On the Language of (Counter)Terrorism and the Legal Geography of Terror

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On the Language of (Counter)Terrorism and the Legal Geography of Terror
By Nick J. Sciullo

As some bask in the sunlight of the killing of Osama bin Laden, we still face a difficult time in law, international relations, and the pursuit of national security. The problem lies in the “global war on terror,” a phrase continually uttered yet without meaning. Language and geography intersect in this phrase, which implicates important legal standards and notions of legality and space. Even with President Barack Obama’s desire to draw down troops in Afghanistan, there is little indication that the war against terrorism is ending. Fewer troops do not mean the war is over.

Now that Osama bin Laden is dead, what are we to do? Who do we hunt and where do we find them? The Toledo Blade reported:

Declaring the killing of Osama bin Laden “a good day for America,” President Obama said Monday the world was safer without the al-Qaeda terrorist and mastermind of the Sept. 11, 2001 attacks.\(^2\)

The world is safer. This is a startling revelation for those in the tornado ravaged South, those in Southeast Asia at constant risk of tsunami, and those who fear earthquakes like the Haitian people who have largely fallen back out of U.S. consciousness. President Obama rhetorically links even the death of Osama with place, perhaps one of the largest of places—the world.

We must understand where the global war on terror occurs. Without a terrain upon which to engage this war, the laws of war become quite complicated. In today’s war on terror there are no boundaries, geography does not constrain the flow of violence, so the law, which finds safe harbor in personal jurisdiction and jurisdiction in rem, is precariously cast out upon a treacherous sea.

In this paper, I will discuss the difficulties in defining a place for the global war on terror and the implications this lack of terrestrial bounds has for the law. I will then discuss the way language impacts not only the idea of terrorism, but also the politics of place. On our journey will be philosophers Martin Heidegger and Jacques Derrida, discussed extensively below, who help flesh out the important politics of language and place.

Ultimately, I will urge for a deconstructive approach to the global war on terror, which I hope will encourage a more thoughtful

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consideration of the place and politics of this war, and a more careful consideration of place and the law.

I. U.S. Counterterrorism Policy

U.S. Counterterrorism policy was begun, at least as it is modernly discussed, with George W. Bush’s *National Strategy for Combating Terrorism*, published in 2003. This document describes terrorism as the single most important threat to U.S. national security. Counterterrorism has been a concern for years, but it was with this Executive Office of the President policy that current thought on counterterrorism strategy has been guided. My discussion will begin here, not to belabor criticisms of the Bush presidency, but to start at a point that seems instrumental to the present day discussion. It makes sense to start historically, but not to be bogged down with every historical instance of terrorism or counterterrorism policy. To do so would lead us astray and cast too wide a net. This discussion is meant to provide the basics of contexts, not an exhaustive legal history.

This is not to deny prior terrorism policy, but to select a point at which to begin critique. There were, of course, acts throughout the 1990s that radically shaped the U.S. and encouraged the development of what might be called a counterterrorism policy, but policy seemed to take a radically new direction in 2001. The selection of September 11, 2001 as the defining moment and the *National Strategy for Combating Terrorism* as the defining document helps focus us, something this event and this document failed to do. It also helps scholars and practitioners relate to the general public, because the public, I believe, generally thinks about terrorism in the shadow of the September 11 attacks.

While the Obama Administration has given lip service to a change in direction, the all too recent troop surge in Afghanistan suggested otherwise. There is a continual need to investigate the progress of this war against terror because to sit back and watch any Administration without asking pointed questions is to do a disservice to critical inquiry. Even as we may see relief from the aggressive jingoism of the Bush Administration, we must still

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exercise caution in evaluating foreign policy, lest the wool be pulled over our eyes.

The where of terrorism is a confusing question that could be traced to a number of executive and legislative branch actions, secondary sources, military policies and actions, and likely many conceivable other sources. But, a clear way in which to contextualize the problem is to consider an artifact that then-President George W. Bush brought into being, Presidential Military Order of November 13, 2001.9 This order contained no geographical limits in its attack on terror. It defined enemy combatant in a way that allowed the Administration to conduct the global war on terror everywhere.10 The lack of bounds, the flowing, broad definition of combatant justified a war that had no location, not because it could not have a location, but because, as is evident in Presidential Military Order of November 13, 2001, the idea was to not locate the war, but instead to allow it to be waged everywhere and against anyone.11

The definition of a battlefield, a place where this war against terror occurs is central to the very fight against terror.12 If nothing else, a spatial understanding of this war ought to help the layperson better understand it. It is easy, relatively, to understand war in a country or against a country. Throughout history we have understood wars as existing in their battlefields: Iwo Jima,13 Bull Run,14 Gettysburg,15 etc. The floating war against terror is incomprehensible in this respect because it fails to afford us a spatial orientation of U.S. power.

Counterterrorism today is no less confusing than it was initially. The June 28, 2011 letter from President Barack Obama, affixed to the June 2011 National Strategy for Counterterrorism16 indicates as much. In the letter, President Obama indicates:

Our terrorist adversaries have shown themselves to be agile and adaptive; defeating them requires that we develop and pursue a strategy that is even more agile and adaptive. To defeat al-Qa’ida, we must define with precision and clarity, who we are fighting, setting concrete and realistic goals.

