2005; Akçam, 2012). This resulted in peoples in Anatolia, Mesopotamia, and the Levant including Kurds, Assyrians, Chaldeans, and Armenians demanding

"nationalist objectives" thus exacerbating the historical fallacy that equates Muslims as Arab thereby advancing a "minority protection" and/or "humanitarian intervention" arguing the need to have an "independent nation-state" away from "Arab barbarism" since Arabs, it was argued, impose their "religious cultural values" on others by the "sword" (Akçam, 2012). This selective prejudice is evidenced when we remember that massacres that occurred between Arab Maronites and Arab Druze on July 11th 1860 in Lebanon was not identified as a "genocide" by the British and the French but rather a "humanitarian issue" in need of a French "humanitarian intervention" since it was argued that only Muslim's are receptive to terror. It is then not surprising to note that the discussion of "genocide" inflicted on "Arabs" at the conclusion of the Osmanli Caliphate by "national *young* groups" is never mentioned since Orientalists proliferate the historical fallacy that Ottomans are "Arabs" because they are "Muslim". Rather than imagining an Arab mode of *Being* as an epistemology in its own respect as internalized by the Abbasid, Umayyad, and Osmanli Caliphate allowing multiple cultural differences to flourish whether they be indigenous to Hejaz, Yathrib, Sanaa, Baghdad, Mosul, Damascus, Nineveh, Beirut, and Jerusalem, the focus is rather on nationalist projects perpetuating arguments relating to "minority rights" and "genocide" after the activation of the Treaty De Sèvres, Lausanne, Sykes-Picot, and the Balfour declaration giving credence to the distorted idea developed by (former) colonial powers of what it means to be Arab (Abou-El-Haj, 2005; Robson, 2017).

[69] Concerning the vocabulary succeeding the final blow against the great Osmanli Caliphate following the countercoup of 1909 forcing the legendary Osmanli Caliph Abdul Hemid II to abdicate, Robson (2017:30) states that if "the minorities treaties were applied to the new states of eastern Europe with the specific purpose of marking their subordinate status within a nineteenth-century-style global hierarchy, the mandate system did the same thing in more overt fashion for the former Arab provinces of the Ottoman Empire. And just as the existence of 'minorities' had constituted a major part of the Allies' argument for continued supervision of the Balkans and eastern Europe, the League of Nations now began to develop a narrative of ethnic, religious, and national difference in the Middle Eastern mandate territories that sought both to legitimize mandate rule over Arab populations and to define the League's supervisory capacity over the British and French mandatory authorities".

[70] The initial name of the 2003 operation in Iraq was called "Operation Infinite Justice". This caused several political theologists whether Muslims, Christians, or Jewish, to highlight that this designation is blasphemous and prejudice since it assumes the U.S. as the provider of justice – an act reserved to God in Abrahamic religious genealogies.

[71] Agathangelou and Killian (2016:2-3) emphasize the importance of struggling in revealing the temporal monopoly of a particular-made-universal historical political spectacle of violence by stating that by "becoming open to the force of time while remaining attuned to discursive and material constraints of the

present demands problematizing a kind of historicism that recapitulates politics in the terrestrial matrix...This historicism emerges as an issue in several IR static, narrativizations, and phenomenological readings because of the structure of violence itself: a teleological orientation, with peace as the end. This structure is transposed onto an assumed dichotomy of a 'war against all' (state of nature, anarchy) and peace (civil society, and social contract). Even when teleology sits in the genres of historiography and its subject evades teleological designs, IR registers such accounts as proof of anarchy, calling forth projects programmed by 'a history of the present' where sovereign-bound subjects control their passions. The production of this 'history' requires making a kind of time out of *kairos* by controlling *chronos* (dividing and sequencing time in a linear manner)".

[72] While postcolonial scholarship contributed in accentuating European colonial history by navigating a variety of disciplinary perspectives, Biccum (2018:566, 2018b) suggests that for postcolonial thought and research to remain ethically and morally relevant it is vital to recognize the "worldliness of knowledge production…it requires a post-positivist and interpretivist epistemology and methodology and, with this, it can invigorate a normative discussion of the efficacy of using 'empire' as an analytic for US foreign policy, among other topics. But, by remaining trapped in European colonial history, postcolonial IR scholarship risks becoming outdated and will remain marginal".

[73] Arabs are part of an Ummah (Society of Communities) rather than a "nation-state". The former in contrast to the latter celebrates cultural *differences* rather than cultural *homogeneity*.

[74] Martin S. Kramer states that "Some called it the 'Arab Spring,' by analogy to the democratic transformations in Europe. When it became clear that the path wasn't going to be as smooth as in Europe, others backtracked and called it the 'Arab Awakening,' which sounds like a longer-term proposition. Still others, who saw Islamists initially triumph in elections, took to calling it the 'Islamist Winter.' The terminological confusion is a reflection of analytical disagreement" (2013).

[75] It is important to note that Montesquieu's criticism of despotism also amounts to a critique of Europe. According to Sullivan (2017), Montesquieu imagines Europe "as home to some of the most brutal despotic practices. Despite his apparent focus on Eastern despotism, he also manages to underscore the despotic practices of venerated European institutions: the Catholic Church and the French monarchy. He unmasks the despotism of the Portuguese Inquisitors, who burn alive an adolescent girl for practising the Judaism of her parents, and even of his own homeland, which executes for treason those who merely reproach the monarch's minister. He thus highlights the cruelty of Europe at a time when voicing such criticism was still decidedly dangerous". However, while Montesquieu similar to Tocqueville adhere to the idea that Occidental spaces *could be* despotic (i.e., *Ancien régime*), they both *a priori* perceive Oriental theological persuasions such as Islam as inherently lacking the civilizational ideas and experiences that would

temporally eject it from a "despotic condition" leading to an "equality of condition" informing a liberal democratic sovereign society.

[76] It is important to note that the nationality of terrorist rebels engulfing Arabia post 2011 encompassed over 70 nationalities. Several tens of thousands were neither Muslim nor genealogically Arab however the media emphasized "visual shots" that made the viewer link the source of terrorism to "Islam" and "Arabs".

[77] I am aware that CANVAS, USAID, NED, Carnegie, Otpor, and Open Society were involved in funding and guiding protestors in demanding liberal-capitalist values. This questions the Western hegemonic idea claiming that the Arab Spring was a "spontaneous" and "leaderless" uprising demanding freedom from *past* traditions.

[78] A point I revert to in depth in chapter IV.

