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Mathias Delori

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# The "Global War on Terror" and the fetishism of lesser intentionality

ABSTRACT: The Global War on Terror has killed or harmed far more innocent people than "terrorism" over the last twenty years. This observation has led some critical scholars to reverse the mainstream question on political violence. Instead of asking how and why some people become "terrorists", they analyse how the violence of the Global War on Terror has been produced and reproduced. This article contributes to this critical scholarship by investigating two cases: First, the "enhanced interrogation" policy implemented by the Bush administration and, second, French aerial bombings in Afghanistan and Mali. Despite their numerous differences, these warlike counter-"terrorist" practices have one thing in common: their partisans and operatives tend to fetishize the question of intentionality. They claim that counter-"terrorism" remains more moral than "terrorism" – regardless of the aforementioned death toll – because counter-"terrorist" forces do not specifically intend to kill or harm innocent people. I analyse this claim as a "frame of war" in Judith Butler's sense - , i.e. as a regime of knowledge which normalizes a particular violence -, and I document its social construction.

## Introduction

"We took a machine gun to shoot a mosquito".<sup>1</sup> Alain Chouet, a former French foreign intelligence official, used this image in 2010 in order to describe the "global war on terror" (GWOt) launched in 2001 by the United States with the support of its allies<sup>2</sup>. Chouet went on to say that while the mosquito had obviously been missed, much damage had been done in the process. This image describes a statistical reality. Al-Qaeda, the "Islamic State" organization and their affiliated groups have caused the deaths of about 4,000 civilians in Europe and North America since 2001, including the September 11 attacks. According to some conservative estimates, it took the U.S. and European counter-"terrorist"<sup>3</sup> forces only

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<sup>1</sup> Alain Chouet, *Al Qaeda*, Senate Committee on Foreign Affairs, Defense and Armed Forces, Conference of 29.1.2010, [http://videos.senat.fr/video.22174\\_57b70c17f0a5f.le-moyen-orient-a-l-heure-nucleaire?timecode=4809000](http://videos.senat.fr/video.22174_57b70c17f0a5f.le-moyen-orient-a-l-heure-nucleaire?timecode=4809000) (accessed March 12, 2020), 2010. The sequence can be found here: 19'50".

<sup>2</sup> I thank the PARISS editors and the two anonymous reviewers for their thoughtful comments on a previous version of this article.

<sup>3</sup> I use the notion of "terrorism" in a nominalist way. I call "terrorist" those actions which the hegemonic discourse calls "terrorist". This does not mean, of course, that I accept the validity of this concept as such. As noted by Bigo, "terrorism does not exist. More precisely, the social sciences cannot use it as a concept". Didier Bigo, "L'impossible cartographie du terrorisme", *Cultures et conflits*, [en ligne] articles inédits, mis en ligne le 25 février 2005 et consulté le 4 février 2017 (<http://conflits.revues.org/1149>), 2005, p. 1.

three months, from October to December 2001, to cause the same number of civilian casualties in Afghanistan.<sup>4</sup> If one adds to this figure the death toll of the wars in Iraq, Mali, Syria and of the drone wars in Pakistan, Yemen or Somalia, one realizes that the war against "terrorism" is much more deadly than the evil it claims to fight.

Contemporary scholarship on violence does not do justice to this asymmetry between "terrorist" and counter-"terrorist" death tolls. One could fill an entire library shelf with books that investigate what leads some people to become "radicalized" to the extent that they end up perpetrating "terrorist"<sup>5</sup> attacks. However, only a few studies try to understand the production and reproduction of the main part of this violent interaction: the war violence that has the objective of fighting "terrorism". A reason for this lies in the fact that many International Relations (IR) scholars conceive of the GWoT in the same terms as the official narrative, i.e. as a law enforcement response against criminals. This is the case, for instance, when they argue that "When confronted with terrorism, all countries have the right and the duty to protect their citizens".<sup>6</sup> This narrative reproduces the old opposition between *potestas* - the legitimate use of "force" by legal authorities - and *violentia*, i.e. the "violence" perpetrated by individuals or organizations who are not authorized to use "force"<sup>7</sup> and may, therefore, be called "criminals". By doing so, it hyperbolizes terrorist violence and euphemizes the violence of the GWoT.

Fortunately, some more reflexive or critical authors have rejected the framing of the GWoT as "potestas", investigating how its inherent violence is being produced and reproduced. Most of these scholars have documented the centrality of de-humanizing logics for the GWoT. This idea emerges, to begin with, from the studies on the Orientalist underpinnings of the GWoT.<sup>8</sup> The literature in question powerfully argues that the partisans and operatives

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<sup>4</sup> Marc W Herold, "The Obama/Pentagon War Narrative, the Real War and Where Afghan Civilian Deaths Do Matter", *Revista Paz y Conflictos (Granada, Spain)*, downloaded online on December 5, 2016 (<https://paulcollege.unh.edu/faculty/herold>), 5, 2012, 44-64, p. 49.

<sup>5</sup> On the problems posed by the notion of radicalization, see: Arun Kundnani, "Radicalisation: the journey of a concept", *Race & Class*, 54(2), 2012, 3-25, Laurent Bonelli and Fabrien Carrié, *La Fabrique de la radicalité. Une sociologie des jeunes djihadistes français*, Paris, Seuil, 2018.

<sup>6</sup> Samy Cohen, "Introduction", in: Samy Cohen (dir), *Democracies at war against terrorism. A comparative perspective*, New York, Palgrave Macmillan, 2009, 1-11, p. 5.

<sup>7</sup> Elsa Dorlin, *Se défendre*, Paris, La Découverte, 2017.