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11 Id. at 850 (quoting Adam Liptak, In Terror Cases, Administration Sets Own Rules, N.Y. TIMES, Nov. 27, 2005, at A1.).
13 See The Battlefield of Iwo Jima, 18.15 LIFE 93 (Apr. 9, 1945).
tailored to the specific challenges we face in different regions of the world.\textsuperscript{17}

The letter from President Obama highlights the problem, but also sends up several red flags. The call for “agile and adaptive” policy seems to be an indication of sloppy, un-moored policy. It sounds as if the blatantly imperial strategies of the Bush Administration are simply receiving a new cloak. This sounds too much like the de-localized, global conflagration that has been the \textit{status quo} for the last ten years.

II. The Where of Terrorism

Law is intimately tied to spatial configuration. Our geographical imagination helps order the law.\textsuperscript{18} Place matters whether one speaks of jurisdiction, the law’s reach, sovereignty, or many other questions common in legal discourse.

It is not unusual for war, law, and geography to become a part of the same larger juridico-military discourse. It may be appropriate to think of this association historically as growing from the Peace of Westphalia of 1648, which tied the notion of sovereignty to state boundaries, making control of territory a specifically legal issue. Indeed, Westphalia ushered in a new consciousness not based on Christianity, but instead based on the notion of Europe.\textsuperscript{19} Westphalia introduced a system that was not religio-spatial, but governmental or juridico-spatial. Baylis and Smith indicate, “[I]n codifying and legitimating the principle of sovereign statehood, the Westphalian constitution gave birth to the modern states- system.”\textsuperscript{20} This model intimately tied the law to territory and has been, more of less, a guiding presence in modern understandings of law and international relations.\textsuperscript{21}

More so, to think of the state without the law makes little sense. The two are mutually reinforcing; there is no law without the state, and a state cannot exist without law.

In the framework of relationships between State and Law, to understand one is to fully understand the other. This fact gives legitimacy to the inquiry about the Westphalian Legal paradigm which is to be developed here. All the “vision of


\textsuperscript{18} David Kennedy, in a book review, cites the “role changing images of geography play in the construction and deployment of the law.” David Kennedy, \textit{Book Review and Notes: The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice} by Sharon Korman, 91 \textit{A.J.I.L.} 745, 747 (October 1997).

\textsuperscript{19} \textit{NORMAL DAVIES, EUROPE: A HISTORY} 568 (1996).

\textsuperscript{20} \textit{JOHN BAYLIS & STEVE SMITH (EDS.), THE GLOBALIZATION OF WORLD POLITICS: AN INTRODUCTION TO INTERNATIONAL RELATIONS} 29-30 (2006).

the world” (Weltanschauung) structuring of the modern and contemporary modes of understanding/applying Law is based on the tripod Stateness-rationality-oneness, according to which Law identifies with the rule imposed solely by the State, the only one valid, in use and effective in its territory and conceived according to principles of coherence, systematization, harmony and logic. The political-juridical category “State” is the base to the study and understanding of this model of Law that has been formed since the disintegration of the feudal world. State and Law maintain between each other a relationship of mutual interference so that Law (starting from the constitutional one) is meant to give a form, constitute or conform a given scheme of political organization of which main characteristic is the monopoly of the political-juridical power over a determined community gathered in a territory.22

In this vein, conventional understandings of war necessitate a battlefield.23 Although, the world has moved toward unconventional wars, the spatial understanding of war, I believe, remains firmly enshrined in our understanding of the world. There must be a geopolitics of conflict. Even wars against ideas, must occur in a place, defined by borders, not because borders are necessary, but because war necessitates them.24 A battlefield is a place where battle is conducted.25 A combat zone is the place where combat forces operate.26 If we are to engage in a war, then we must know where that war is to take place. Without place, we engage in a psychic war of colossal proportions that promises to do tremendous injury to every U.S. citizen. Why? Because a war, at law, needs a place, because the battlefield is the foundation upon which protection for combatants and civilians is built.27 It is a

22 Id. at 957 (citing J. J. Gomes Canotilho, Direito Constitucional e Teoria da Constituição 87-90 (2002)).
23 This is a necessity not of borders, but of law. In order to appropriately legally interpret the “global war on terror” there must be a recognition of the place the war takes. Lives are at risk. Blank describes:

Defining the battlefield - or the zone of combat, to use a new term - is thus critical to understanding where the U.S. can use force as a first resort and alternatively where law enforcement options are the appropriate tool. At stake are not only the lives of the innocent victims of terrorist attacks that could have been prevented, but also the rights of alleged terrorists and the unintended victims of military attacks.

25 See supra note 12, at 3.
26 Id.
27 See supra note 23.
battle of the mind that manifests its violence not in place but in ether.  

War’s most important historical text, which is still required reading in military academies and international relations departments is Prussian Carl von Clausewitz’s *On War*, a text that continues to inspire the way modern strategists think about armed hostilities. In this text, Clausewitz describes the centrality of territory to the existence of war. Clausewitz writes: “[A] military action can have only two kinds of goal: either to seize a greater or lesser part of the enemy’s territory or to hold onto one’s own territory….” But, it was more efficient to conduct the war on terror without bounds. Territory was seen as something that would get in the way of objective of winning quickly. Zaki Laïdi notes:


[W]ar is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most “efficient” way of finding one.