[79] In the context of the CIA calling the operation *Timber Sycamore*, the following passage is gripping: "He gave their crops to the grasshopper, the fruit of their labor to the locust. He killed their vines with hailstones and their sycamore-figs with sleet. He abandoned their cattle to the hail and their livestock to bolts of lightning" (Psalm 78-47). The *ficus sycomorus* is commonly found in the Arab world, including Yemen, Syria, Libya, and Egypt – all overlap with high levels of covert deadly actions conducted by Western intelligence agencies (Dostal, 2018:370). More interestingly is the name of the hired *death squads* in the operation referred to using the acronym of ISIS. In the ancient world of Egyptian and Greco-Roman religion up until the 4th and 5th c. AD, *Isis* was a worshipped goddess that helped the *dead* enter *afterlife*. Also, the New Kingdom of Egypt had an elite paramilitary force serving as desert scouts protecting valuable areas such as the *Theban Necropolis* or the *Valley of the Kings*. Therefore, the death squads in ISIS/ISIL can be esoterically perceived as a group of elite mercenaries that seek to purify and/or transform impure *dead* Arab bodies aiding them in "entering" *modern* life. I am indebted to Professor J. Dostal for these hermeneutic discursive links.

[80] Fictional in the sense that while the terror violence did occur, it is not because the agent of violence *is* Muslim or Arab. Using Islam and/or Arabness as "historical information" supposedly explaining the *cause of* chaos and violence informing Arabia is fundamentally the fictional and reductionist aspect of neo-Orientalist narratives. As matter of fact, *death squads* were not all genealogically from Arabia but rather came from over 70 countries whether from Europe, Africa, or North/South/Central America. In addition, some were not even Muslim, however, communication centers linked violence and chaos to Islam while generalizing all Arabs as Muslim thus developing the "Islamist figure" which dominated media centers after the Arab uprisings in 2011.

[81] These groups were directly involved in exacerbating sectarian cleavages since they would engage – with legal coverage from recognized sovereign figures – in targeted assassinations and/or destroy places of worship from different religious sects. For instance, Peace Companies, also known as the Mehdi Army,

funded by Iran were allied with U.S. army and the Wolf Brigades against local Arab-Iraqi resistance targeting imperialism in the wake of conquest in 2003.

[82] On August 14th 2014 in Syria, over a period of three days, *death squads* executed by hanging, shooting, beheading, or crucifixion over 700 Syrians from the Arab tribe known as Al-Shaitat located in the Deir ez-Zoor governorate. The point to note is not that "ISIS" claimed responsibility, but that members of Al-Shaitat are Muslim, and more importantly, Sunni, thereby demythologizing the idea that ISIS is an "Islamic State" that seeks to "displace" and terrorize "non-Muslims" from Arabia using *Sharia* (Holmes and Al-Khalidi, 2014; Mezzofiore and Limam, 2015). Similarly, in Iraq, *death squads* have systematically emptied cities mostly inhabited by genealogies of historic Arab tribes and clans – across all religious persuasions – such as Dulaim or Jubur in Anbar, Ramadani, and Mosul, or other cities such as Tikrit, Rabia, or Fallujah (Holmes and Al-Khalidi, 2014; Mezzofiore and Limam, 2015; Sly, 2016).

[83] It is important to note the cultural relativist consequences of naming the terror of ISIS "Islamic". This could assume that any society informing Arab civilization that existed (i.e., Umayyad, Abbasid, Osmanli, and Mughal) and/or used "Sharia" as its philosophical theological *nomos* invariably reverts to violence and terror to consolidate power. Secondly, it assumes that ISIS is *actually* "Islamic" and is *actually* following Islamic Jurisprudence (Sharia). Thirdly, it neglects and negates the importance of Arab epistemology historically emerging during the Abbasids, Umayyads, Mamluks, and Osmanlis aiding with the development of Latin-European philosophical theology as highlighted in the cultural traffic between the *Toledo School of Translators*, the *Salerno School*, or the *House of Wisdom*.

[84] Here I refer to Thomas Babington Macaulay's famous minutes known as *"Minute Upon Indian Education"* of 1835 where he argues the supposed natural inherent inferiority of Arab epistemology compared to European civilization.

[85] Martin S. Kramer has in the past and present declared that critics of neo-Orientalism have contaminated Middle Eastern Studies because it is "dirt" that "swept the general field of the humanities and created the faux-academic discipline now known as post-colonialism" (2007:63).

[86] These include amongst others: Robert Spencer, Pamela Geller, Lindsey Graham, David M. Friedman, Jared Kushner, David Horowitz, Phyllis Chesler, Daniel Pipes, Irshad Manji, Ayaan Hirsi Ali, Ibn Warraq (b.1946), Nabil Khalife, and Wafa Sultan.

[87] It should be noted that Hezbollah's guerilla group does not exclusively include Muslim fighters.

[88] At the time of writing in January 2020, the UK and three other countries joined the U.S. in blacklisting Hezbollah by identifying the whole movement as a "terrorist" organization (AFP, 2020). Brian Hook, the U.S. special representative for Iran, stated that the Trump administration was "very pleased" with the decision of the UK adding that it had long been seeking such a move from European allies (AFP, 2020).

Most importantly, he stated that "there is no distinction between Hezbollah's political arm and its military arm" (AFP, 2020).

[89] On February 29th 2020 the U.S. and the Taliban signed a peace deal agreement in Doha, Qatar stating that the U.S. would withdraw its troops from Afghanistan in a period of 14 months only if the Taliban can guarantee that Afghani soil will not be used as a launchpad for Al-Qaeda or Islamist combatants.

[90] In Arabic, Mujaheed (مجاهد) is defined as a person engaging in a struggle. However, in modern usage the term has strictly been adopted in a pejorative sense by equating it with terrorism and (un)holy actions.

[91] According to a study conducted by Susan Moeller at the Yale Center for the Study of Globalization, since 9/11 a bias has been identified in U.S. newspapers defining the term *"Madrassa*" in a reductionist manner (Moeller, 2007). While the term in Arabic is defined as "school", communication centers in the U.S. "Orientalized" the term pushing readers "to infer that all schools so-named are anti-American, anti-Western, pro-terrorist centres having less to do with teaching basic literacy and more to do with political indoctrination" (Moeller, 2007). Although early *madrasa's* in Arabia were founded primarily to gain "knowledge of God" – similar to the Western world where universities began as institutions of the Catholic church. For instance, during the Abbasid, Umayyad, and Osmanli Caliphate, "Medrese" or "Madrasa" had expansive curriculums consisting of seven categories of sciences such as "calligraphic sciences", "oral sciences" such as the Arabic language and phonetics, "intellectual science" such as logic and dialectics, and the "spiritual sciences" such as theoretical rational sciences, practical rational sciences, and the theoretical religious sciences. (Inalcik, 1973:93). It should be noted that early European "madrasas" were characterized by a limited curricula known as the Trivium and Quadrivium during the Medieval period. It was only during the Renaissance that Latin-Europe began developing a reason based philosophical theology by incorporating the work of Arab-Greek-Roman philosophical theology (Winter, 2011; Yusuf, 2019).