<sup>8</sup> Tarak Barkawi and Keith Stanski, "Introduction. Orientalism and war", in: Tarak Barkawi and Keith Stanski (dir), *Orientalism and war*, New York, Columbia University Press, 2013, 1-16, Mélanie Richter-Montpetit, "Beyond the erotics of Orientalism: Lawfare, torture and the racial-sexual grammars of legitimate suffering", *Security Dialogue*, 45 (1), 2014, 43-62, Hugh Gusterson, "Can the Insurgent Speak?", in: Tarak Barkawi and Keith Stanski (dir), *Orientalism and war*, New York, Columbia University Press, 2013, Christian Olsson, "De la pacification coloniale aux opérations extérieures. Retour sur la généalogie "des cœurs et des esprits" dans la pensée militaire contemporaine", *CERI, Questions de Recherche / Research in Question*, 39, 2012, Laleh Khalili, *Time in the Shadows. Confinement in Counterinsurgencies*, Stanford University Press, 2012, Patrick Porter,

of the GWOt demonize their victims by resorting to the same tropes that, some decades ago, justified the colonial wars. According to Barkawi and Stanski, for instance, "the public discourses of the War on Terror are suffused with orientalism. Law abiding, Christian and Western civilization is threatened by 'mad mullahs' who hail from an East ever-resistant to modernity and who use violence in ways that violate the most fundamental ethical protocols of armed conflict".<sup>9</sup> A theory that links violence to de-humanizing logics is also present, albeit in a different way, in the studies which highlight the reifying power of new war technologies such as bombs with remote guidance systems. The notion of "reification" denotes that dehumanization may take a less passionate and emotional form than demonization. It is the case when perpetrators represent their victims as "things". The literature on the "PlayStation mentality" of drone operators, for instance, indicates that they make sense of the violence they perpetrate by developing a virtualized representation of reality where the latter is populated by characters who have no real tangible existence<sup>10</sup>.

Parallel to this, some scholars have completed this picture by arguing that partisans and operatives of the GWOt sometimes resort to more elaborate rationales than de-humanization. The principle of the lesser evil plays such a role.<sup>11</sup> Eyal Weizman defines it as follows: "The principle of the lesser evil is often presented as a dilemma between two or more bad choices in situations where available options are—or seem to be—limited. The choice made justifies harmful actions that would otherwise be unacceptable, since it allegedly averts even greater suffering".<sup>12</sup> The key insight is that the partisans and operatives of the GWOt tend to fetishize this rationale: "politically, the weakness of the argument has always been that those who choose the lesser evil forget very quickly that they chose evil".<sup>13</sup> Weizman shows that some war technologies play a key role in the fetishization of the lesser evil principle. He gives the example of FAST-CD, a computer software used by US-American airmen during bombing missions in Afghanistan and Iraq. The software calculates the number of civilians whom they will probably kill if they drop their bomb. Those airmen<sup>14</sup> who

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*Military Orientalism: Eastern War through Western Eyes* New York, Columbia University Press and Hurst, 2009, Kevin J Ayotte and Mary Husain, "Securing Afghan Women: Neocolonialism, Epistemic Violence, and the Rhetoric of the Veil", *NWSA Journal*, 17, 2005, 112-133.

<sup>9</sup> Tarak Barkawi and Keith Stanski, "Introduction. Orientalism and war", op. cit, p. 1.

<sup>10</sup> Grégoire Chamayou, *Théorie du drone*, Paris, La Fabrique, 2013, Chris Cole, Mary Dobbing and Amy Hailwood, *Convenient Killing: Armed Drones and the 'Playstation' Mentality*, The Fellowship of Reconciliation, 2010.

<sup>11</sup> Eyal Weizman, *The Least of all Possible Evils: Humanitarian Violence from Arendt to Gaza*, London, Verso, 2012, Mathias Delori, "Humanitarian violence. How French airmen kill or let die in order to make live", *Critical Military Studies*, 5/4, 2019, 322-340, Mathias Delori, *Ce que vaut une vie. Théorie de la violence libérale*, Paris, Editions Amsterdam, 2021.

<sup>12</sup> Eyal Weizman, *The Least of all Possible Evils: Humanitarian Violence from Arendt to Gaza*, op. cit, p. 6.

<sup>13</sup> Eyal Weizman, *The Least of all Possible Evils: Humanitarian Violence from Arendt to Gaza*, op. cit, p. 27.

<sup>14</sup> I do not use a gender neutral term here because 95% of French fighter-bomber jet pilots and navigators are men.

use this software do not see the killing of civilians as a moral problem. They mainly think of the calculations which the software helps them to do: "it is the very act of calculation—the very fact that calculation took place—that justifies their action".<sup>15</sup>

This article contributes to this critical literature by investigating and comparing two case studies: the "enhanced interrogation" policy of the 2000s<sup>16</sup> and French aerial bombings from 2001 to 2013. In the first case, my main empirical materials were the so-called "torture memos", i.e. the internal documents which circulated among the CIA and the military and explained how violence against detainees could be used without risking judicial prosecution. The most important is a text produced on August 1, 2002 by the heads of the Office of Legal Counsel (OLC) of the Department of Justice, John Yoo and Jay Bybee. The other texts analysed here are additional Justice Department notices and exchanges of letters or emails between U.S. civilian and military officials involved in the events.<sup>17</sup> In the case of French aerial bombings, I have conducted forty semi-directive interviews with staff officers and with French airmen who were deployed in Afghanistan and Mali. The interviewees only talked about their actions which comply with International Humanitarian Law (IHL) or *jus in bello*. Therefore, it is important to note that my second case study is not aerial bombing in general but, rather, those bombings that do not target civilians and whose violence is proportional to the expected military effect. All the interviews were conducted at French Air Force bases. I have used the memos and the interviews as a source of information in order to reconstruct the intersubjective cognitive and normative "frames" (I explain this notion below) which mediate the agents' relation to violence.

The qualitative comparison of the two cases reveals the centrality of a rationale which I call the "fetishism of lesser intentionality". It states that the morality of a violent action should not be assessed by looking at its concrete consequences (the number of innocent people being killed or harmed for instance) but, rather, at the (alleged) intentions of the perpetrator. The less a social agent intends to cause harm, the more moral (or the less immoral) their action. The aforementioned memorandum of the Office of Legal Counsel

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<sup>15</sup> Eyal Weizman, *The Least of all Possible Evils: Humanitarian Violence from Arendt to Gaza*, op. cit, p. 12.

<sup>16</sup> This policy was officially called "enhanced interrogation policy". A report by the US Senate has recently stated that it amounted, in fact, to "torture". Senate, "Report of the Senate select committee on intelligence committee study of the Central Intelligence Agency's detention and interrogation program", *113 Congress, 2d session*, 2014 (December 9).

<sup>17</sup> These documents were progressively leaked in the mid-2000s and the Obama administration declassified some of them after 2009. The NGO National Security Archives has recently put them together on a well-documented website: <https://nsarchive2.gwu.edu/torturingdemocracy/documents/> (accessed January 6, 2020). See also: Andy Worthington, *The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison*, Chicago, Chicago university press, 2017. In addition, the US Senate released an interesting 500-page summary of its comprehensive enquiry on the CIA "extraordinary rendition" programme: Senate, "Report of the Senate select committee on intelligence committee study of the Central Intelligence Agency's detention and interrogation program", op. cit.