This quest for efficiency has marked the war on terror and perhaps been the impetus behind the contravention of international law and the myriad excesses of this specific instance of militaristic hubris.

War begets borders, and this is perhaps an important reason why we ought to avoid war. The arguments against borders are quite plentiful: they reinforce difference, divide nations, are artificially constructed, demand militarization, encourage violent patriotism, are patriarchal, etc. Borders create the need for security, a precondition for going to war and perpetrating

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29 CARL VON CLAUSEWITZ, *ON WAR* (1832).
33 Here I have in mind the critical geographers that have risen to prominence in the last 30 years. Matthew Sparke, Professor of Geography and International Studies at the University of Washington, and Gerard Toal, Professor of Government and International Affairs at Virginia Tech.
violence. It is not so much that we need borders and boundaries, but that we must recognize them and that their absence, while preferable, may not be preferable while we engage in a complex modern day war. Perhaps we must chose the lesser of two evils.

The global war on terror has been defined spatially in an ad hoc way. The war is conducted in Afghanistan, Pakistan, and to a lesser extent Somalia and Yemen. These are places of geopolitical definition. This gives us a sense of place, but only in so far as it describes where U.S. troops have acted as counterterrorism forces. The problem is that these places are not existent in terms of a battlefield, of a strategy for the place war is to be conducted, but instead constructed or enumerated after war has already begun. Laurie R. Blank describes the problem of the war on terror’s where:

[T]he present conflict between the United States and al Qaeda and affiliated terrorist groups poses significant yet seemingly fundamental questions about not only the law applicable to operations against terrorists but also about where the conflict is taking place and where that law applies.

Our attempt to define the where of the global war on terror happens only after that war has been initiated. The 2011 National Strategy for Counterterrorism almost makes a mockery of defining the war on terrorism’s place. It isolates so many areas as to practically render their listing a farce. This document isolates the United States, South Asia, the Arabian Peninsula, East Africa, Europe, Iraq, the Maghreb and Sahel, Southeast


36 See supra note 23.
37 Id.
38 See supra note 12.
40 See supra note 16, at 11.
41 Id. at 12.
42 Id. at 13.
43 Id. at 14.
44 Id. at 15.
45 Id. at 15.
46 Id. at 16. The Maghreb consists of Morocco, Algeria, Tunisia, Libya, Mauritania, and Western Sahara. See ÉLISÉE RECLUS (E. G. RAVENSTEIN, ED.), THE EARTH AND ITS INHABITANTS: THE UNIVERSAL GEOGRAPHY 6 (1878). The Sahel is a biogeographic zone between the Sahara Desert and Sudanese Savanna. See generally CLAUDE RAYNAUT, SOCIETIES AND NATURE IN THE
Asia,\textsuperscript{47} and Central Asia\textsuperscript{48} as places where the war continues. The only places safe from the war seem to be parts of Africa and South America. But not so fast! This remains a global war: “The 21st-century venue for sharing information and ideas is global, and al-Qa’ida, its affiliates and its adherents attempt to leverage the worldwide reach of media and communications systems to their advantage.”\textsuperscript{49} The world is this war’s canvas.

Even if we accept a definition of terrorism “as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience,”\textsuperscript{50} that still gets us no closer to understanding the geographical limits of a global war against terrorism. The problem is much broader than a definition of terrorism or terrorists.

Definitions about who enemy combatants are,\textsuperscript{51} when force can be used,\textsuperscript{52} and what defines counterterrorism policy\textsuperscript{53} abound. Definitions are of course frequent in the legal, political science, economics, and sociological literature. The problem is not that definitions are infrequent or not usually applied, but that definitions often get us into trouble. Definitions, of course, carry weight and deserve to be investigated, but their existence cannot be denied. If we are to conceive of the global war on terror as necessary, then we must declare a place for it to take place. When defining geopolitical boundaries, we must be careful as these boundaries are usually contested, especially as they relate to many of the countries where we may seek to locate the global war on terror because discourse is often silenced with respect to this war.\textsuperscript{54}

The lack of a consistently defined geography of war is not surprising however. War has evolved from columns of rigid soldiers, spread across clearly defined plains and valleys,\textsuperscript{55} exchanging volleys in an almost dance like performance, to the notion of total war that demands entire countries mobilizing all resources to conduct war.\textsuperscript{56} Then war became smaller, sometimes not even state-sponsored.\textsuperscript{57} This new style of war featured insurgents as the main actors.\textsuperscript{58} Insurgency is nothing new, but its prominence is.\textsuperscript{59} War is no longer the all-encompassing onslaught

\textsuperscript{47} Id. at 16.
\textsuperscript{48} Id. at 17.
\textsuperscript{49} Id. at 17.
\textsuperscript{50} See supra note 6, at 13-4.
\textsuperscript{51} Id.
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Gerard Toal, “Just Out Looking for a Fight”: American Affect and the Invasion of Iraq, 35.5 ANTIPODE 856, 859-60 (2003).
\textsuperscript{55} Ganesh Sitaraman, Counterinsurgency, the War on Terror, and the Laws of War, 95 VA. L. REV. 1745, 1746 (2009).
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
that might be familiar to the typical or uncritical student of war. War is now less-well-defined, with adversaries with complex agendas, new strategies, and a new appearance. These were and are the insurgencies or small wars that frequently appear in television news cycles and newspaper reports. The war without territorialized framework is a characteristic of the modern state of international affairs. Michael Hardt and Antonio Negri make the point in terms of an evolving status quo that now finds the world more violent, more contentious:

The world is at war again, but things are different this time. Traditionally war has been conceived as the armed conflict between sovereign political entities, that is, during the modern period, between nation states. To the extent that the sovereign authority of nation states, even the most dominant nation states, is declining and there is instead emerging a new supranational form of sovereignty, a global Empire, the conditions and nature of war and political violence are necessarily changing. War is becoming a general phenomenon, global and interminable.

The inability to geographically place the war on terror may be a result of the changing form of war and the evolution of war as the international state of being. War is no longer a state verses state undertaking. War has merged with a security discourse that now projects/protects war as a show of national security. David Chandler notes:

The understanding of war – the struggle for geopolitical control – has been extended to comprehend global war as the desire to control and regulate at the global level. In essence, global war is understood as the struggle for securing the reproduction of power, written on a global scale rather than that of the nation-state.

Laurie R. Blank lays out a three-pronged approach to defining a space for terrorism that I will chose to present in questions: 1) do the terrorist activities look like war and are these activities regular?, 2) does the government respond with military force as opposed to local police force?, and 3) do terrorists use the area in question for “safe havens, establishment of training camps and command posts, and the launching of regular attacks”?

These are valuable criteria for establishing a geopolitical space for a war on terrorism.

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61 Id. at 3-4.
63 See supra note 23.
But, again, why do we need a space? Because if there is not some geopolitical locus where we might act, might engage in war, then war is justifiable everywhere. The global war on terror, because there is no nexus with the battlefield, allows us to pursue these people known as terrorists in Afghanistan, Pakistan, Iraq, Somali, Yemen, and the South China Sea. We can go anywhere because the battlefield is nowhere.

This does not mean that we must rely on rigid geopolitical boundaries. To be sure, we must investigate space or the lack thereof. Michel Foucault notes:

A whole history remains to be written of spaces – which would at the same time be the history of powers [both of these terms in the plural] – from the great strategies of geopolitics to the little tactics of the habitat, institutional architecture from the classroom to the design of hospitals, passing via economic and political installations. . . . Anchorage in a space is an economico-political form which needs to be studied in detail.

If as Foucault claims, “anchorage in a space” is worthy of study, then it seems we ought to investigate the absence of such anchorage. If a conscious decision to leave out space is made, then we out to interrogate the process by with this decision was made. Foucault seems to be correct that there are not histories of space as such, particularly as space as/and power. This sort of research is beginning to be completed in the subfield of critical geopolitics, but has yet to be fully developed and incorporated in the legal, economic, or geographic literature.

The arguments for no borders are persuasive, but defining a battlefield need not rely on traditional country boundaries. We must resist the urge to say there is a war in Iraq, because such a

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64 See supra note 62 (“While, for its advocates, global war was posed in terms of global policing or cosmopolitan law enforcement, the globalization of security threats and the need for post-state or post-national responses to them was at the top of the international policy agenda.” Id.).
69 See Jennifer Hyndman, THE QUESTION OF ‘THE POLITICAL’ IN CRITICAL GEOPOLITICS: QUERYING THE CHILD SOLDIER IN THE ‘WAR ON TERROR’, 29.5 POLITICAL GEOGRAPHY 247-55 (2010) (“Critical geopolitics began less as a theory of how space and politics intersect than a taking apart of normalized categories and narratives of geopolitics. It situates power not in the hands of a sovereign state or individual, but in more relational ways that traverse a spectrum of scales of social life (Sparks, 1998). And yet since that inception, critical geopolitics has either tacitly or directly taken political positions, and invoked normative judgements [sic] in a range of geographical contexts.” ID. AT 249).
construction only fools us into thinking that we are engaging in a traditional war. The better way to define the terrain of war is through measurement, longitudes and latitudes. It may also make sense to define countries in relation to their capitol city. The area with Washington, D.C. as its capitol defines the United States not in terms of its boundaries, but in terms of its capitol. This allows for a more thorough understanding of the entire U.S. empire, not simply the contiguous 48 or the 50 states and outlying territories. There are ways around traditional notions of boundaries so that we can define place in terms of thought and geography together. This means a country does not exist in relation to other countries, but in relation to its national identity.

This notion of spatio-thought boundaries may be extremely important to the law. When combined together, it may become easier to understand the fluid nature of boundaries and people and may help to understand the ideas that connect us to the maps that dissect us. Ahmed S. Hashim argues that bin Laden and his followers thought this way:

They have attacked the United States because of where it is, what it is, and what it does. Of course, America is not attacked primarily for where it is—that is, nearly everywhere, and conspicuously in the Middle East; its global presence simply makes it easier to attack for the other two reasons. It is clear that America is detested by many people the world over for what it is—a successful and dynamic modern society. It has created envy among the dispossessed and revulsion among ideologically alienated groups who see it as totally antithetical to their own values or aspirations.  