[92] On February 5th, 2003 Colin Powell declared at the UN Security Council that "Our concern is not just about these illicit weapons; it's the way that these illicit weapons can be connected to terrorists and terrorist organizations...But what I want to bring to your attention today is the potentially much more sinister nexus between Iraq and the Al Qaeda terrorist network, a nexus that combines classic terrorist organizations and modern methods of murder. Iraq today harbors a deadly terrorist network, headed by Abu Musaab al-Zarqawi, an associate and collaborator of Osama bin Laden and his Al Qaeda lieutenants…One of his specialties and one of the specialties of this camp is poisons…the Zarqawi network helped establish another poison and explosive training center camp, and this camp is located in Northeastern Iraq. We are not surprised that Iraq is harboring Zarqawi and his subordinates. This understanding builds on decades-long experience with respect to ties between Iraq and al Qaeda". (Chossudovsky, 2004, 2015)

[93] At the time of writing, Abu-Bakr Al-Baghdadi – the *nom de guerre* of the proclaimed leader of "Islam" and the "Islamic State" – was pronounced once again as deceased. He was replaced with Abu Ibrahim al-Hashimi al-Qurashi.

[94] Also known as "Bush's shadow army" (Scahill, 2007).

[95] General Kevin Bergner went as far as to state that "Abu Omar al-Baghdadi, leader of the self-styled Islamic State of Iraq...did not exist" (Yates, 2007). On December 28th 2019, a lawsuit against U.S. military contractors claims that firms paid "protection money" to private military contractors and terrorist groups. According to Ryan R. Sparacino, a lawyer representing plaintiffs stated that the "Anti-Terrorism Act complaint alleges that eight large multinational corporations, most of which are American, regularly paid 'protection payments' to the Taliban (including the Haqqani Network) which were designed to boost the companies' profits redirecting violence away from their own business interests, We believe plaintiffs bore the consequences". Over 40% of funds extended by organizations such as USAID, DAI, and Louis Berger from 2007 to 2009 ended up in the pockets of terrorist groups (RT, 2019).

[96] Contrary to hegemonic media centers framing Fallujah, Anbar, and Tikrit – amongst other areas – as "Islamist enclaves", these cities included Arab-Iraqi civilians from all religious persuasions who early on during the U.S conquest of Iraq in 2003 engaged in some of the fiercest resistance.

[97] At the time of writing, on January 3rd 2020, Qasem Soleimani, Major General in the Islamic Revolutionary Guard Corps (IRGC) and commander of its Quds Force, along with Jamal Al-Ibrahim, Deputy Chairman of Popular Mobilization Committee in Iraq were struck by a U.S. predator drone. The point to note here is that the decision to execute them was based on *information* rather than *evidence* alleging that they were attempting to target U.S. personal and blowing up the U.S. embassy in Iraq located in the Green Zone. On January 7th 2020, Secretary of State Mike Pompeo stated that the attack on the U.S. embassy was "imminent" even though such legal term requires *evidence* rather than *information* to make a legal case for "self-defense" (Reuters, 2020; Taylor, 2020). Pompeo articulated Principle 8 of the Bethlehem Principles by defending the basis for killing both individuals citing the threat of "an imminent strike" even though the administration declined to present any evidence. Pompeo continued by stating that President Donald Trump's decision was "entirely legal" (Reuters, 2020; Taylor, 2020).

[98] This includes Baghdad, Mosul, Damascus, Cairo, Tripoli, and Sana'a.

[99] It should be noted that the Lebanese government was informed by the Greek government that *Trader* was heading to Lebanon.

[100] It should be noted that the term "Salafi" has also become a pejorative equated with terrorism and incompetently referred to as a "sect". In Arabic, the term *salafi* is an adjective that designates a person who follows his "predecessors". Therefore, if a Muslim is a salafi it does not *a priori* mean he/she are terrorists, it simply designates that he/she revert to a literalist interpretation of Tradition (i.e., sunnah) deliberated by

their predecessors (i.e., *Salaf*). It is also interesting to note that the articulation of *salafi* in a pejorative manner is used to denote an Arab that is temporally "stuck in the past" by abiding to "traditional" ideas.

[101] NATO French air-force destroyed the *La Farge* cement factory on October 17th 2019 located in Jalabiyeh northern part of Syria's Aleppo close to the Turkish border. The factory was vital in extending death-squads cement and other building equipment to build underground tunnels and/or extend arms transportation. It has been reported that the factory gave terrorists over 6 million tons of cement (Meyssan, 2019).

[102] This is further discussed by Hersh (2016) who reveals that "Lieutenant General Michael Flynn, director of the DIA between 2012 and 2014, confirmed that his agency had sent a constant stream of classified warnings to the civilian leadership about the dire consequences of toppling Assad. The jihadists, he said, were in control of the opposition. Turkey wasn't doing enough to stop the smuggling of foreign fighters and weapons across the border. 'If the American public saw the intelligence, we were producing daily, at the most sensitive level, they would go ballistic,' Flynn told me. 'We understood Isis's long-term strategy and its campaign plans, and we also discussed the fact that Turkey was looking the other way when it came to the growth of the Islamic State inside Syria.' The DIA's reporting, he said, 'got enormous pushback' from the Obama administration. 'I felt that they did not want to hear the truth".

[103] He says, "two years before the violence in Syria…I met top British officials, who confessed to me that they were preparing something in Syria. This was in Britain not in America. Britain was preparing an invasion of gunmen to invade Syria" (Ahmed, 2015a; Kleib, 2019; Raimbaud, 2019).

[104] Daniel Ellsberg also confirmed the danger of the memo released in 2012 in that it asserted that "Western powers were supporting extremist Islamic groups in Syria that were opposing Assad…They were not only as they claimed supporting moderate groups, who were losing members to the more extremists' groups, but that they were directly supporting the extremist groups. And they were predicting that this support would result in an Islamic State organization, an ISIS or ISIL…They were encouraging it, regarding it as a *positive development*" (Ahmed, 2015c; *emphases added*).

[105] There is no *essential qualitative* difference between ISI, AQI, ISIS except their *name*. Interestingly, on Wikipedia, if you search ISIS, ISIL, or DAESH, they all lead to the same page and it states that its members adhere to an ideology that was "founded" in "1999" (Wikipedia, 2020).

[106] It should be noted that Al-Qaeda fighters present in Libya under the command of Abdel Hakim Belhadj and other Al-Qaeda affiliated death squads were transported to Syria after the great Libyan Jamahiriya was conquered (Forte, 2013).

[107] Malhama Tactical is also known as the "BlackWater of Jihad" (Komar, Borys and Woods, 2017)

[108] The use of chemical weapons by death squads in Khan Al-Assal on March 19th 2013, Ghoutta on August 21st 2013, and Douma on April 7th 2018.

[109] Khaled Al-Asaad, a Syrian archaeologist and the head of antiquities at the ancient city of Palmyra for over 40 years – a UNESCO World Heritage Site – was publicly beheaded by *death squads* on August 15th 2015.

[110] Ian Henderson who worked for 12 years at the OPCW by serving as an inspection team leader and engineering expert assisted in the fact-finding mission (FFM) on the ground in Douma authorized by the international watchdog (Norton, 2020). He told a UN Security Council session convened on January 20th 2020 by Russia's delegation that "OPCW management had rejected his group's scientific research, dismissed the team, and produced another report that totally contradicted their initial findings. 'We had serious misgivings that a chemical attack had occurred,' Henderson said, referring to the FFM team in Douma. The former OPCW inspector added that he had compiled evidence through months of research that "provided further support for the view that there had not been a chemical attack" (Norton, 2020).