(OLC) of August 1, 2002 constitutes a good illustration.<sup>18</sup> Its leitmotif is that it is illegal to "torture" but that it is legal to carry out "enhanced interrogations". Interestingly, the memo did not state that the difference between both lies in the amount of violence being perpetrated. Indeed, an "enhanced interrogation" could go as far as "serious injury, such as organ failure, impairment of body function, or even death",<sup>19</sup> i.e. way further than what any reasonable torturer would want to. According to the memo, the difference between torture and "enhanced interrogations" lies in the (alleged) intentions of perpetrators. Both torturers and "enhanced interrogators" intend to cause some harm to the victims. However, the harmful intentions of the former are said to be "specific"—they are sadistic people who commit violence for violence's sake—whereas the harmful intentions of "interrogators" are only "general": their ultimate objective is to obtain intelligence in order to fight terrorism.

My argument is that this argument regarding the lesser lethal or harmful intentions of counter-terrorist forces is more than a mere communication discourse. It is a "frame of war" in Judith Butler's sense: i.e. a regime of knowledge which naturalizes a particular violence, in this case counter-"terrorist" warlike violence. Butler observes an analogy between frames of war and photographic frames. In both cases, "the frame is always throwing something away, always keeping something out, always de-realizing and de-legitimizing alternative versions of reality, discarded negatives of the official version".<sup>20</sup> Here, the main "version of reality" that the frame excludes is the lived experience of the victims. For them, the question of the perpetrators' intentions is non-sensical because, as Hannah Arendt notes, the victims of violence only experience the (violent) means which perpetrators use, whatever the latter really aim at.<sup>21</sup> In this sense, the frame of lesser intentionality is, also, a regime of knowledge-power<sup>22</sup>. It can only reproduce by silencing the voices of entire populations: the "collateral damages" of the airmen/interrogators' intentions.

Now, the fact that this frame of war is based on some arbitrary axioms and some epistemic violence<sup>23</sup> does not imply that it is not real. It is, indeed, real from the perspective of those who wage the GWOt. The analogy with photographic frames works here again. From their perspective on, airmen and "enhanced" interrogators have some good intersubjective reasons to frame their violence as less intentional than that of "terrorists". The reason for this does not only lie in the fact that they repeat or hear this discourse constantly. They also use procedures and technologies which tell this very story. I analyze these procedures and technologies as rites through which social agents perform and embody the idea that their

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<sup>18</sup> Mélanie Richter-Montpetit, "Beyond the erotics of Orientalism: Lawfare, torture and the racial-sexual grammars of legitimate suffering", op. cit, p. 51.

<sup>19</sup> Jay Bybee, *Memo to Alberto Gonzales, Standards for Conduct for Interrogation under 18 U.S.C. 2340 - 2340A*, Torture documents (The Rendition Project), 2002 (August 1), 50, p. 50.

<sup>20</sup> Judith Butler, *Frames of War. When is Life Grievable?*, London, Brooklyn, Verso, 2010, p. xi.

<sup>21</sup> Hannah Arendt, *On violence*, Orlando, Austin, New York, A Harvest Book, 1969.

<sup>22</sup> On the nexus knowledge/power, see: Michel Foucault, *Archéologie du savoir*, Paris, Gallimard, 1969.

<sup>23</sup> Gayatri Chakravorty Spivak, "Can the Subaltern Speak?", in: Nelson Cary and Larry Crossberg (dir), *Marxism and the interpretation of Culture*, Chicago, University of Illinois Press, 1988, 271-316.

violent actions are less intentional than the terrorists', and that these actions are, therefore, more moral<sup>24</sup>.

The argument is structured as follows. The first section introduces my case studies. In this preliminary section, I also explain why I chose to compare these cases which appear, at first sight at least, very different. Section two documents a first set of ritual performances: the bureaucratic organization of counter-terrorist warfare. The idea here is not that bureaucracy objectively splits the violent action into a myriad of small actions so that intentions cannot be imputed. That might well be true, but this is not what I am interested in. My point is that the bureaucratic organization of counter-terrorist warfare leads interrogators and airmen to (intersubjectively) frame their violence as less intentional than "terrorist" violence. In section three, I show that the fetishism of lesser intentionality is also present at a smaller scale, that of war technologies. The latter are not only instruments of war. They tell their users a story: one can water on the face of detainee one suspects to be innocent or drop a bomb in an urban area without specifically intending to cause harm.

## Comparing "enhanced interrogations" and aerial bombings

The United States and its allies began interrogating their prisoners as soon as they invaded Afghanistan in the winter of 2001–2002. In January 2002, U.S. forces deported detainees considered to be of "high value" to the Guantanamo Bay naval base on the island of Cuba. The Bush administration then set the legal and administrative framework for this policy by producing the "torture memos" I referred to in the introduction.

Prisoners could be held and interrogated in two types of places: military institutions such as the Guantanamo Bay naval base on the island of Cuba and secret CIA prisons located on the territory of US allies. These two pillars of the "enhanced interrogation" policy hosted different practices. Indeed, Elspeth Guild, Didier Bigo and Mark Gibney have shown, on the basis of the Feinstein report,<sup>25</sup> that the CIA operated autonomously and that segments of the army refused to cooperate with it. However, this distinction between CIA and military-led "enhanced interrogations" should not be taken too far.<sup>26</sup> Indeed, all of the above-mentioned military camps have hosted sections administered, in practice, by the CIA. Conversely, Special Forces personnel participated in some CIA-led interrogations in its secret prisons or those of its proxies.<sup>27</sup> Moreover, detainees could be moved from one space to another based on the arbitrary assessment of their "value"—that is, the information they

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<sup>24</sup> For a similar approach applied to the social construction of other frames of war, see: Hugh Gusterson, *Nuclear Rites – A Weapons Laboratory at the End of the Cold War*, Berkeley, University of California Press, 1998.

<sup>25</sup> Senate, "Report of the Senate select committee on intelligence committee study of the Central Intelligence Agency's detention and interrogation program", op. cit.

<sup>26</sup> Laleh Khalili, *Time in the Shadows. Confinement in Counterinsurgencies*, op. cit.

<sup>27</sup> Laleh Khalili, *Time in the Shadows. Confinement in Counterinsurgencies*, op. cit, p. 159-161.

were suspected to possess. Finally, there was no substantial difference in the nature of the interrogation techniques used by the military and those of the CIA. While the former were intended to be "milder",<sup>28</sup> the two repertoires overlapped and drew on a common knowledge resulting from the cooperation between these two organizations during the Cold War.