This is not a call to think like bin Laden, but a call to realize that thought (legal, political, philosophical, etc.) and geography are linked in ways the U.S. and many of its citizens do not understand or fail to acknowledge. I argued for a similar type of thinking to understand the complexities of thought and geography as they relate to relate to segregation in U.S. school systems.  

III. Heidegger and Derrida as Critiques of “Terrorism”

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I want to leave aside Jacques Derrida’s\textsuperscript{72} critique of Martin Heidegger\textsuperscript{73} for the most part, but highlight a key difference—Derrida, who I am more persuaded by, does not mandate some sort of truth-value product at the end of his deconstruction. The debate between the two has been the subject of many papers,\textsuperscript{74} but it will be more useful to investigate the way each discusses and critiques language. Derrida’s project, in a sense, is more critical that Heidegger’s,\textsuperscript{75} where Heidegger attempts to establish the value of some “truth of being.”\textsuperscript{76} Derrida is more comfortable simply deconstructing language without the compulsion to leave something in its place.\textsuperscript{77} In fact, it is this need to establish the truth of being that makes Heidegger’s argument more constructive than deconstructive.\textsuperscript{78} Derrida, on the other hand, is “nonprescriptive.”\textsuperscript{79} There is something to this nonprescriptive deconstruction theory, where we resist the urge to build another soon-to-be-failed project upon a cracked foundation. We need to delimit the space of language, make language more fluid, so that we are not locked into a world of heavy connotation. The law struggles with this greatly, this notion of fluidity.

In this vein, we need not necessarily devote ourselves to finding something with which to replace the word “terrorism” or the phrase “global war on terror” because whatever other word or phrase we use will ultimately be subject to its own connotative dressing. Deconstruction and critique for their own sake.\textsuperscript{80} Let us first think more critically about terrorism before we decide what new naming conventions we want to deploy. Naming debates, while important, suffer from the same problem as definitional debates; nothing is ever completely satisfactory and someone or some group, or some intellectual tradition, always comes away wishing for something different. The United Nations has struggled

\textsuperscript{72} Jacques Derrida (1930-2004) was a French philosopher who wrote on deconstruction and poststructuralism. He wrote influentially on language and literary theory. He famously critiqued Martin Heidegger in \textit{Of Grammatology}. His most well known works are \textit{Speech and Phenomena}, \textit{Of Grammatology}, and \textit{Writing and Difference}.

\textsuperscript{73} Martin Heidegger (1889-1976) was a German philosopher who wrote influentially about questions of “Being.” He wrote many important books including \textit{Being and Time} and \textit{An Introduction to Metaphysics}.


\textsuperscript{75} David Couzens Hoy, \textit{Forgetting the Text: Derrida’s Critique of Heidegger}, 8.1 \textsc{Boundary} 2 223, 224 (1979).

\textsuperscript{76} Id. at 224.

\textsuperscript{77} Id.

\textsuperscript{78} Id.

\textsuperscript{79} Id.

\textsuperscript{80} For a discussion of Derrida’s deconstruction’s influence on the critical legal studies (CLS) movement and also a description of Derrida’s ethical turn, which may cast some doubt on the claim that Derrida was nonprescriptive, see Michel Rosenfeld, \textit{Derrida’s Ethical Turn and America: Looking Back from the Crossroads of Global Terrorism and Enlightenment}, 27 \textsc{Cardozo L. Rev.} 815, 820 (2005).
for years to adequately describe terrorism, but lines in the sand have been drawn and agreement seems quite unlikely:

The United Nations has been trying to define terrorism for some thirty years, and has given up in its quest for a definition that everybody can agree upon. A major problem is that Western governments wanted to make sure that state agents could never be considered terrorist, while Islamic countries wanted to make sure that national liberation movements in the Middle East and Kashmir could never be considered terrorist.\(^{81}\)

Becoming mired down in this debate is ineffective for analyzing the broader implications of terrorism’s construction and discussion in the public sphere. This is the problem with the neoliberal agenda, the shoot from the hip liberalism that seeks bandages for solutions instead of cures for the maladies that caused the lesion. Liberals are often quick to try something new, to propose new solutions, to reconceptualize problems; but what is just as often lacking is the appropriate critical reflection on the past and the careful analysis of the rhetoric of problems.

Why focus on terrorism? Of course it makes sense in its relevance to current events and a good deal of law and conversations that occur formally and informally everyday. Heidegger makes the point that language often has meaning that is not explicit.\(^{82}\) Words can mean more than they mean. When we talk of finding terrorists or fighting them as well as conducting a global war on terror, we are describing much more than a group of people, our quest for them, and the space on which we plan to engage them. Terrorism is bound up with notions of the Other\(^{83}\), cultural imperialism, diplomacy, morality, etc. Using terrorism without regard to the complexities of its connotations is both logically unsound and politically dangerous. The meanings we attach to our words influence policy action, therefore when we describe the global war on terror, existing in the ether; we are actually encouraging the war to take place wherever we want. We have decided that this war must take place everywhere and nowhere. When there is no geopolitics of war, war is free to exist in the world without need for focus or locus.