[111] According to Crooke "the idea of breaking up the large Arab states into ethnic or sectarian enclaves is an old Ben Gurion 'canard', and splitting Iraq along sectarian lines has been Vice President Biden's recipe since the Iraq war…the idea of driving a Sunni 'wedge' into the landline linking Iran to Syria and Hezbollah in Lebanon became established by Western groupthink in the wake of the 2006 war…in short, the DIA assessment indicated that the 'wedge' concept was being given a new life by the desire to pressure Assad in the wake of the 2011 insurgency launched against the Syrian state. 'Supporting powers' effectively wanted to inject hydraulic fluid into eastern Syria (radical Salafists) in order to fracture the bridge between Iran and its Arab allies" (as cited in Ahmed, 2015c).

[112] While it is beyond the scope of this chapter to analyze and identify each "Islamist" *death squad* group involved in Operation Timber Sycamore, it is sufficient to mention Jabhat Fateh al-Sham (formerly known as Jabhat Al-Nusra), Ahrar al-Sham, Hayat Tahrir al-Sham (HTS), Khorasan Group, and Nour al-Din al-Zenki Movement, including Private Military Contractors such as Academi (formerly Blackwater) and Malhama Tactical (Ahmed, 2014; Chossudovsky, 2016; Komar, Borys, and Woods, 2017). These groups were the primary benefactors of the operation who engaged in barbaric acts involving immolation, crucifixion, looting, pillaging, and massacring of Muslims and non-Muslims thereby leading to millions of people in the Arab world, especially Syria, becoming "internally displaced peoples (IDPs)" and/or "refugees". Also, while most *death squads* were ethnically and religiously featured in media frames as "Arab rebels" and "Islamic warriors" driven by "Sharia law", most groups included foreigners that were neither Arab nor Muslim (Pichon, 2017; Kleib, 2019; Raimbaud, 2019). Also, important to note is that while death squads funded by Iran are not identified as "ISIS" such as Saraya al-Jihad, Mehdi Army, Peace Companies, Badr Organization, Kata'ib al-Imam Ali, Asa'ib Ahl al-Haq, and some factions of the Popular Mobilization Unit (PMU), their committed atrocities are exactly like ISIS.

[113] On May 18th 2017, 27 Arab Syrian Army vehicles drove within 18 miles of al-Tanf to target *death squads* thus breaching the 34-mile radius declared by the U.S. This resulted in U.S. forces striking the Arab Syrian Army vehicles. It should be noted that al-Tanf (a U.S. military base) operated by U.S. special forces trains a number of "Islamist" *death squads* referred to by the U.S. as "Vetted Syrian Opposition (VSO)" or the "Southern Front" which includes over 50 "Islamist" militant groups such as the Revolutionary Commando Army (RCA). The point to note here is not only that the U.S struck the Arab Syrian Army who is the national army of the Arab Syrian Republic, but that it struck the army in defense of *death squads* (Al-Kassimi, 2018; *emphases added*).

[114] As of December 21st 2017, the bombing campaign led by CJTP-OIR during *Operation Inherent Resolve* in Iraq and Syria, for instance, has been dubbed the "heaviest bombing campaign since the War in Vietnam" with over "105,000 bombs and missiles" dropped according to AFCENT commander Lt. Gen. Jeff Harrigian (Benjamin and Davies, 2018). These bombing campaigns not only resulted in most victims being civilians, but reduced several Arab cities to rubble (Benjamin and Davies, 2018)

[115] The civilizational consequences of the bombing campaign in Yemen – claiming the lives of over 100,000 Arabs as of 2020 – is summed up by Dr. Abdulkader Alguneid who reminisces about Mount Sabir in the citadel of Taiz by saying "I'm watching an entire generation lose our history and heritage" (Khalidi, 2017; Rodrigues, 2019). The city of Taiz – one of many cities and historical sites reduced to rubble and/or nearly so – represents for Yemen "what Notre Dame represents for Europe, or what St Paul's Cathedral is for the British". Taiz is a "centrepiece of Yemen's extraordinarily [Arab] rich heritage and gives a sense of identity and continuity for the exhausted, war-weary people of Yemen" (Rodrigues, 2019). The Arab-Islamic scholar and explorer Ibn Battuta called Taiz "one of the most beautiful and extensive cities of Yemen" (Rodrigues, 2019).

[116] The city of Sirte in Libya or other Arab historical cities such as Tripoli or Benghazi, whether during the NATO bombing in 2011 or during Operation Inherent Resolve in 2017, were either completely or nearly destroyed (Forte, 2013; Al-Kassimi, 2018)

[117] Benjamin and Davies (2018) highlight that since 2003, there has been a minimum of 1.5 million deaths and a maximum of 3.4 million deaths in Iraq alone. The battle to retake Mosul in 2017 using a CJTP-OIR mandate resulted in the deaths of over 40,000 civilians – with several thousand individuals unaccounted for – in less than 5 months including 1 million displaced (Benjamin and Davies, 2018; Gonsalves, 2017). The bombing campaign in Iraq and Syria resulted in more than 70% of deaths being civilians with around 20% informing *death squads*.

[118] The war on Syria destroyed around one-third of all Syria's pre-war housing and civil infrastructure. The destruction of the financial and industrial center Aleppo – also known as the economic capital of Syria – was compared with the Dresden bombing of WWII (Salman, 2019; Rabih, 2019). Aleppo had a population

of around 2 million people and produced over 50% of the manufacturing output of the country. According to a study issued by the Syrian Center for Policy in Research in 2016, the losses of the Syrian economy have reached $255 billion dollars. This means that Aleppo's share of economic losses could be about 65 billion dollars or more (Sasa, 2016). According to Frontier Economics, the Syrian war by 2020 would have costed £1.3 trillion pounds in economic growth – around £3.2 billion pounds a month (Jones, 2016)

[119] While it is difficult to quote a precise number of how many persons were involved in death squads who roamed the Arab world since 2011, Al-Qassimi (2019) mentions that according to her sources there was in 2014 Syria alone – at the zenith of the war – anywhere from 150,000 to 200,000 mercenaries on Arab Syrian territory which directly or indirectly received logistical funding from Western intelligence agencies – especially from the CIA through Operation Timber Sycamore.

[120] Similarly, Eldridge Colby in 1925 argues in the British Manual of Military Law – in agreement with American jurist Quincy Wright – during the indiscriminate bombings of Damascus by the colonial mandate that the "rules of international law apply only to warfare between civilized nations, where both parties understand them and are prepared to carry them out. They do not apply in wars with uncivilized States and tribes… the real essence of the matter is that devastation and annihilation is the principal method of warfare that savage tribes know" (Colby, 1927:280; emphases added; Wright, 1926; Bowden, 2007)

[121] For example, reductionist discourses claiming that the British and French mandate were endowed with the "sacred trust of civilizing" Arabia.

