

**WESTERN SYDNEY
UNIVERSITY**



INVENTING COLLATERAL DAMAGE

International Workshop

21 – 22 NOVEMBER 2017



INVENTING COLLATERAL DAMAGE: THE CHANGING MORAL ECONOMY OF WAR

21 – 22 November 2017

Western Sydney University, Sydney, Australia.

Organized by Dr. Jessica Whyte.

This workshop aims to illuminate the invention of ‘collateral damage’. In the paradigmatic U.S. military definition, collateral damage refers to ‘unintentional or incidental damage to persons or objects that would not be lawful military targets in the circumstances ruling at the time’. Such damage need not be the accidental consequence of technical malfunction or human error, but also encompasses harm that is both foreseeable and foreseen by militaries that nonetheless proclaim their compliance with international law prohibitions on intentionally targeting non-combatants. Today, there is a significant body of scholarship that addresses the history of the laws of war and the construction of categories such as the civilian and the combatant. Less attention has been devoted to the language of ‘collateral damage’ as a distinctive rationalization of death and destruction, or to the political stakes of this language.

What a prominent US human rights center terms ‘collateral damage management’ is currently a burgeoning field that involves militaries, humanitarian organizations and international lawyers in the attempt to ‘humanize’ war by reducing its impact on civilians. Western militaries devote significant resources to estimating the precise number of civilian deaths likely to result from any particular attack, and utilize sophisticated computer programs to guide them in minimizing casualties and ensuring compliance with international humanitarian law. This incorporation of humanitarian logics into military strategy is double-edged; while it offers the possibility of constraining military violence, it also risks becoming a means by which further violence is rationalized. The language of collateral damage, as Talal Asad notes, enables Western militaries to justify the killing of non-combatants, while morally elevating their own ‘civilized’ violence over the violence of those who resist military attack and occupation.

Today, the term ‘collateral damage’ has become part of our contemporary lexicon, and its semantic field has extended beyond the military context to refer to diverse forms of “unintended” harm. This workshop will bring together political theorists, philosophers, legal scholars and historians to examine the historical and institutional processes that have established a crucial moral and legal distinction between intentional harm inflicted on non-combatants, and the ‘collateral damage’ that is seen as an inevitable ‘side effect’ of modern warfare.



KEYNOTE SPEAKERS

Associate Professor Banu Bargu

The New School, NYC

Professor Jeanne Morefield

Whitman College, Washington

This workshop is held under the auspices of Jessica Whyte's Australian Research Council DECRA Project "The Invention of Collateral Damage and the Changing Moral Economy of War" (DE160100473). It is hosted and supported by the School of Humanities and Communication Arts, Western Sydney University. Thanks to Ryan Calder, School of Humanities and Communications Arts, for assistance with the organization of the workshop.

All welcome but registrations are essential. Please RSVP by the 15th of November to Jessica Whyte, J.Whyte@westernsydney.edu.au



WORKSHOP OVERVIEW
THE INVENTION OF COLLATERAL DAMAGE

<p>Tuesday 21 November 2017 Geoffrey Roberson Boardroom, Female Orphan School Building EZ Parramatta South Campus</p>	
09:30 – 10:00	COFFEE AND REGISTRATION
10:00 – 10:30	<p>Welcome address, acknowledgement of country and introductions</p> <p>Dr. Jessica Whyte & Professor Peter Hutchings, Dean, School of Humanities and Communication Arts</p>
10:30 – 12:30	<p>Session 1: Air-wars and rationalities of killing</p> <p>Luís Paulo Bogliolo, Melbourne University <i>Bombing Civilians: strategic bombing and distinction in the history of international law</i></p> <p>Ihab Shalbak, Sydney University <i>RAND: The Certainty of Uncertain Death</i></p>
13:30 – 13:30	LUNCH
13:30 – 15:30	<p>Session 2: Proportionality</p> <p>Amanda Alexander, Australia Catholic University <i>The Principle of Proportionality in International Humanitarian Law</i></p> <p>Brian Cuddy, Macquarie University <i>Inventing Proportionality</i></p>
15:30 – 16:00	BREAK
16:00 – 17:15	<p>Session 3: Keynote Lecture</p> <p>Banu Bargu, The New School <i>Dying In: Politics of Life, Theaters of Death</i></p>
17:15 – 18:15	Drinks
19:00	DINNER for SPEAKERS in PARRAMATTA