The battle for meaning has been a concern for generations and it is an important contest. It matters not simply in war, but in life. The place of the battlefield, the definition of combatants or enemies, the radical notion that language shapes reality are all

\(^{81}\) TRUDY GOVIER, A DELICATE BALANCE: WHAT PHILOSOPHY CAN TELL US ABOUT TERRORISM 89 (2002).

\(^{82}\) MARTIN HEIDEGGER, KANT AND THE PROBLEM OF METAPHYSICS 140-1 (1929; Indiana University Press, 1997).

\(^{83}\) See supra note 80, at 823 (“Both global terrorists and those who seek to eradicate them accuse one another of seeking to destroy the other or the other’s identity. Accordingly, each seeks to justify violence against the other while condemning the violence of the other.” Id.).
intimately tied to the practical application of violence and war. This is not, as Derrida points out, because language must be used to discern truth, but because language is the marker for multiple types of truth. The existence of multiple truths is the essence of legal and military disputes, not to mention historico-cultural conflict. And, it is this interrogation of truths that have been Derrida’s focus.

Derrida offers some interesting insight into his views on the law, which help position his critique of language and truth, in, perhaps, something more palatable for practitioners. Derrida writes:

One believes it generally possible to oppose law to affirmation, and particularly to unlimited affirmation, to the immensity of yes, yes. Law—we often figure it as an instance of the interdictory limit, of the binding obligation, as the negativity of a boundary not to be crossed.

Law asks that we make this “double yes,” this bold and thorough affirmation. Because law needs this yes, yes, we often feel compelled to give it. The way we construct law and military action then becomes a way of construction affirmation, of defining what is and what is not through an elaborate language game of affirmation. Matters of law and of war are definitional, they attempt to form truth values and exist in their opposition to something else (opposition to terror, to criminality, etc.). The global war always involves the law whether the discussion is legal rights of detainees or border protection, war or military funding, immigration or airport screening. Terrorism is a double yes for military dominance, imperialism, and violence. Unchecked we will nod affirmatively toward a world much more dangerous than the one in which we currently live. We will nod all the way to our own demise.

Further, Derrida is concerned about the idea of the phantasm. His concern, while formulated before the death of bin Laden raises important questions about the specter of bin Laden. Derrida writes:

A word on the subject of the various figures of appearing—image, morphê, eidos, and especially phantasm. It seems to me that if, following the logic of your discourse, we take the word ‘phantasm’ to mean that which weaves the

84 See supra note 75, at 225.
85 Id.
86 Jack M. Balkin, Symposium: Derrida/America: The Present State of America’s Europe: Law: Deconstruction’s Legal Career, 27 CARDOZO L. REV. 719, 719 (2005) (“Deconstruction began as a series of techniques invented by Jacques Derrida, Paul de Man, and others to analyze literary and philosophical texts. These techniques, in turn, were connected to larger philosophical claims about the nature of language and meaning.” Id.).
universal and the individual together in the image, then we come right back to what we said earlier—though we don’t have time to go into it here—about the ‘coming before’ of the other in the I, i.e. as phantasm. But I would not free myself so easily of phantoms, as some people all too often think they do (‘it’s nothing but a phantom’). I think that we are structured by the phantasmic, and in particular that we have a phantasmic relation to the other, and that the phantasmicity of this relation cannot be reduced, this pre-originary intervention of the other in me.  

Derrida makes the important assertion that out our world is structured by the phantasmagoric. It abounds, and our fear of the Other is indeed the phantasmic combination of the universal and the individual, as in the phantasmic bin Laden—bin Laden’s ghost. Heidegger echoes this notion of defining existence through defining a position in relation to multiple senses of being. Heidegger argues that Being must be conceptualized as “on the basis of beings.” In an attempt to understand this relationship, we must open ourselves up to the experiences of the world and in turn the relationship we have to these experiences. This means understanding the power of the word “terrorism” and of the delocalized “global war on terror.” The language we use dictates our policies, constructing more than our thoughts, but providing the foundation for the entirety of our speech acts. Heidegger elaborates this point. He talks of our “experience with language.” Language is not something we tacitly accept or carelessly yield. “[T]he experience is not of our own making,” he offers, suggesting of course that language helps constitute our experiential reality. This is precisely why we must take language seriously, especially when it is used to describe the methods, purposes, and theories of war.

Derrida adds to this notion with his famous aphorism, “There is nothing outside the text.” That being so, the question is not what linguistic games we can play to avoid representations and their

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89 See generally supra note 28 (discussing the phantasmagorical nature of the global war on terror).
90 See supra note 88.
92 Guy Bennett-Hunter, Heidegger on Philosophy and Language, 35 Philosophical Writings 5, 7 (Summer 2007).
94 Id.
meaning, of our texts or speech acts, but how we act knowing this to be our condition. What can we do when texts suffer from a multiplicity of often contradictory meanings, when the overflow of meanings renders each meaning severally, potentially without value. Derrida then argues that Heidegger’s attempt to constitute Being that is free from representations fails because it is always constituted from our representations. Is there a way to escape “terrorism” or the “global war on terror?” It would seem not. Our representations are with us always. All we can do is encourage the pause of critical reflection at every juncture is possible. The ghost of terrorism cannot be escaped. The ghosts of our philosophical inquiries are always silent specters in the room.