[122] I am indebted to P. Nyers for this theoretical clarification.

[123] The distinction between law and morality is a positivist jurisprudent trait *par excellence*.

[124] According to the Encyclopedia Judaica (1971) the term Muselmann was primarily used in Auschwitz and derived from attitudes of prisoners "staying crouched on the ground, legs in Oriental fashion, faces rigid as masks".

[125] I come back to this point in my conclusion since I think it exemplifies the epistemological schism between a European and Arabian idea of *Being*.

[126] Influenced by Umberto Eco's book entitled *In the Name of the Rose* (It. Il nome della rosa)

[127] A Judeo-Christian rationalization of revealed Law (i.e., secularization) to be exact.

[128] It is important to note that Arab communities situated in *Southern Syria* (Ar. سوريا الجنوبية) – a civilizational term that was replaced with an ahistorical *abject* term known as "Palestinian State" by sovereign powers in the League of Nations at the 1919 Paris peace conference, and later in 1947 with UN resolution 181 – were terrorized by *death-squads*/*war-machines* involved in terrorist organizations such as *Haganah* and *Irgun* who sought to establish a homeland for European Jews fleeing persecution by forcing local Arab inhabitants into displacement. The exodus of Arabs involved in the *Nakba* of 1948 and *Naksah* in 1967 and hundreds of other (re)settlement programs adjudicated by the Israeli Knesset during the 21st

century highlight that sovereignty figures the Arab as a necessary *muselmänner*/*homo sacer* for ontologically security.

[129] The concept of necroeconomics/necrocapitalism is the subject of future research concerning death squads imitating the actions of mercenaries/privateers/pirates working for the East India Company (EIC). See, e.g, Banerjee (2008) for a discussion on the economics of death – necroeconomics – in the context of contemporary capitalism hiring "private military forces" for the accumulation of capital and its relation to imperialism as an exceptional policy exercising bio/necropower.

[130] Revert to Chapter IV for a detailed deconstruction of the terror and violence conducted by *death squads*.

[131] Most proven oil, water, and gas reserves in the northern Syria have been or are currently occupied by war-machines directed by the U.S, French, British troops and Arab comprador Kurdish elite. These areas include Deir Ezzor, Al-Hasakah, Raqqa, and Suwaydah (Ahmed, 2015e; Webb, 2018; Meliksetian, 2018; Salman, 2019; Rabih, 2019).

[132] This is explicitly noticed in 1) the unaccounted torture and killing of Arabs in Abu-Ghraib prison or other international spaces dubbed "CIA Black Sites", 2) Arab dead bodies being categorized as "collateral damage", 3) ignoring "body counts" since Arabs are neither *bios* nor *zoë* but *homo sacer*, and finally, 4) detained Arab-Muslim citizens being classified as "enemy combatants" (Anghie, 2004; Agamben, 2005; Mutimer, 2007; Masters, 2007; Al-Kassimi, 2019)

[133] As highlighted by Nyers (2006:54) "If the space of fear is external to political space, then the temporality of fears appears to occupy an altogether different time zone than the modern state. The time of fear and the time of politics are out of sync, and this temporal disjuncture is often attributed to the prepolitical quality of fear. Even at the level of language it is apparent that fear and the state are opposing concepts…The temporal quality of fear is invoked whenever it is presented as a primal emotion or elementary passion, an involuntary response to danger that is somehow 'hardwired' into the human psyche"

[134] Kant's concept of *cosmopolitanism* is based on an *a priori* idea claiming that a foreigner or a stranger is permitted into a country if they are endowed with citizenship in their country of origin (2003). This concept is exclusive rather than inclusive since being a citizen of a nation-state demands its inhabitants to embody a liberal-secular mode of *Being*. Also, it requires "sovereign recognition" and in the case of Arabs, they are denied sovereignty which means that inhabitants of the Arab world are not citizens but the extreme opposite (i.e., *refugee*, *homo sacer*, *musulmanner* etc.). See also Derrida (1997) for a critic on how cosmopolitanism is a limiting concept since it envisions a particular ratiocinated philosophical theology made universal as naturally informing the cosmopolis in general, and citizenship as a superior category of "belonging" in particular.

[135] CRS has received between 2015 and 2018 over $USD 147 million in contracted projects in Syria (Parker, 2018).

[136] For instance, the chaos in Syria is fallaciously framed as a "civil war" thus assuming that the chaos engulfing Syria is organic to Arab Syrian society rather than mitigated, managed, and exacerbated by foreign intervention maintaining "creative anarchy".

[137] I use "concentration camp" to resurrect the symbolic powerful image of *muselmänner* or victims of nation-state-building succeeding WWI and WWII – whether in the Orient or Occident – and also to highlight the consequences of *necropower* forcibly transferring populations to spaces perceived as "outside" law. As mentioned earlier, the "camp" is imagined as a "zone of indistinction" inhabiting modes of *Being* that are identified as "threshold bodies" failing the "purity-metric".

[138] The politicization of humanitarian aid reached a climatic dispute at a UNSC meeting on January 11th 2020 when a vote on resolution 2504 concerning the case of cross-border aid shipments was postponed by three hours and vetoed by Russia (UN, 2020). While the resolution was voted on by 15 council members, receiving 11 "yes" votes and 4 "abstentions" from Russia, China, the U.S., and the United Kingdom, the issue the Arab Syrian Republic and Russian Federation had with the program is that rather than being discussed as a "temporary" solution, it was *a priori* perceived as a "permanent" solution to the displacement problem of Arab Syrians (Arab News, 2020; Lederer, 2020; UN, 2020; Jaafari, 2020a). Russia's UN Ambassador Vassily Nebenzia along with Syria's UN Ambassador Bashar Jaafari stated that cross-border aid was meant to be a "temporary response to the Syrian conflict" and that "the situation on the ground has changed" since 2011 therefore the "situation" no longer requires multiple cross-border aid check points across sovereign Arab Syrian territory (UN, 2020; Jaafari, 2020a; Lederer, 2020; Arab News, 2020). Vassily said that the "Jordan crossing point hasn't been used for a lengthy period of time" and the aid volume through the Iraqi crossing "is insignificant...and could be done from Syria", therefore, "only the Turkish crossing points are needed" (Lederer, 2020; UN, 2020). Syria and Russia saw a "permanent" authorization of cross-border aid shipments by Western sovereign figures as a "breach of sovereignty" by consistently citing a Syrian "humanitarian crisis" as legal justification (Jaafari, 2020a). Both countries wanted to force an *international political recognition* that Damascus had largely retaken control over its legal sovereign territorial boundaries. Therefore, the resolution adopted by the UN's most powerful body reduced the number of crossing points for aid deliveries from four to two (UN, 2020; Jaafari, 2020a). The resolution demanded the closure of the Jordanian and Iraqi cross-border points and kept the Turkish point open as Russia and Syria demanded (UN, 2020; Jaafari, 2020a). The resolution also cut in half the year-long mandate that has been in place since 2014 to six months – as demanded by Damascus (Arab News, 2020; Lederer, 2020; Jaafari, 2020a; Salman, 2020). Karen Pierce, the British ambassador to the UN, said: "We won't vote to stop vital aid from reaching Syria, but neither will we vote in favor of a resolution that reduces aid provision to vulnerable populations and puts lives at risk" (Arab News, 2020; Lederer, 2020). US Ambassador Kelly Craft accused Damascus and Moscow of "starving its opposition" by warning that