<p>Wednesday 22 November 2017 Female Orphan School, Conference Room Building EZ.G.36 Parramatta South Campus</p>	
09:00	MORNING TEA
09:30 – 11:00	<p>Session 4: Panel – The Collateral Damage of Contemporary Wars</p> <p>Michael Brull, Independent Journalist, <i>New Matilda</i> <i>When a Nation is Collateral Damage: The War on Yemen.</i></p> <p>Tara Gutman, Acting National Manager, International Humanitarian Law and Movement Relations, Red Cross. <i>Title TBC</i></p>
11:00 – 11:30	BREAK
11:30 – 12:45	<p>Session 5: Keynote Lecture</p> <p>Jeanne Morefield, Whitman College <i>Revisionist Liberalism: Global Justice, Liberal Internationalism and the Politics of Deflection</i></p>
12:45 – 13:30	LUNCH
13:30 – 15:30	<p>Session 6: Civilian participation in hostilities</p> <p>Jessica Whyte, Western Sydney University <i>Just War, Humanitarianism and the Protection of Civilians</i></p> <p>Emily Crawford, Sydney University <i>Tracing the Historical and Legal Development of the Levée en Masse in the Law of Armed Conflict</i></p>
15:30 – 15:45	BREAK
15:45 – 17:45	<p>Session 7: Securing Humanity</p> <p>Bruce Buchan, Griffith University <i>On Seeing What is Not There: Security, Insecurity and Neoliberalism</i></p> <p>Miguel Vatter, University of New South Wales <i>Is Human Dignity a Supremacist Concept?</i></p>
17:45 – 18:00	Conclusion



GUEST SPEAKER BIOS & ABSTRACTS

AMANDA ALEXANDER

The Principle of Proportionality in International Humanitarian Law

Rule 14 of the International Committee of the Red Cross's 2005 list of Customary Rules of International Humanitarian Law states:

Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

This is the ICRC's construction of the principle of proportionality, which, the ICRC states, is established as a norm of customary international law applicable in both international and non-international armed conflicts. Most contemporary international lawyers would agree with this statement. Indeed, these international lawyers see the principle of proportionality, together with the principle of discrimination, as the core principles of an international humanitarian law that is designed to protect civilians. Moreover, they see proportionality as a principle which has a long history as part of the laws of warfare, stretching back to the doctrine of military necessity. In this paper, however, I will argue that the principle of proportionality has a much briefer and more contested history than these statements suggest. I will discuss the controversy that attended the codification of the principle in the *1977 Additional Protocol I to the Geneva Conventions* and the resistance to the principle that continued until the early 1990s. I will then discuss the legal mechanisms through which this principle was transformed, at the end of the twentieth century, from an ambiguous and problematic provision to a fundamental principle of international humanitarian law.

Amanda is a lecturer in the Thomas More Law School. Amanda has a BA(Hons)/LLB from the University of New South Wales and a Masters in Legal Theory and History from University College London. She completed her PhD in 2013 at the Australian National University on the history of the civilian in international law. Amanda has research interests in the history of international humanitarian law, the process of change in international law and the relationship between theory and practice in international law. She also does research in legal theory and sports law.