Language can indeed be violent. We do not escape language by refusing to use the word “terrorist,” or by defining the global war on terror as occurring in a geopolitical space. But, we do make steps in the direction of a more critically conscious view of military action. The “global war on terror” is a violent phrase specifically because it does not contain a locus. It is violence at every utterance. It demands action against the Other located everywhere. The war is global in the sense that it is equally justified everywhere at once. This is the problem with the global war on terror as language. It tells us directly that no place matters and that the war must occur across global political space. But, this is a form of violence distinct from the juridico-political violence on news reports and political agendas. It is a “natural violence,” ever-present in our rhetorical world.

Slovenian philosopher Slavoj Žižek provides an important description of the violence of language. He argues that the breakdown of the border of the Other has made us more violent toward the Other. This is not to say that we need the division between the us and other, but that when we fail to locate the Other, the Other becomes ever-present. Žižek describes the fear of the newly proximal Other, “I suspect this is a reaction to the disintegration of the symbolic walls that kept others at a proper distance.” If the enemy is closer, because we cannot locate her or him, then we will always be uneasy, always subject to fear.

96 Richard Rorty, Derrida on Language, Being, and Abnormal Philosophy, 74.11 J. PHILOSOPHY 673, 675-6 (Nov. 1977).
97 See supra note 86, at 727.
98 See supra note 96, at 677.
99 See supra note 28.
100 See supra note 96, at 678.
102 Id.
103 Slavoj Žižek (1949-) is a Slovenian continental philosopher and cultural critic who is most closely associated with his mentor French psychoanalyst Jaques Lacan. Žižek has written on everything from Christianity to cinema, violence to terrorism, and beyond. See generally Nick J. Sciullo, Žižek/Questions/Failing, 47 WILLAMETTE L. REV. 287 (2011) (discussing Žižek as a legal theorist and his ideas on terrorism and violence).
Derrida notes, “[e]very terrorist in the world claims to be responding in self-defense to a prior terrorism on the part of the state, one that simply went by other names and covered itself with all sorts of more or less credible justifications.” This simple observation highlights the fluidity of the terrorism discussion. Terrorism has come to be too close to us, it is Freud’s unruly neighbor, scary precisely because it is near us. Without geopolitics the Neighbor is always near, around every corner, always peering at us from across the lawn, sometimes behind the hedges and other times on the stoop. This then forces us to defend our Home, as our Neighbors assault us from every conceivable angle. We must protect Home at all costs. Home is the place that we construct of our singularity. The inability to conceive of a Home, makes its violent defense all that much more likely.

Language is not the cure-all that many have described it to be. Žižek suggests, indeed, that it may be language that causes us to be violent. The global war on terror violently labels a set of policies as a practice of war; it demands violence against the Other. Žižek notes, “As Hegel was already well aware, there is something violent in the symbolisation of a thing, which equals its mortification.”

Describing something as terroristic erases that act or thing and recreates it in a new language work. Describing a person as a terrorist, actually kills that individual and gives birth to a new subjectivity: the Terrorist. This is how language operates to kill, while creating. This is why language must be deconstructed so that death remains on the battlefield, not before it. In other words, death becomes a priori to war as opposed to an unfortunate circumstance of it. If we work more carefully with language, then we are far more likely to avoid the violence of our language works, to keep violence on the battlefield as opposed to in the air.

In our inability to locate terrorism or terrorists, we are experiencing language. Language makes this reality accessible. We cannot escape language, so we better attempt to use it to our advantage. Language is here to stay, but what we do with it is our decision. Language will always carry connotations, markers, definitions, and histories, but we can endeavor to change the historical reality of language to better shape our future. It makes sense for us to describe a battlefield because this language helps wrangle the language of terror. The battlefield can help us corral our unruly rhetoric and make some sense of our world. We are better able to locate both physically and psychologically what our language means, and what it could mean, when we can place it somewhere in the pantheon of our experiential knowledge.

105 GIovanna Borradori, Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida 103 (2003).
106 See supra note 104, at 59.
107 Id.
108 Id. at 61.
109 Id.
IV. The Ghost of Osama bin Laden and the World’s Haunted Castle

As regards specters or ghosts, I have hitherto heard attributed to them no intelligible property: they seem like phantoms, which no one can understand. – Baruch Spinoza, 1674

Muslims have long played an active role in Western imagination. – Agatha Koprowski, 2011

Osama bin Laden’s death has changed the characteristics of the United States response to terrorism. Where his pursuit may have justified, or at least was argued by some to justify, entrance into Afghanistan and a careless attitude toward sovereign Pakistan’s border, that justification is now absent.

Osama bin Laden was the personification of the U.S. quest against terrorism. Now he is but a specter of the Terrorist writ large. Now that he is no more, what is the justification? The decentralized network of al-Qaeda cells, which bin Laden arguably had less and less control over in the last few years, now has no figurehead to justify U.S. intervention. International law seemed to be conveniently contravened during the Global War on Terror, not to mention U.S. ideals, but it seemed to be because the U.S. was going after an individual, and individual who operated a transnational organization designed to render violence upon much of the world. Now what will the U.S. use to justify foreign intervention and contravention of international law?