"Syrians will *suffer* needlessly…(and) Syrians will *die* as a result of this resolution" (Lederer, 2020; UN, 2020; *emphases added*). It is important to note that the resolution adopted only permits aid to cross in from the border between Turkey and Syria into the Idlib province which includes around 800,000 Arab Syrian citizens (Jaafari, 2020b). The delay in voting on the resolution was related to the US, France, Belgium, and the UK wanting to expand cross-border aid points across *all* Syrian territory – especially the Al-Ya'rubiyah crossing located in the northeast region between Syria and Iraq (Jaafari, 2020a, 2020b; Salman, 2020a). Jaafari (2020a, 2020b) emphasised that Al-Ya'rubiyah is an area located in the far northeast region of Al-Hasakah across the Euphrates river and is under U.S. control with military personnel and PMC's extending training and military intelligence to terrorists involved in Malhama Tactical and Hayat Tahrir al-Sham (HTS) (Salman, 2020a). According to Professor Hayan at the University of Damascus, the politicization of Arab suffering is manifest when we realize that Arab-Syrian citizens in Idlib, for instance, are categorized using a humanitarian discourse that identifies them as either "terrorists, refugees, or internally displaced people all in the same time" (2020a). Idlib not only includes the largest concentration of *death squads* involved in organizations such as HTS and Al-Nusra numbering around 90,000 (Jaafari, 2020a, 2020b; Salman, 2020a, 2020b), but it is also "the *largest* area where you have a case of *Arab-Syrian citizens* being taken hostage by terrorist organizations and become classified as *refugees* in their own country….and these imperial organizations are washed from any *guilt* because it is seen as a 'humanitarian problem' in the hallways of UN….the *politicization* of Arab-Syrian displacement has made the conflict worse… our brothers and sisters need to return home" (Salman, 2020b; *emphases added*)

[139] According to R. Yewdall Jennings (1939) "the status of the refugee is not, of course, a permanent one. The aim is that he [sic] should rid himself of that status as soon as possible"

[140] In a UN session dated January 29th 2020, Dr. Jaafari mentioned that located in Idlib are around 90,000 mercenaries and around 800,000 civilians, contrary to Western reports stating that there are around 3-4 million civilians under fire by "Arab Syrian forces" thus transforming an *actual* temporary humanitarian situation into a permanent humanitarian crisis (Jaafari, 2020b).

[141] According to the UNDP (2019) the "The Regional Resilience and Refugee Plan is an evidence-based plan that harnesses the knowledge, capacities and resources of humanitarian and development partners into one strategic and multi-faceted resilience-based response for countries neighboring Syria that have been impacted by the influx of Syrian refugees....The 3RP is a country driven, regionally coherent planning process. It draws together the national crisis response plans for humanitarian relief, resilience and stabilization in neighboring countries to Syria, namely, Lebanon, Jordan, Iraq, Turkey and Egypt, in one coordinated regional framework". Another program launched during the same period is entitled the Syrian Response Plan (SRP).

[142] Jamal (2016:358) in discussing the expenditures of the UNHCR in the Middle East mentions that "UNHCR expenditures in the Middle East in 1999 came to US$20 million; by 2010 it reached US$318 million, and in 2013 – with the Syria crisis at hand it reached US$430 million. The US has consistently been the top donor for the UNHCR activities in the region while the European Commission extended around US$18.5 million".

[143] Professor Makdisi (2019) identifies the United Nations Relief Works Agency (UNRWA) as a prime example of an organization that has attempted to ameliorate the plight of Arab "Palestinians".

[144] I adopt the term from Beier (2015:258).

[145] The conference was critical in that it highlighted how resilience programs render displaced Arabs voiceless and blamed "the international community and donor countries [that] have furthered *the rupture* of Syria's social cohesion by supporting *only particular* local actors. Another problem is that Syrians have *not been included enough* in planning and implementing humanitarian assistance. The international community has *talked about* Syrians but *not with* Syrians themselves. Decisions have been made on a *top-down basis*, without taking account of local level perspectives. And yet Syrians know best about local problems and how to solve them" (FCA, 2017; *emphases added*).

[146] In a research paper released by the World Refugee Council (WCR) on February 19th 2019, Will Jones emphasized that the failure of prioritizing refugee voices ignores resources that would have dramatically enhanced decision-making capacity (Jones, 2019). For instance, the core logic of the Jordan Compact – funded by 3RP – was to provide Syrian refugees with the opportunity to work. The Jordanian government would lift the barriers to employment faced by Syrian refugee in return for donor support in creating jobs for them. The deal was made between governments in February 2016 and it selected the garment industry as its primary focus (Jones, 2019:11). Despite humanitarian actors attempting to facilitate the entry of displaced Arabs into the garment factories, by the end of 2016, only 30 Syrians out of a target of 2,000 were being employed (Lenner and Turner, 2018). The failure of this policy can be directly attributed to refusing to consult with Arab-Syrian refugees during policy formation because a humanitarian order *a priori* describes displaced bodies as voiceless apolitical objects with no "lived experiences" (Qasimyeh, 2016:7)

[147] If humanitarian compacts were more *inclusive* rather than *exclusive*, then, the garment compact funded by the 3RP and SRP would have benefited from Syrian refugees informing them "that wages in the garment sector compare unfavorably with jobs in the informal sector they were already accessing" (Jones, 2019:11). Displaced Arabs would have been able to point out that "most migrant workers were not raising families nor paying rent in Jordan, and that rent alone can exceed the salary on offer in the garment sector. The policymakers would have also been able to understand that Syrians with dependents (a large proportion of the Syrian refugee population) would be unable to move to dormitories or travel the long daily distances to factories" (Jones, 2019:11). Research also revealed that many Syrians who worked in the garment industry

departed after a few days or weeks, as they discovered the mismatch between what was offered and their needs (Jones, 2019). If displaced Arabs had been surveyed in a manner in which they felt able to honestly reveal their preferences and current economic activities prior to the development of the policy in question, it would have been possible for policymakers to ascertain that displaced Arabs were unable or unwilling to participate in the compact (Lenner and Turner, 2018; Jones, 2019:12). As highlighted by Jones (2019:12, *emphases added*), "the further expansion of the garment sector may well have been the foremost desire of the governments, donors and implementing partners involved, *but that is not relevant if the wishes of Syrian refugees mean that such a pathway is not viable*."