We do not know precisely how many people became victims of this policy.<sup>29</sup> It is clear that most of the hundreds of "high-value" prisoners deported to Guantanamo were tortured.<sup>30</sup> We also know that nine people died at Guantanamo in conditions that are still unclear, probably because of some "enhanced" interrogations inflicted "serious injury, such as organ failure, impairment of body function, or even death"<sup>31</sup>. One does not know much, however, about the tens of thousands of people who were detained by the United States and its allies in the other military prisons. Testimony from camp guards and former prisoners suggests that they were not subjected to the same violent interrogation techniques as the so-called "high-value" prisoners, but that abuse was widespread. Furthermore, the line between these two populations—the average prisoner and the so-called "high value" prisoner—was porous. This is due to the fact that the war against "terrorism" is based on a logic of suspicion. The categories of populations it institutes are structurally blurred.<sup>32</sup>

For the methodological and empirical reasons explained in the introduction my second case study concerns those aerial bombardments which comply with IHL. It is important to note that not all bombings in the war against "terrorism" fall into this category. In Afghanistan in the winter of 2001–2002 and in Iraq in March/April 2003, intense aerial bombing campaigns preceded the invasions, and credible allegations of major infractions to *jus in bello* have been made. However, this legal way of waging war has become more important in the economy of the GWoT since the mid-2000s. This evolution is noticeable in the expansion of the law departments of military organizations. That of the Pentagon, for instance, employs 10,000 people. This trend also materializes in the almost systematic use of bombs equipped with GPS or laser guidance systems. These technologies allow to wage war in a legal way by destroying targets which are said to be "military objectives": training centres, ammunition depots, enemy "combatants", etc.

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<sup>28</sup> Major General Michael Dunlavey, *Memo from Major General Michael Dunlavey, 'Counter-Resistance Strategies'*, Torture documents (The Rendition Project), 2002 (11 octobre), 12, p. 8.

<sup>29</sup> Ivan Greenberg, "From surveillance to torture: The evolution of US interrogation practices during the War on Terror", *Security Journal*, 2019, 1-19, p. 6.

<sup>30</sup> Andy Worthington, *The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison*, *op. cit.*

<sup>31</sup> Jay Bybee, *Memo to Alberto Gonzales, Standards for Conduct for Interrogation under 18 U.S.C. 2340 - 2340A*, *op. cit.*, p. 50.

<sup>32</sup> Didier Bigo, "Dramaturgy of suspicion and the emergence of a transnational guild of extraction of information by torture at a distance", in: Elspeth Guild, Didier Bigo and Mark Gibney (dir), *Extraordinary renditions*, London, New York, Routledge, 2018, 30-52, p. 32.

Some scholars present the increasing consideration of the *jus in bello* as the sign that Western military organizations care more about the human consequences of their actions<sup>33</sup>. In reality, this development is more likely to be the result of a strategic consideration. In the mid-2000s, U.S. military and intelligence officers observed that too much and too indiscriminate use of force generates more occasions to become a "terrorist" than it kills terrorists. This observation emerged "on the ground" in 2004 when U.S. armed forces and their allies were confronted with powerful insurgencies in Afghanistan and Iraq. It became official two years later. Once a year, the President of the United States receives a document, called the National Intelligence Estimate (NIE), that summarizes the observations and recommendations of the intelligence agencies. The 2006 NIE pointed out that the invasion of Iraq "had produced a strong negative backlash against the United States in the wider Muslim World that caused radical Islamist terrorist organizations to more effectively operate and recruit new members worldwide."<sup>34</sup> This has led to the rediscovery of key notions of colonial warfare like those of "mastery of force" and "conquest of hearts and minds".<sup>35</sup> It turns out that the *jus in bello* almost perfectly reflects this counterinsurgency strategy and the Western material and technical capability to implement it<sup>36</sup>. Indeed, IHL does not state that it is unlawful to kill civilians. It simply implies that one should not target civilians and that the number of civilian casualties should be proportional to the expected military effect.

The French case is to a certain extent representative of more general trends. Indeed, French aircrafts are similar to U.S. and British aircrafts and many technologies are standardized by NATO. Weapons are also very similar, notably because the French drop more bombs than they produce, which leads them to buy additional supplies from the United States. There may be differences in the "rules of engagement", the set of written standards that state when airmen are authorized to open fire. The French airmen I interviewed explained that the French rules are more restrictive than the U.S. rules, meaning that France allows itself less "collateral damage". However, they also told me that French planes generally use more powerful, and therefore less discriminating, bombs.

I have chosen these two cases because they appear, at first sight, very different. The first difference concerns the relationship to law. Contrary to aerial bombings, the policy of "enhanced interrogation" has been condemned by all legal institutions. With the noticeable exception of those directly linked to the Bush administration, most international lawyers consider that most of the "enhanced interrogations" were akin to torture, which is by definition unlawful. In the United States, psychologists Bruce Jessen and James Mitchell, two of the main authors of "enhanced interrogation techniques", were subject to civil lawsuits. They reached a settlement in 2017 with the courts in order to avoid conviction. At the international level, the United Nations Security Council could not condemn a policy

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<sup>33</sup> Ariel Colonomos, *Moralizing International Relations. Called to Account*, New York, Palgrave, 2008.

<sup>34</sup> James A. Piazza and Seung-Whan Choi, "International Military Interventions and Transnational Terrorist Backlash", *International Studies Quarterly*, 62-3, 2018, 686–695, p. 686.

<sup>35</sup> Christian Olsson, "De la pacification coloniale aux opérations extérieures. Retour sur la généalogie "des cœurs et des esprits" dans la pensée militaire contemporaine", op. cit.

<sup>36</sup> Frédéric Megret, "From 'savages' to 'unlawful combatants': a postcolonial look at international law's 'other'", in: Anne Orford (dir), *International law and its 'others'*, Cambridge, Cambridge University Press, 2006, 1-37.

produced by one of its permanent members, the United States, with the complicity of two others (the United Kingdom and France). However, UN bodies less dominated by these particular interests have produced opinions. The High Commissioner for Human Rights, for example, underlined that the so called "enhanced interrogations" are akin to torture and that the latter is prohibited by the Universal Declaration of Human Rights, by the Geneva Conventions of 1949 and by the 1987 Convention "against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".<sup>37</sup> He called on the United States to put an end to the impunity that its perpetrators have enjoyed until now. In a ruling on March 5, 2020, the appeals chamber of the International Criminal Court opened the way for a war crimes investigation against U.S. military and CIA officials for acts of torture committed in Afghanistan.