BANU BARGU

Dying In: Politics of Life, Theaters of Death

One of the novel forms of nonviolent resistance to emerge since the 1980s, and which has gained an increased visibility in the last few years, is a form of action called the “die-in.” In these protest actions, activists have placed themselves in public sites and lain on the ground, feigning dead bodies. Most frequently staged in the United States, these actions have been deployed to resist different forms of violence. Most prominently, they have been performed by Black Lives Matter activists, who oppose police violence that targets black and brown bodies in violation of fundamental constitutional rights. Less well known is the deployment of the die-in as a form of protest by anti-war protesters in opposition to the increasing use of drones, or Unmanned Aerial Vehicles (UAVs) in warfare and counterinsurgency operations. By performing die-ins, groups such as the Hancock 38 and other peace activists have been publicizing their opposition to the use of drones as part of targeted killings that violate international humanitarian law. In this paper, I focus on the die-in as a novel *form* of corporeal and nonviolent resistance to violence based on the dramatic performance of death. Relying on a biopolitical approach informed by Foucault, Mbembe, and Agamben, I interrogate its recent deployments by Black Lives Matter and peace activists and draw out the theoretical connections between them, by focusing on the conditions that make such a form of protest possible and meaningful. I analyze the political intervention of this form of action, especially by way of its theatricality, relying on the perspective of materialist aesthetics built on the work of Althusser. I argue that through an analysis of the political deployment of an embodied theatricality within a biopolitical problematic, the die-in enables us to become cognizant of both the ongoing nature of sovereign violence, in its domestic and global manifestations, and the pitfalls of an ideology of humanism/humanitarianism that attends to and expresses the contradictions of the current regime of power.

Banu is an Associate Professor of Politics at the New School for Social Research. Banu Bargu’s main area of specialization is political theory, especially modern and contemporary political thought, with a thematic focus on theories of sovereignty, resistance, and biopolitics. Her research interests are situated at the intersection of philosophy, politics, and anthropology, with a regional focus on the Middle East (especially Turkey). In her research and teaching, she draws upon the traditions of continental and critical theory to address salient political issues and contemporary resistance practices. She is interested in bringing together political theorization with empirical, ethnographic, and historical research, relying on methods that are transdisciplinary and hybrid. Professor Bargu is the author of *Starve and Immolate: The Politics of Human Weapons* (Columbia UP, 2014), which received APSA's 2015 First Book Award given by the Foundations of Political Theory section and was named an Outstanding Academic Title for 2015 by CHOICE. She is currently working on two book-



length projects. The first is a volume on corporeal counter-politics, analyzing exemplary instances involving the use of the body in political struggles. The second project is a manuscript on Louis Althusser's political thought and his rethinking of the materialist tradition, especially in light of the posthumous publication of Althusser's work on the aleatory.

LUÍS PAULO BOGLIOLO

Bombing Civilians: strategic bombing and distinction in the history of international law

This paper traces how ideas related to the distinction between combatants and non-combatants and to legitimate targets in aerial bombing materialised in policy and in international law during the strategic bombing campaigns of the Second World War. It is a tentative part of my PhD research on the history of international law related to aerial bombing. My goal is to historicise the idea of distinction in war as expressed in the thought of international lawyers, and I take aerial bombing as the point of departure from which the subject can be seized. In this short piece, I analyse the strategic bombing campaigns of the Second World War, paying particular attention to the international legal discourse used to justify them. I am not so interested in passing judgment on the justifications for the bombing of civilian populations during the war, but rather in drawing out in the legal justifications for these bombing campaigns who were the 'civilians' that international lawyers talked about. I argue that in the justifications for the massive strategic bombing campaigns over Germany and Japan there is a clear sense of class difference: it was not so much the people as a whole that were being targeted, but the working class in particular.

Luís is a doctoral candidate with the Laureate Program in International Law at Melbourne Law School. He holds an LLM from the London School of Economics and Political Science, and a BA Law from the University of Brasília. He has been a voluntary lecturer at the University of Brasília, Coordinator of Intellectual Rights at the Brazilian Ministry of Culture, and Law Clerk at the High Court of Brazil. His thesis is entitled *Bombing Civilians: Aerial Warfare and Distinction in the History of International Law*.