[148] Characterizing displaced Arabs as incapable of being authors of their own experiences is explicitly recognized with the 3R program prioritizing *resettlement* rather than the *repatriation* of Arabs. This is manifest with the UNHCR refugee agency suggesting that displaced Syrian's should not register their new-borns at the Syrian embassy in Lebanon[148], and Lebanon's former Foreign Minister Gebran Bassil on June 7th 2018 freezing all work-visas and residency permits of UNHCR agents citing that they are "frightening and intimidating" refugees by informing them of forced military conscription, kidnapping, and the lack of UN support in some areas if they decide to return (Khallaf, 2016; Jamal, 2016; Makdisi, 2019; Zahran, 2019; Al-Qassimi, 2019)[148]. H.E Gebran Bassil stated that these statements are evidence that the UN violated its principles of neutrality and impartiality by manipulating the psychological sentiments of refugees thus hindering them exercising their right of "voluntarily return" since Lebanese and Syrian security services have jointly continuously cooperated, consulted, and assured a safe repatriation (Akoum, 2018; El-Huni, 2018; Salman, 2019; Rabih, 2019; Zahran, 2019; Al-Qassimi, 2019).

[149] Quite interestingly, the UNDP and UNHCR extending "immediate" and "technical" solutions facilitating resettlement rather than repatriation is noticed in programs adhering to a 3RP framework such as the *Comprehensive Protection and Solutions Strategy: Protection Thresholds and Parameters for Refugee Return to Syria* (CPAS, 2018b) and *Comprehensive Protection and Solutions Strategy: A Roadmap to Advance Resettlement and Complementary Pathways in the Syria Crisis* (2018a). The discourses adopted in both strategies and solutions (re)affirm and make salient that the contact groups involved in drafting these problem-solving based programs *speak on behalf of* Arabs.

[150] As mentioned by Anghie (2004:63; *emphases added*) "the whole edifice of positivist jurisprudence is based on this initial *exclusion*, this determination that *certain societies* are beyond the *pale of civilization*. Furthermore, it is clear that, notwithstanding *positivist assertions of the primacy of sovereignty*, the concept of *society* is at least equally central to the whole system".

[151] As declared by Bauman (1990:143), the "outside is negativity to the inside's positivity. The outside is what the inside is not. The enemies are the negativity to the friend's positivity…Only by crystalizing and solidifying what they are not, or what they do not wish to be, or what they would not say they are into the

counter-image of the enemies, may the friends assert what they are, what they want to be and what they want to be thought as being".

[152] Schism in Arabic translates into انفصال or الانشقاق which is more accurately described in the case of the former Arabic word as "detachment" and the latter Arabic word as "disunity".

[153] On July 1st 2020 Secretary of State Mike Pompeo declared that since the U.S is a "Force for Good" in the "Middle East", it would commit nearly USD $700 million to help Syrian's facing "humanitarian challenges".

[154] The TWAIL conference in 2015 Cairo remarked, "International law has played a pivotal role in shaping the Middle East and North African region, from its borders and its politics to its economics and its natural environment. Changing regional dynamics in recent years highlight the critical space that the region continues to occupy in international affairs. Young Arab and African scholars, practitioners and activists persistently interrogate and productively engage with an international system that has played a complex and often detrimental role in local struggles for equality and social justice. As the region evolves through a time of change, TWAIL can shed light on the conservative, transformative, and radical potential of international law and policy. Additionally, while Arab scholars and jurists such as Mohammed Bedjaoui and Georges Abi-Saab were integral to the underpinnings of TWAIL, voices from the region remain relatively under-represented in contemporary TWAIL scholarship. This conference aims to encourage and highlight the work of young Arab and African scholars of international law, linking them with each other and with existing global networks of research and support. The hope is to connect, in a mutually beneficial fashion, innovative thinking and critical practice on international law and policy from the Middle East and North Africa with that in the rest of the world."

[155] As highlighted by Akbari (2012:213-214), the *Chanson de Roland*, like the *Sowdone of Babylone* written in Middle English in the 15th century concerns the "deeds of Charlemagne and his men and centers on the martial conflict of Muslim and Christians...[it] concerns the deeds of Charlemagne and his men as they attempt to beat back the advance of the Muslim armies in Spain". While in Roland the Muslim is briefly described as dark skinned, in the Sowdone of Babylone the Muslims are repeatedly described as being "not only black but deformed and even chimerical, having leopard's heads and baro's tusks. Also, the "anti-trinity of Mahum, Apolin, and Tervagan worshipped by the Muslims" in the Chanson de Roland is further expanded in the Sowdone into a "wider pantheon, including not just Mahounde, Apolyne, and Termagaunte" but also "Jubiter, Ascarot and Alcaron".

[156] According to Bishop Lambert's *Book of Flowers (*Lat. *Liber Floridas)*, Robert the Monk's *Chronicle of the First Crusade* (Lat. *Historia Hierosolymitana*), the *Historia peregrinorum* at Monte Cassino, and the *Codex Laurentianus* at Florence, Pope Pius II is remembered to have called up the "*race* of the Franks" at the Council of Clermont while speaking to the clerics and other attendees by exclaiming "Whoever for

devotion alone, not to gain *honour* or *money*, goes to Jerusalem to *liberate* the church of God can substitute this journey for *all penance*", to which the crowd euphorically replied *"Deus lo vult"* (Eng. God *wills* this) (Somerville, 1972: 74, 108, 124n; *emphases added*).

[157] Following the Battle of Maysalun in 1920 in Ottoman-Arabia, French General Henri Gouraud – while other sources mention General Mariano Goybet – went to the tomb of Saladin at the Umayyad Mosque in Damascus, kicked it, and said: "Awake, Saladin. We have returned. My presence here consecrates the victory of the Cross over the Crescent."

[158] It should be noted that not all of Henri Priene's thesis is accurate. For instance, he states that trade between the Islamic world and Europe seized after the 8th and 9th century. Arab-Islamic jurisprudence finds it immoral – therefore illegal – to enact sanctions on a society simply because governments are in a "state of war". Furthermore, the more recent work of Rodinson (1977) and Heck (2006) dispel this historicist claim by revealing that it is not simply false, but that the Arab-Islamic Caliphate continued trading with former Byzantine and non-Byzantine ports.

[159] While it is beyond the scope of this dissertation to highlight the importance of Arab-Islamic philosophy in aiding Europe to develop a philosophical theology of its own after the 11th century, it suffices to mention that the works of prominent figures such as Al-Ghazali, Al-Farabi, Ibn-Sina, Ibn-Tufayl, Ibn-Khaldun, Al-Khawarizmi, Ibn-Rushd, Al-Razi, Al-Biruni, Al-Qurtabi, Ibn Haytham, and Al-Kindi were extensively translated from Arabic to Latin, French, and English.

[160] The *Inquisition* marked the end of the *Reconquista* which took place from the year 711 to 1492. It is important to remember that the European *Inquisition* started in the 11th-12th century and lasted well into the 20th century as highlighted for instance with the forced expulsion of Arabs or Muslims during the Balkan War or from former Arab Ottoman provinces during WWI and WWII.