"Enhanced interrogations" and bombings also appear to be very different—and even perfectly opposed—in terms of the distance between bodies. In the case of "enhanced interrogations", the victims are literally in the hands of the interrogators, whereas in the case of aerial bombardment, the distance is several kilometres. The job of a French fighter-bomber pilot (or navigator) is ultimately not very different from that of an armed drone operator. Exposure to enemy fire is almost absent. While the French air force has been deployed continuously since 2001 (in Afghanistan, then in the Sahel, Iraq and Syria), no French airman has died in operations during this period. Only one crew had to eject in Afghanistan due to a mechanical problem. He was rescued. Moreover, airmen find the polemics about armed drones strange. More precisely, they find it curious to be spared from this debate: "Is it shocking today that we use a fighter plane costing several tens of millions of dollars to go and shoot a Taliban who is in his cave with his Kalashnikov? (...) I don't find the difference between the drone that kills from a distance and what I did in Afghanistan to be glaring".<sup>38</sup> It is interesting to compare cases that appear qualitatively different to bring out unexpected similarities. I do so in the remainder of this article.

## Performing the myth through bureaucratic rites

Although the concrete implementation of the "enhanced interrogation" policy varied in time and space, it followed a pattern. The process of interrogation was divided into two phases. Firstly, those soldiers who guarded the prisoners were responsible for "conditioning" them by depriving them of food and sleep and lowering their self-esteem. Most of the thousands of photographs and videos from the Abu Ghraib prison showing naked detainees in humiliating stances capture such "conditioning" scenes. The objective of "conditioning" was to undermine the prisoners' "resistance" so that the "interrogators" could easily "break" it. The second phase, the actual "interrogations", was conducted by Special Forces officers and/or CIA agents. The use of techniques such as "waterboarding", a practice I comment on

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<sup>37</sup> Nils Melzer, "US must stop policy of impunity for the crime of torture", *United Nations Human Rights. Office of the High Commissioner*, 2017 (13 December).

<sup>38</sup> Interview n°3 with a pilot, Paris, December 2012.

below, was supposed to finish the job and lead prisoners to reveal important information about their terrorist networks and projects.

Mohammad al-Qahtani, detainee number 063 at Guantanamo Bay military prison, has been subjected to the full range of conditioning and interrogation techniques prescribed by the Bush administration. Laleh Khalili sums up these abuses as follows:

Al-Qahtani was interrogated continuously for fifty days, during which he was allowed to sleep only in four-hour blocks every twenty hours, if that. On the third day, al-Qahtani, who was on hunger strike, was given several bags of fluid intravenously and prevented from using the lavatory. (...) In the second week, after his beard and hair were forcibly shaven and he was disoriented by being moved between different interrogation rooms while hooded, the interrogators used 'Pride and Ego Down, Fear Up Harsh and Invasion of Space by a Female.' By then, he was severely dehydrated and his heart rate had dropped to thirty-five beats per minute. After he was revived in the hospital, he was returned to the interrogation room. In the third week, the regime of interrogations, forced listening to loud music of white noise, forced intravenous feeding, and the aforementioned interrogation methods continued. By the fourth week, after more forced shaving, loud music, and struggles over food and drink, the interrogators leashed al-Qahtani and forced him to perform dog tricks. And 'a towel was placed on the detainee's head like a burka with his face exposed and the interrogator proceeded to give the detainee dance lessons'. In the fifth week, al-Qahtani was subjected to yet more crushingly similar assaults while told that his mother and sisters were whores: (...) By the sixth week, he was denied the right to pray unless he 'gives something up'; he had cold water thrown at him, had been questioned continuously, had been subjected to white noise, had been forced to strip in front of women, and had been straddled by a woman interrogator. In the seventh week, the forced sleeplessness continued, as did the repetitious questioning, struggles over eating and drinking, and al-Qahtani's weeping.<sup>39</sup>

One wonders, when reading this account, which human being could subject another human being to so much suffering. However, the enigma disappears if one understands that Mohammad al-Qahtani was not tortured by a single intelligence officer, but successively and methodically by several dozens. The reason for this was bureaucratic: not all interrogators could use all interrogation techniques. A certain level of clearance was required in order to be authorized to resort to the most harmful techniques. Hence, guards and interrogators had to give over to a colleague when the detainee "resisted" to conditioning or interrogations. This diluted the sense of intentionality because each guard/interrogator separately did not see the whole picture of the harm being done.

This feeling was reinforced by the fact that the conditioning and interrogation techniques were numbered. The use of German shepherds to terrorize detainees, for example, was technique number 35 in the Abu Ghraib Enhanced Interrogation Techniques repertoire. The same repertoire stated that this technique should only be used if the previous 34 techniques, which were deemed "milder", had not been effective in conditioning the detainees.<sup>40</sup> This numbering suggested to the guards and interrogators that the violence they committed was not as high as it could be. It is important to note, in this respect, that even those guards or interrogators who used the most violent technique of their repertoire could conceive of their action as relatively mild. Robert Baer, the former CIA agent who inspired the character embodied by George Clooney in *Syriana*, once wrote that "If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear—never to see them again—you send

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<sup>39</sup> Laleh Khalili, *Time in the Shadows. Confinement in Counterinsurgencies*, op. cit, p. 162-163.

<sup>40</sup> Anonyme, *Working Group Report on Detainee Interrogations in the Global War on Terrorism*, Torture documents (The Rendition Project), 2003 (April 4), p. 65.

them to Egypt".<sup>41</sup> Beyond its obvious Orientalist dimension, this statement is a good illustration of how the myth of lesser intentionality works: those who perform the myth always have the feeling that others have more harmful intentions.