BRUCE BUCHAN

On Seeing What is Not There: Security, Insecurity and Neoliberalism

Is security seen in images of peace and safety, or is it perceived in the depiction of the horrors of violence and suffering? Vision has played a crucial role in shaping the modern Western preoccupation with, and prioritisation of security. Historically, security has been visually represented in a variety of ways, typically involving the depiction of its absence. In Medieval and Early Modern Europe especially, security and insecurity were presented as simultaneous and coterminous insofar



as the promise of security was to be obtained through and by contemplation of the image of insecurity. This ocular demonstration of presence alongside absence has been heightened by the 'war on terror' conducted by neo-liberal states since 2003. Neoliberalism operates as a discourse of constant global circulations (of money, goods and people) premised on a perpetual anticipation and pre-emption of insecurity. In the neoliberal scheme, security and insecurity are simultaneous but not coterminous. In effect, neoliberalism mobilises an indefinitely perpetuated insecurity. In that sense, neoliberal security is 'Antigonish security' - an uncanny presence that is not there. In the reiterated images of horror amplified by the seemingly endless 'war on terror', neoliberal security operates as a terrifying visual reflex: we cannot see it but in new horrors.

Associate Professor Bruce Buchan teaches and researches war and security in history and political theory at Griffith University. He is a former winner of an Australian Research Council Future Fellowship, and ARC Discovery Grants. In 2016 he held a Visiting Professorship at the University of Copenhagen, and a Caird Research Fellowship at the National Maritime Museum in the UK. He was a Visiting Professor at the École des Hautes Études en Sciences Sociales (Paris) in 2017. He is currently working on a new Swedish funded research project (with Linda Andersson Burnett) on race and colonialism in the eighteenth century entitled: 'The Borders of Humanity'.

DR EMILY CRAWFORD

Tracing the Historical and Legal Development of the Levée en Masse in the Law of Armed Conflict

Levée en masse – the spontaneous uprising of the civilian population against an invading force – has long been a part of the modern law of armed conflict, and has been one of the ways the law of armed conflict has conceptualised the civilian in wartime. The concept originated during the revolutionary wars in America and France, and was incorporated into the first codified rules of armed conflict in the 1800s. However, the levee en masse participant is something of a legal anomaly, existing as a sui generis category in a system of rules designed to actively discourage civilian involvement in warfare. This presentation will examine some of the social and cultural tensions that exist in the historical legal development of the concept of levee en masse.

Dr. Crawford is a senior lecturer at the University of Sydney Law School. Emily teaches in international law and international humanitarian law, and has delivered lectures both locally and overseas on international humanitarian law issues, including the training of military personnel on behalf of the Red Cross in Australia. A member of the NSW Red Cross IHL Committee, Emily's current research project is looking at non-binding instruments in the law of armed conflict.



BRIAN CUDDY

Inventing Proportionality

The principle of proportionality—the idea that the foreseeable harm of a military action should not outweigh the value of the action’s objective—is now standard in American foreign policy discourse and military planning. At West Point in 2015, Barack Obama emphasized that the future use of American force would need to be accompanied by “tough questions about whether our actions are proportional.” And in his earlier Nobel Peace Prize Lecture, he traced the history of proportionality (and other just war concepts) back to medieval “philosophers and clerics and statesmen” who sought “to regulate the destructive power of war.” But President Obama’s invocation of a long history of proportionality is misleading. The concept only became familiar during the twentieth century, and for much of that time the United States opposed its incorporation into the laws of war. By the 1970s, however, America became a champion of the rule of proportionality, leading efforts to have it enshrined within the first Additional Protocol to the Geneva Conventions (1977) and, more generally, within national and global public opinion. That remarkable shift, this paper argues, was prompted by the Vietnam War, during which appealing to the principle of proportionality emerged as a way to rationalize U.S. actions in a disorienting, asymmetric military environment. The first part of this paper traces the rise of the concept of proportionality in the thought of jurists and humanitarians during the twentieth century. The second part uncovers and examines the use of the principle during the Vietnam War. The third part analyzes the contentious discussions on proportionality during the negotiations for the Additional Protocols, emphasizing the contingent nature of its codification into international law. In sum, the paper aims to reveal more clearly the surprisingly recent history of this bedrock principle of wartime conduct.