Celeste Ward Gventer offers a succinct analysis of the post-bin Laden world:

The rationale for a large-scale U.S. military commitment in Afghanistan had already grown quite thin before the death of bin Laden. But now that he is gone, the spiritual leader and motive force behind the attacks on 9/11 has disappeared from the scene. And only a few hundred, if that, al-Qaeda remain in Afghanistan. And, frankly, it’s time to rethink our commitment, scale down, and start focusing on much larger problems in the American strategic landscape.

112 Marc J. Hetherington & Elizabeth Suhay, Authoritarianism, Threat, and Americans’ Support for the War on Terror, 55.3 AM. J. POLITICAL SCIENCE 546, 546 (July 2011).
The reference to a landscape is intentional. U.S. priorities and military action are seen to take place on a metaphorical landscape of political and social interactions. Bin Laden’s death has changed this dramatically. The strategic landscape has lost its predominate characteristic, the search for bin Laden as the personification of a mass injustice and unrepentant violence.

But, the specter of bin Laden is bound up with the securitizing discourse of the war on terror. Although there may be no corporeal terrorism, it now exists in our thoughts and nightmares in a way both different and profound. While the castle of our mind remains strong, the specter of bin Laden remains ever-present on the grounds.

V. Theory Meets Practice

Pillar writes, “Sound counterterrorist policy requires a long and broad perspective.” The preceding analysis is a part of this idea. The long perspective is addressed by the need to define limits to the war. Those limits may be temporal and spatial. There must be some sort of descriptive character to the war on terror that produces guiding principles and affords the opportunity to end the war at some time. Unfortunately the United States is not yet there. Definitions and understanding are fluid, the language we use to describe the global war on terror is wrought with difficulty, and the place where the war is conducted is undefined. The United States has failed to adequately grapple with this notion. It is too large, too unspecific, and too open to a self-fulfilling analysis by war hawks in the United States government.

Somewhat echoing Derrida’s nonprescriptive deconstruction analysis, Pillar goes on to note that there is no solution to terrorism, but that we may be able to manage specific types of non-state actor aggression. Pillar makes a point here that I feel is more revolutionary than he might have imagined. We simply cannot expect to solve the world’s ills. Violence does not have a cure. Terrorists, whoever they are, will not be pacified and the global war on terror is likely not to end. But, we can critically engage these issues and seek workable solutions, best practices, and new ways to think about these issues as we search for a more peaceful international community. That is not theory, but sound practice informed by sound theory. There need not be a divide between theory and practice, instead the two can work together to better understand violence on a global scale.

Pillar further notes that there is an “impossibility of winning a ‘war.’” His quotations around war are indicative of the problems I have described above. Is this a war? What defines a war? Where is the war taking place? Practitioners have just as

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114 See supra note 6, at 217.
115 Id. at 217-220.
116 Id. at 218.
much trouble with the global war on terrorism as theoreticians. This problem is our problem; it is pervasive and will continue to be an important characteristic of the United States national discourse for years to come. Until we can remove these quotations, which this article may help address, there will be continued tension and perpetual violence.

My focus on Pillar’s text, *Terrorism and U.S Foreign Policy*, also leaves me with another problem, which while addressed subtly throughout this paper has not been explicitly described. Pillar, a national security professional, in this text published by the non-partisan Brookings Institution, fails to offer any recommendations about the rhetoric of terrorism.\textsuperscript{117} For such a comprehensive and well-written text, it is shocking that there are no recommendations for a more careful analysis of rhetoric. The type of analysis contained in this article may be wordy, cumbersome even, but it can be applied to policy decisions. Rhetoric must be studied as it relates to law and national security, more so now than ever. Pillar does a decent job working with questions of definitions and aims, describing various policies and their implications, but forgets the power of words to influence the practice of policy. This is indicative of the divide between critical theory and policy that ought to be bridged. If practitioners continue to rely only on the tools of other professionals, they will remain locked in convention’s jail.

VI. Conclusion

What I have attempted to argue for is a keener appreciation of language so that we do not let it stray into a violent otherization that forces us, with backs against the wall, to act out against the Other. Our counterterrorism policy currently forces us into just such a position, by refusing to define a battlefield. This is the hollowness that W. J. T. Mitchell pointed to.\textsuperscript{118} The fight against terror is hollow, not solely because, but certainly furthered as a result of the lack of geopolitical bounds. The global war on terror occurs in rhetorical space as well as in traditional notions of physical space in such a way that we are always fearful of the Other, the Neighbor just over our shoulder. The need for a battlefield in U.S. counterterrorism policy is both practical and theoretical. It is a needed practice of the mind and of the practitioner. Through deconstruction, the global war on terror might be better understood and better practiced. Without critical thought and a desire to investigate the language that marks the realities of terror, there will be little hope for an end to the war.

\textsuperscript{117} Id. at 220-9.
\textsuperscript{118} W. J. T. Mitchell, *Picturing Terror: Derrida’s Autoimmunity*, 27 CARDozo L. REV. 913, 925 (2005) (“The idols of our time, the monumentalization of 9/11, the fetish concept of terrorism, the mythic cultural icon of immunity as “homeland security,” cannot be destroyed either. But they can be sounded, made to divulge their hollowness. They can be melted down and drunk, deconstructed, and subjected to a secular divination.” Id.).