The same logic can be found in the case of aerial bombing. The reality of modern aerial warfare has little or nothing to do with the image portrayed in novels, television series and Hollywood films. Air duels are nowadays very rare, so that aerial warfare consists of two main activities: surveillance and bombing. The latter are very well supervised. An airman of an older generation spoke of the job of his current colleagues in the following terms: "Ah, well, they're robots now... Even before delivering the weapon, you have to check this parameter, that parameter, that parameter...".<sup>42</sup>

The rules that regulate a bombing operation are called "rules of engagement". While the exact content of these classified documents is not known, some elements can be found in military doctrines. In 2016, NATO adopted a doctrinal text entitled "Allied Joint Doctrine for Joint Targeting". This text provides for a "targeting" process in 6 phases. Phase 5 deals more specifically with bombing. It gives an idea of the rules that pilots and navigators must follow when deciding whether or not to press the button. The procedure is called "F2T2E2A" for "Find" (find the target), "Fix" (place the cameras on the target), "Track" (maintain the surveillance of the target), "Target" (evaluate the risks of collateral damage), "Engage" (drop the bomb), "Exploit" (examine if the new situation created by the strike can bring about new "immediate opportunities"), "Assess" (examine if the objectives have been achieved).<sup>43</sup> Each phase is itself ruled by precise procedures. Thus, the evaluation of the number of potential "collateral damages" foreseen by the "Target" phase takes into account the nature of the target. There is a "No Strike List", a list of prohibited targets, which must not be struck in any way because they are considered too politically sensitive. One can imagine that mosques and schools fall into this category. During this "Target" phase, the airmen must also consider the type of weaponry they have at their disposal as well as the angle of the strike. This is due to the fact that the risk of seeing a bomb exploding too far to the left or right is deemed lower than the risk of seeing its trajectory being too short or too long.

Of course, a rule can always be interpreted. However, the margins of autonomy for airmen have become narrow today. This is mainly due to the aforementioned strategic development of the mid-2000s. Ever since, the gain of "hearts and minds" has played a key role in counter-insurgency wars such as the GWoT. Hence, an airman who would decide to destroy one of the prohibited targets would not only infringe the rules; they would also jeopardize the outcome of the war itself. This is why airmen are selected and trained to scrupulously follow the rules of engagement. Those who exhibit a mad dog or maverick mentality are quickly identified and eliminated from the selection process. Besides, airmen can hardly disguise any personal initiative. Their radio exchanges are recorded. Bombings are filmed from multiple angles by planes and drones. Each mission is debriefed by an operations commander, during which pilots and navigators must account for how they respected the rules of engagement.

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<sup>41</sup> Laleh Khalili, *Time in the Shadows. Confinement in Counterinsurgencies*, op. cit, p. 121.

<sup>42</sup> Interview n°7 with a former pilot, Paris, January 2013.

<sup>43</sup> NATO Standard, AJP-3-9, Allied Joint Doctrine for Joint Targeting, edition 1 version 1, April 2016, pp. 2-6.

This does not mean that airmen are pure robots. They claim agency for the fact that they kill people. In this respect, one particular metaphor occurred in many interviews, that of "walking through a door":

On my first mission to Afghanistan in 2002, we [his navigator and himself] didn't go through that door. I thought: 'Whatever. I did the job. We were the crew that took the most risks. We went down very low to get the information. We followed the rules of engagement. We didn't open fire. No big deal'. In 2006, I went back. And there, I went through the door. I shoot my first bomb that kills. And I have the confirmation that it is a doorway. There are those who are before, those who are after, and there is nothing we can do about it.<sup>44</sup>

However, this agency claim for the fact that they kill people only concerns enemy combatants. When it turns to civilians, the war bureaucracy seems to be the actual agent of death: "As long as I shoot at an enemy, I have no problem with it. [Regarding the question of civilians] the only question I ask myself is: 'Do I respect the rules set for me by my command structure? If I do, I have no problem with that. (...) If I have respected the rules, I consider that the responsibility for what happened is the President's. I don't ask myself any questions".<sup>45</sup>

## When technologies tell a story

Bruno Latour has written that "it is pointless to want to define some entities and some situations as technical in opposition to others called scientific or moral, political or economic. Technology is everywhere, since the term applies to a regime of enunciation, or, to put it another way, to a mode of existence, a particular form of the exploration of being—in the midst of many others".<sup>46</sup> The notion of "moral technology"<sup>47</sup> illustrates this idea. It designates the objects that appear technical at first sight but whose users see it as moral. Nuclear weapons are a good example. They are not moral per se; they could lead to the destruction of all life on Earth. However, their partisans frame them as moral because they believe in nuclear deterrence theories, and because the latter present nuclear weapons as peace-makers. The guards, the interrogators and the pilots of the GWOt are like those partisans of nuclear deterrence studied by Cohn and Gusterson: they believe that some weapons can help build a better world.<sup>48</sup>

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<sup>44</sup> Interview n°9 with a pilot, Paris, January 2013.

<sup>45</sup> Interview n°30 with a pilot, Mont-de Marsan, mars 2013.

<sup>46</sup> Bruno Latour and Couze Venn, "Morality and Technology: The Ends of the Means", *Theory, Culture and Society*, 19(5/6), 2002, 247-260), p. 248.

<sup>47</sup> Adi Ophir, "Moral Technologies: The Administration of Disaster and the Forsaking of Lives", *Theoria veBikoret*, 23, 2002, 67-103.

<sup>48</sup> Carol Cohn, "Sex and Death in the Rational World of Defense Intellectuals", *Signs*, 12-4, 1987, 687-718, Hugh Gusterson, *Nuclear Rites – A Weapons Laboratory at the End of the Cold War*, *op. cit.*

As stated above, the guards were supposed to "condition" the detainees before the proper interrogations could start. A conditioning technique involved depriving prisoners of food for several days. Instead, they were given a liquid gel whose caloric content was calculated according to two parameters: the individual detainee's height and the degree of "sedentary" behavior (in other words, the physical exercise he was forced to do). The average dose was 1000 kilocalories per day. A memorandum from May 30, 2005 noted that "in comparison, weight loss programs sold in the United States frequently limit the intake to 1000 kilocalories per day, regardless of weight".<sup>49</sup> Thus, the memo told a story where the guards did intend to cause some harm—otherwise the technology would not be efficient—whilst highlighting that this intention was no more specific than that of a doctor who prescribes a diet to a person who does not need one.

The same logic was operative during the interrogation phase. One particular technique played a key role in the social construction of the myth of lesser intentionality: waterboarding. The latter implied putting a towel on an inmate's face and pouring water over it. Those who supported this technique felt that it was both effective and moral. It was effective because, "if [an interrogator] is well trained, it makes the detainee feel like he is drowning. The lymphatic system reacts as if you are suffocating". In other words, the detainee would have the impression that he is dying and would as a result rationally prefer to cooperate rather than to keep hiding information about the next terrorist attack. This technique was also deemed moral and even "humane" because the inmate only feels like he is going to die: "the body doesn't stop working". Or, if it does, "you're not doing [the job] right".<sup>50</sup> The CIA's *Office of Medical Service* made a careful calculation to determine the limit that should not be exceeded in order to have a good mixture of both effects. Detainees could be subjected to this technique for a maximum of 30 consecutive days, only 5 days within that 30-day period, and only 2 two hours a day. Each application of water was to last a maximum of 40 seconds, totaling not more than 12 minutes per day.<sup>51</sup> The ritual execution of this procedure contributed to fashion the (Orientalist) myth as told by Robert Baer: those Western soldiers who use waterboarding are no Oriental torturers, and even less terrorists. To use Yoo and Bybee's terminology, they do not "specifically" intend to do harm. Their only intention is to make the detainee believe that he is being harmed whereas he is not, or barely.