Brian is a historian of twentieth-century international politics and US foreign relations, and an associate lecturer in security studies at Macquarie University in Sydney, Australia. He received his PhD from Cornell University in August 2016. His dissertation, “Wider War: American Force in Vietnam, International Law, and the Transformation of Armed Conflict, 1961-1977,” examined both how law influenced American conduct of the Indochina conflict and how the application of force by the United States in Vietnam reshaped the legal architecture of war. Brian is currently turning “Wider War” into a book manuscript. Prior to his doctoral studies, Brian prepared assessments of regional strategic and political affairs as an analyst in New Zealand's Department of the Prime Minister and Cabinet.



JEANNE MOREFIELD

Revisionist Liberalism: Global Justice, Liberal Internationalism and the Politics of Deflection

This paper investigates the relationship between dominant political theory approaches to global justice today and the discourse of liberal internationalism, a school of thought which has historical connection to American imperialism. The paper begins with a careful exploration of the way global justice scholarship quietly mutes history and reifies liberal approaches to global problems. It then moves on to a closer investigation of the discursive and ideological connections between global justice scholarship and the liberal internationalism of “Neo-Wilsonians” like John Ikenberry and Michael Blake, and liberal imperialists like Michael Ignatieff. The paper briefly historicizes liberal internationalism and then explores the way its contemporary adherents couple an idealist language of human rights and global ethics (gleaned from global justice scholarship) with “realist” arguments about the necessity of America hegemony. The result is not simply an unseeing of the ‘collateral damage’ associated with military aggression but a simultaneous celebration of violence in American history that is deflected and reframed as permanent exceptionalism. The paper begins and ends by considering the way liberal internationalist critiques of “historical revisionism” circulate today in a global moment characterized by heightened xenophobia and bellicose foreign policy. Ultimately, I make the case for a critical orientation to history and international politics that relocates imperial conflict from the periphery to the center of analysis.

Jeanne Morefield is Professor of Politics at Whitman College and a Professorial Fellow at Australian Catholic University whose work engages the historical and contemporary intersection of political theory and international relations with a particular focus on British and American imperialism. Her books include *Empires Without Imperialism: Anglo-American Decline and the Politics of Deflection* (Oxford, 2014) and *Covenants Without Swords: Idealist Liberalism and the Spirit of Empire* (Princeton, 2005). She has published articles in *Political Theory*, *History of Political Thought*, *Theory and Event*, and other journals as well as numerous chapters for edited volumes on the history of international and imperial thought. Jeanne is currently Co-President of the Association for Political Theory and is writing a book entitled, *Empire as Method: Edward Said and Political Theory*.

IHAB SHALBAK

RAND: The Certainty of Uncertain Death

This paper examines the unarticulated assumptions of the RAND Corporation’s Cold War form of reasoning, which gave us notions like collateral damage. RAND came into being during the transition from the military mobilization of the Second World War to the general mobilization of the national security state of the Cold War. An initiative of the American Air Force, Project RAND was initiated in order to ensure US military readiness and superiority. RAND focused on forecasting techniques and



methods that would provide economical and technical policy solutions to military problems—and, later, to social and political ones. It fashioned military procedures, techniques and technologies of codification, shaped by formalistic-statistical reasoning, in order to render the Cold War order visible and articulable. It was in this context that “collateral damage”, and a host of related notions, made their appearance. They appear as codifications of contingent events and (un)controllable probabilities. For example, RAND developed a family of models called SNAPPER (for Strategic, Nuclear Attack Program for Planning and Evaluation of Results) to address the uncertain damage that would result from a Soviet nuclear attack on the United States. In the context of a global geopolitical conflict distinguished by a fierce competition between two universalist ideologies, both intent on saving humanity as a whole, RAND’s formulations acquired an additional humanitarian normative dimension: they were now conceived as damage-limiting technologies designed to save civilian lives. The enemy population was thus conceived as an indispensable factor in designating the optimal course of action at the strategic level. In this paper, I argue that the sort of universalism that RAND’s reasoning embodies is only capable of including by excluding. Although the enemy population becomes internal to its logic, it is internalized only as collateral damage, or human waste. In this framework, while designations like collateral damage appear factual, neutral and tragically unavoidable, in actuality, they designate those who deserve to live and those who are fated to die.