[161] This is evident in Ibn-Khaldun's *Al-Muqadimmah*. At the end of every page he places either a Quranic verse or the Arab saying "And God Knows Best" thereby highlighting to the reader that while the intellect was used to produce the chapter, it is not primarily deduced because of the "I" or ratiocination, but is inferred in *past* tradition (i.e. Sunnah) or *Law* (Sharia) in tandem with the usage of dialectical arguments, demonstrative reasoning, or rhetorical statements of *appeal*.

[162] It should be emphasized that Arab epistemology possesses an exceptional diversity of thought with Arab and Persian Islamic philosophers such as Al-Farabi, Al-Kindi, Ibn-Sina, Ibn-Tufayl, and Ibn-Rushd being some of the earliest philosophical theologians that had a vital influence in the development of Latin-European philosophical theology (Al-Jabri, 1994). It is telling that Latin-European diffusion of knowledge paid more attention to Al-Ghazali's philosophical work entitled *The Aims of the Philosophers* rather than on his other work entitled *The Incoherence of the Philosophers* which is a rebuttal of the former. Also,

important to note is Arab-Muslim philosophers critiquing each other with Ibn-Rushd publishing the *Incoherence of the Incoherence* as critique to Al-Ghazali's *Incoherence of the Philosophers*.

[163] It should be noted that *Dīn* in Arabic is inaccurately translated in English as Religion. However, *Dīn* is more accurately defined as custom, judgement, and *Law* that is unchanging with the passing of *time*. For instance, Smith (1963:43) mentions that "One's own 'religion' may be piety and faith, obedience, worship, and a vision of God. An alien 'religion' is a system of beliefs or rituals, an abstract and impersonal pattern of observables. A dialectic ensues, however. If one's own 'religion' is attacked, by unbelievers who necessarily conceptualize it schematically, or all religion is, by the indifferent, one tends to leap to the defence of what is attacked, so that presently participants of a faith – especially those most involved in argument – are using the term in the same externalist and theoretical sense as their opponents. Religion as a systematic entity, as it emerged in the seventeenth and eighteenth centuries, is a concept of polemics and apologetics". For an important discussion relating to the institutionalization of the term "religion" following the Renaissance but more specifically after the Enlightenment period revert to Smith (1963).

[164] The idea of *Kalam* (Islamic Scholastic Theology) and *Falsafa* (Philosophy) is identified in two schools known as Ash'ari and Mu'tazili. The former emphasizes that Science and Religion are complementary, while the latter emphasizes Reason over Revelation if they were to clash. For instance, Al-Basri, Al-Farabi, Al-Ghazali, Ibn-Rushd, Izz al-Din ibn 'Abd al-Salam, Taj al-Din al-Subki, and Ibn-Khaldun were non-Mu'tazilites. Ismaili Shi'ism and Twelver Shi'ism are *par excellence* the most *ratiocentric* interpretation of Islamic reveled Law adhering to Mu'tazila logic since their adherents essentially separate Religion and Science by secularizing law in a way that directly violates revealed *Law* (*Sharia*) and Tradition (*Sunnah)*. For an extensive discussion on Arab-Islamic philosophy and the importance of the "Ancients" (i.e., Galen, Plato, and Aristotle) revert to Al-Jabri (1994) and Abou El Fadl (2014).

[165] It should be noted that Arab philosophical theologians are indebted to and praised the work of Aristotle and Plato as highlighted in the work of Al-Ghazali, Ibn-Rushd, Ibn-Tufayl, and Al-Farabi; however, the point to note here is that because Athens and Medina are two culturally different civilizational centers, the aforementioned Arab-Muslim philosophers selected what they deemed compatible with Arab-Islamic civilization from the "Ancients" (Al-Jabri, 1994; Winter, 2011a, 2011b; Yusuf, 2019).

[166] While writing this section I thought about the concept of *Deus ex machina* and how it could be used to figuratively explain the esoteric objective of Western modernity employing *war-machines* and/or *death-squads*. A *Deus ex machina* is a plot device whereby an "unsolvable conflict is suddenly resolved by the unexpected appearance of an implausible character, object, action, ability, or event...The goal of this device is to bring about resolution, but it can also introduce comedic relief, disentangle a plot, or surprise an audience" (Litcharts, 2020). The etiology of *Deus ex machina* is Latin and it is borrowed from a Greek phrase meaning "god from the machine". The origin of the term comes from the "crane (*mechane*) that was

used in ancient Greek drama to lower the actors playing gods onto the stage at the end of a play" (Litcharts, 2020). Therefore, it could be argued metaphorically that *death-squads* or *war-machines* hired and commanded to do "God's work" in Arabia were not only introduced to "solve" the problem of Arabs being incapable of transitioning into a (temporal) modernity paying homage to Latin-European philosophical theology, but that they were also part of a "resolution" which had an objective of proliferating chaos and destruction in Arabia by being "lowered" into Arab geography by sovereign figures (*God's-in-flesh*).

[167] It should be clearly noted that I am referring to *legal* formulations through rhetorical statements – as elaborated in all five chapters – that are deliberately formulated in a linguistic manner producing extensive assumptions and interpretations. That is to say, secular legal doctrines are formulated in a discursive rhetorical manner that leads to discounting "moral judgement". According to Arab-Islamic jurisprudence, since the source of reasoned law is revealed *Law* (i.e., Sharia) – by balancing Religion and Science – then law and morality cannot be distinguished as emphasized by positivist jurisprudence since the objective of any law is assuring the happiness of its legal subjects. In other words, a statement such as the "ends justify the means" or "responsibility to protect" as ratiocinative maxims make possible the "moralization" of deadly consequences accenting the legal doctrine known as R2P since its application made legal the pillaging of Arabs in Libya after 2011 by transforming "cultural differences" into "legal differences".

[168] The policies that were rolled out by recognized sovereign figures continue to maintain the hegemonic status-quo leading to an economic and social "epidemic" – whether for "younger" or "older" citizens – as made evident with the lack of preparedness linked to preventative health-care measures. The blatant disregard of the social-contract by sovereigns vis-à-vis their citizens following Covid-19 highlights that *biopower/necropower* was never simply supposed to be exercised "outside" the borders of the "West" (i.e., Third World), but rather, Covid-19 demonstrated the ominous truth that the *inclusive exclusion* ethos of *jus gentium* also targets citizens of territories recognized as being "inside" *jus gentium* as made evident, for instance, with neo-liberalism also destroying livelihoods in the "West" (i.e., militarization of law-enforcement agencies, austerity measures, resilience governmentality etc.). This demonstrative truth became further evident following 9/11 with citizens of the "free world" being detained and/or had their citizenship revoked because they contested the *will* of their respective *sovereign*. The policies and political realities evident after 9/11, and more so after Covid-19, foreshadow a *technocratic* future seeking the dilution of anything and everything relating to a "political man" involved in a *polis* (i.e., social solidarity/contract, law, community, religion, identity, etc.) thereby transforming inhabitants of civil societies into a "One-dimensional man" valorizing *technological* solutions and *technical* expertise vacant of any socio-cultural content.

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