The technologies used by airmen tell a similar story. One notion plays a key role in aerial counter-terrorist warfare: "Non-combatant Casualty cut-off Value" (NCCV). This obscure expression expresses something simple: the number of civilians that an airman or a drone operator is allowed to kill or to put at risk in order to destroy a given military target. This number depends greatly on the target's value. During the Iraq war in 2003, for example, the US Air Force's rules of engagement stated that the NCCV was 30 for the "high value" targets

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<sup>49</sup> Steven G. Bradbury, *Department of Justice, Office of Legal Counsel. Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency*, 2005 (May 30), 50, p. 12.

<sup>50</sup> *Ibid.*, p. 4.

<sup>51</sup> Bradbury Steven G. 2005 (May 10), *Department of Justice, Office of Legal Counsel, Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency*, p. 14.

(the heads of the Saddam Hussein regime).<sup>52</sup> In other words, U.S. airmen who identified such a target could open fire if they estimated that their bombs would kill less than 30 Iraqi civilians. When the military objective is less important (a single "jihadist", a small weapons depot, etc.), this value can be much lower and even equal to zero. The war against the "Islamic State" organization (ISIS) is a good illustration. According to the *Airwars* network, the US, the UK and France have conducted about 50,000 aerial strikes against ISIS between 2014 and 2021, causing the death of about 13,000 civilians.<sup>53</sup> If the *Airwars* count is correct, this means that the average number of civilians killed by US, British and French strikes is 0.3 (or 3 civilians every 10 strikes). This ratio could be the result of a combination of strikes against "high-value" targets—where the NCCV can take the form of a double-digit number—and "normal" strikes where the NCCV equals zero.

The second determinant of the NCCV is the intensification dilemma. In *War and Peace*, Tolstoy imagines a dialogue between Pierre Bezukov and Prince Andre Bolkhonsky, in which the latter opposes the project of humanizing war practices. Bolkhonsky argues, in particular, that humanizing warfare would make war less detestable and, therefore, more desirable and frequent.<sup>54</sup> A variant of this idea is found in the military adage that the intensification of violence can shorten war and, in so doing, result in fewer civilian deaths. Figure 1/ suggests that U.S., British, and French armed forces chose the second option during the Battle of Mosul between October 2016 and July 2017.

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<sup>52</sup> Eyal Weizman, *The Least of all Possible Evils: Humanitarian Violence from Arendt to Gaza*, *op. cit.*, p. 130.

<sup>53</sup> Online resource: <https://www.airwars.org> (accessed April 14, 2021).

<sup>54</sup> This dialogue can be found in chapter 15-25 of Leon Tolstoy, *La Guerre et la Paix*, Paris, Gallimard, NRF, 1945 (1865-1869).

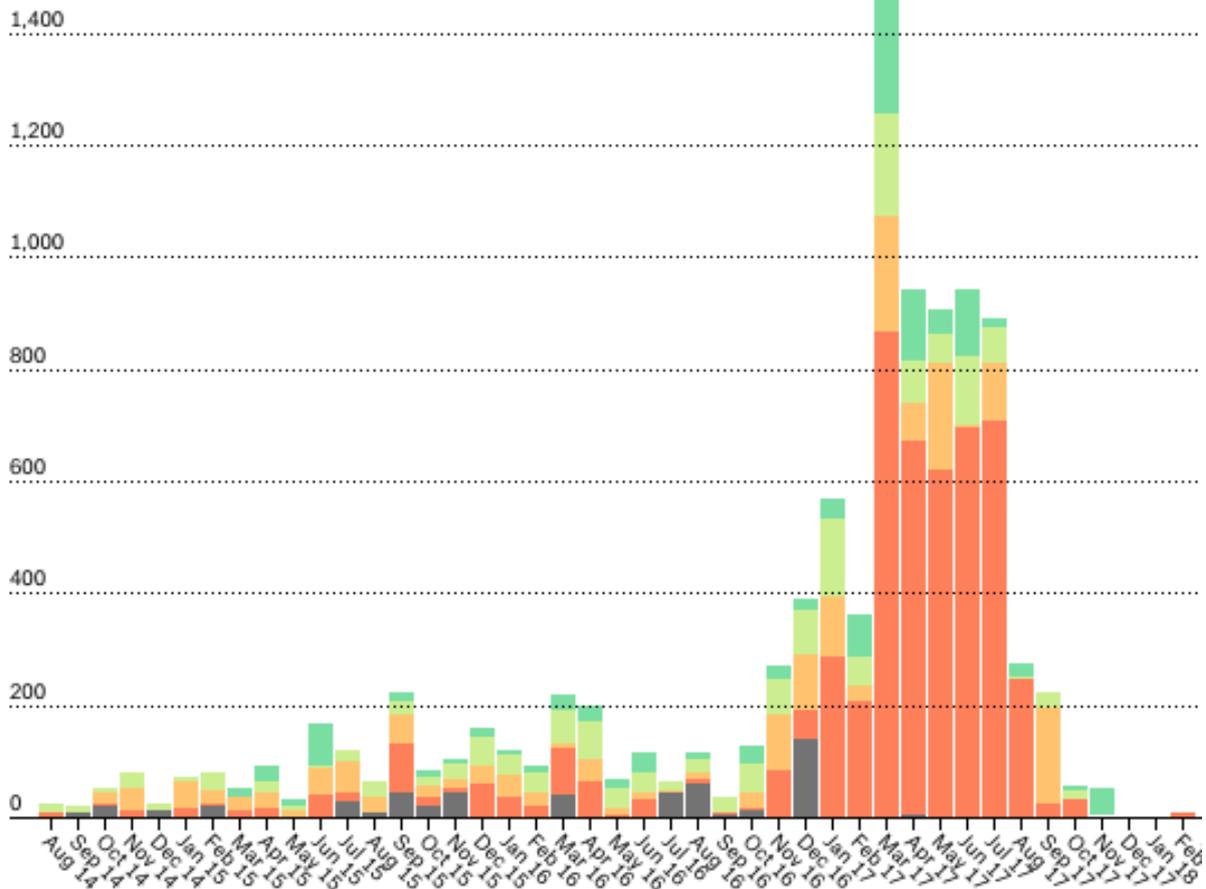


Chart 1/ Iraqi civilian casualties from US-led coalition strikes (Source: *Airwars.org*).<sup>55</sup> The colors correspond to the following categories: dark green ("confirmed") = confirmed by the coalition; light green ("fair") = reported by at least two credible independent sources; light orange ("weak") = only one credible source; dark orange ("contested") = responsibility attributed to different belligerents and, sometimes, to ground troops; gray ("discounted") = those killed could be combatants.