Ihab is a Visiting Research Fellow at the University of Sydney. Previously Ihab worked as a lecturer in the Human Rights program and a coordinator of the Social Justice Research Network, both at the University of Sydney. In 2015, he completed his PhD on ‘The Birth of Think Tank: Theory, History and Politics in the Long American Century’ from the University of New South Wales.

MIGUEL VATTER

Is Human Dignity a Supremacist Concept?

In a recent book, Jeremy Waldron has reconstructed the idea of human dignity, so fundamental in the contemporary discourses on human rights, as a "status" concept rather than as a "moral" concept referring to the "absolute worth" of persons. On Waldron's view, human dignity would signify the "elevated" status of the human species, granting each member of the species the immunities and powers or capacities we associate with human rights. More recently still, advocates of animal rights such as Will Kymlicka have argued that human rights should not be linked to a conception of status because the latter inevitably assumes "human supremacism" over other species. In this paper, I wish to defend the reading of dignity as a status concept, but offer an interpretation of this idea that diverges crucially from the humanist and Christian interpretation offered by Waldron in favour of a reading that avoids charges of speciesism and human supremacism.



Miguel taught politics at UNSW until this year and will be teaching politics at Flinders. His areas of research are republicanism, biopolitics, and political theology. His most recent book is "Republic of the Living. Biopolitics and the Critique of Civil Society" (Fordham 2014).

JESSICA WHYTE

Just War, Humanitarianism and the Protection of Civilians

In 1974, when the International Commission of the Red Cross called a "Diplomatic Conference on the Laws of War" in Geneva, the United States approached the conference "more as a hazard than an opportunity", as the head of its delegation, George Aldrich, reflected at the time. While the US hoped that the ICRC sponsored event would provide a "neutral and humanitarian" forum for discussing the laws of war, these hopes were soon dashed, and Aldrich was left to reprimand delegates to "stop treating the conference as an extension of the United Nations General Assembly." Inevitably, the debates during the Diplomatic Conference were influenced by the new balance of power in the General Assembly in the period of decolonization. Armed with a series of recent UN resolutions, anti-colonial delegates arrived at the ICRC Conference determined to see national liberation struggles classified as international armed conflicts, and privileged belligerent status (and thus prisoner of war provisions) extended to national liberation fighters. In doing so, they used the language of the "just war" to distinguish wars of national liberation from wars of "imperialist aggression". In this paper, I contest the argument, made by the US delegation at the time and by recent historical scholarship since, that anti-colonial evocations of the just war resurrected a medieval licence to cruelty, and served to diminish civilian protection. Far from believing that all was fair in a just war, I show that anti-colonial delegates also fought for stronger legal protections for civilian populations. While the anti-colonialists argued that all "civilian areas should be regarded as prohibited targets," the US managed to secure more permissive standards of so-called "collateral damage", The "neutral humanitarianism" upheld by the US and European powers against the anti-colonialists, was quite capable of sanctioning massive violence against civilians.

Jessica is a Senior Lecturer in Cultural and Social Analysis at the University of Western Sydney, Australia and an Australian Research Council DECRA Fellow. Her monograph, *Catastrophe and Redemption: The Political Thought of Giorgio Agamben*, was published by SUNY in 2013. Her forthcoming book *Human Rights and the Rise of Neoliberalism* will be published by Verso in 2018. She is currently working on a three-year Australian Research Council-funded project, "Inventing Collateral Damage: The Changing Moral Economy of War."

Western Sydney University
Locked Bag 1797
Penrith NSW 2751