Finally, the NCCV depends on the emotional context. In the aftermath of the terrorist attack in Nice, France, on July 14, 2016, some U.S. (and possibly French) aircraft bombed the village of Tokhar in northern Syria. According to the *Syrian Observatory for Human Rights*, these air strikes caused the death of 98 civilians, including 59 children. The Syrian government accused France to have demanded or realized this bombing in order to avenge the 86 deaths of the attack in Nice. The French government has not confirmed that it played a role in the bombing. Two things are clear, however. The "terrorist" attack in Nice was part of a sequence marked by the attacks against the *Charlie Hebdo* editorial office and a kosher supermarket on January 7, 8 and 9, 2015 (17 dead) and those of November 13, 2015 (138 dead) in Paris and Saint-Denis. In other words, the context was highly emotional in France. Moreover, the civilian victims of the Tokhar bombing were not the result of a mechanical

<sup>55</sup> Online resource: <https://airwars.org/conflict/coalition-in-iraq-and-syria/> (accessed March 8, 2020).

accident (a bomb that did not fall in the right place). According to *Airwars*, the planes of the US-led coalition carried out 18 lethal strikes on this village.<sup>56</sup> While it may happen that a bomb explodes in the wrong place, it never happens 18 times in a row. Two hypotheses remain possible: a human error (a poorly programmed set of targets), or an increase in the NCCV in the emotionally charged context of this month of July 2016. The second hypothesis would support Talal Asad's argument that the war on terror amounts to a "marketplace of death" where human lives have "differential exchange value".<sup>57</sup> Following this view, the social construction of the innocent victims of the attack in Nizza as lives of great value who should be venged at all costs impacted the value of the lives of the inhabitants of Tokhar. These people were not targeted. Only terrorists were. Yet vengeance came at a price: that of the killing of dozens of civilians.

Whatever its determinants, the NCCV tells the same story as the technique of food deprivation and waterboarding. The story states that airmen do not specifically aim to kill innocent people, even when they know that they do. The partisans of the GWoT give a distorted version of this story when they suggest that airmen and drone operators only kill innocent people by accident<sup>58</sup>. More precisely, accidents only happen when the NCCV is zero. Every time it is above zero, the death of civilians is neither specifically intentional (they are not targeted) nor accidental (one is aware that civilians will die if one drops the bomb). To use Yoo and Bybee's phraseology, the intention to kill civilians is, then, only "general".

## Conclusion

This article investigated how partisans and operatives of the GWoT have made sense of this violent venture. I began by observing the centrality of a justification discourse which states that the morality of violent actions should not be assessed by considering their practical consequences but, rather, the actors' intentions. The more a social agent (allegedly) intends to cause harm—so the rationale goes—the less moral their action. The less a social agent intends to cause harm, the more moral their action. I argued that this discourse is not a mere rhetoric but constitutes the cognitive and normative frame which normalizes the use of violence against defenseless detainees and bombings in urban areas. I have supported this argument by documenting some of the procedures and routinized actions of counter-terrorist warfare. I interpret them as rites which lead actors to embody the myth and, by so doing, to make it real. Although the myth of lesser intentionality is not the only frame of the GWoT, it plays an important role in solving the contradiction between its moral pretention and its death toll. Those who perform its rites can convince themselves that their way of

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<sup>56</sup> The very detailed report of *Airwars* can be found on the site of this organization ([www.airwars.org](http://www.airwars.org)) under the file "CI550".

<sup>57</sup> Talal Asad, *On Suicide Bombing*, New York, Columbia University Press, 2007, p. 94.

<sup>58</sup> Patricia Owens, "Accidents Don't Just Happen: The Liberal Politics of High Technology 'Humanitarian' war", *Millenium - Journal of International Studies*, 32-3, 2003, 595-616.

waging war is the most moral, even when they cause way more "collateral damages" than terrorists.

Although writing a comprehensive genealogy of this frame of war would be beyond the scope of this article, one characteristic is worth being mentioned: It is not a pure military product. It resonates strongly with a key principle of modern liberal criminal law. Indeed, the latter is based on the idea that it is wrong to kill or injure people but/and that the degree of that evil depends on the intentions of the perpetrator<sup>59</sup>. This logic explains why most modern criminal systems provide for a gradation of penalties according to the alleged degree intentionality, with premeditated murder being more serious than murder without premeditation, which is more serious than manslaughter. The fact that the bureaucratic organization and the technologies of the GWOt resonate with this widespread liberal principle contributes to make the critique more difficult. Indeed, many people see modern criminal law as an institution which contributes to reduce the level of violence in the society. They infer from this premise that reproducing this logic in the way of making war will make it more human.

This non-military root of the frame of lesser intentionality might explain why the critiques of the GWOt which insist on its catastrophic civilian death toll have only found a small audience. As pointed out by Butler, "even when it proves possible to know what the numbers are, the numbers may not matter at all. In other words, there are situations when counting clearly does not count. Some people are horrified to learn the number of war dead, but for others, those numbers do not matter". The US-American philosopher fairly adds that "there is something paradoxical here, since we are used to hearing, for instance, that quantitative methods reign in the social sciences, and that qualitative methods do not 'count' for very much at all. And yet, in other domains of life, numbers are remarkably powerless. This suggests that certain implicit schemes of conceptualization operate quite powerfully to orchestrate what we can admit as reality; they function through ritualized forms of disavowal, so even the positivist weight of numbers does not stand as a chance against them"<sup>60</sup>.

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<sup>59</sup> Baudouin Dupret, "L'intention en acte", *Droit et société*, 48, 2001, 439-467.

<sup>60</sup> Judith Butler, *Frames of War. When is Life Grievable?*, *op. cit.*, p. xx-xxi.

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