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AMERICA'S WAR ON TERROR

*The State of the 9/11 Exception
from Bush to Obama*



JASON RALPH

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UNIVERSITY PRESS

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Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

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First Edition published in 2013

Impression: 1

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British Library Cataloguing in Publication Data

Data available

ISBN 978-0-19-965235-8

Printed by the MPG Printgroup, UK

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Preface and Acknowledgments

This project started following publication of my previous book *Defending the Society of States: Why the United States Opposes the International Criminal Court and its Vision of World Society* (Oxford: Oxford University Press, 2007). I had begun to consider the Bush administration's war on terror as part of that book but the ideas for a new project only began to crystallize in the academic year 2007–2008. Thanks to a research sabbatical from my institution, the School of Politics and International Studies, University of Leeds, I was able to accept a Visiting Researcher invitation from the University of Queensland. I would like to thank the School of Political Science and International Studies at UQ, in particular Alex Bellamy, Richard Devetak, Tim Dunne, Marianne Hanson, Seb Kaempf and Richard Shapcott, for helping get this project off the ground and for being so friendly. It is there that I wrote two of the articles that introduced the arguments this book elaborates on. I would like to thank Cambridge University Press, Taylor and Francis and Sage for permission to draw on the arguments contained in the following: Jason Ralph, 'The Laws of War and the State of the American Exception', *Review of International Studies*, Vol 35, No 3, (2009) 631–49; Jason Ralph, 'Which Cosmopolitanism? Whose Empire? Or Why the Schmittian Charge of "Liberal Imperialism" is Only Half Right', *Global Society*, Vol 23, No 3 (2009) 207–24; and Jason Ralph, 'Carl Schmitt's Theory of the Partisan and Contemporary US Practice', *Millennium: Journal of International Studies*, Vol 39 No 2 (2010) 1–20.

The book is also the product of the research grant (grant number RES-000-22-3252) awarded by the Economic and Social Research Council. This allowed me to pursue this research agenda and I would like to acknowledge their support. I wish also to thank Sally Howarth and Helen Wells for their support in the grant writing process. The grant gave me time to develop my ideas into a book length project. I wish to thank Dominica Švarc who was employed for a short while as a research assistant. Dominica's background in law helped consolidate the interdisciplinary nature of the project and her thoroughness in collecting empirical data meant I was never short of material to analyse (in fact the opposite was the case). She also helped set up the project blog. The grant also enabled travel to Washington DC where I was able to attend the American Society for International Law annual conference and discuss the issues with many individuals involved in the day-to-day discourse that helps to define US policy. In particular, I would like to thank Geneve Mantri, Sarah Mendelson, Jumana Musa, Laura Olson, Andrea Prasow, Charles Stimson, Benjamin Wittes and others for making time to talk to me.

During the period of the grant I also made presentations of many working papers. I would particularly like to thank the convenors of these panels, as well as the ISA and BISA annual conferences. Having organized a conference during this period and having served on the BISA Board of Trustees I know how much work goes into planning these events. Works like this are in many respects products of a research environment and that does not exist without the work of many dedicated individuals. The same thanks should also go to my colleagues and students at the University of Leeds. They consistently provide a friendly and constructive atmosphere in which to work. In April 2011, I was awarded a British Academy Mid-Career Fellowship (grant number MC110531). The purpose of the fellowship is to examine what American exceptionalism means for British foreign policy, in particular the foreign policies of the centre-left. I have, however, been able to use this time to put the finishing touches to this book.

I would also like to thank the anonymous reviewers of the work I published during this period. I would especially like to thank the reviewers of this book, including Kevin Jon Heller. Kevin's detailed reading of the manuscript gives me confidence that the book speaks sensibly across the disciplinary divide between International Law and International Relations. I would also like to thank Alan Craig, Jack Holland, Jean-François Drolet and Ruth Blakeley for their reading of individual chapters. The argument and interpretation of the facts are of course my own. Dominic Byatt and his colleagues at Oxford University Press have again been excellent to work with.

Finally, I would like to thank my wife Katy. She gave birth to our children during this period. That, as every new parent knows, changes everything. Except, somehow, I was able to continue what I had set out to do when I started this project in 2007. That is only because she is amazing. And I am eternally grateful.

JR October 2012

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Introduction

Following 9/11 the Bush administration argued that certain international norms did not apply to US conduct because the US faced a situation of exceptional insecurity. Its argument was underpinned first and foremost by the claim that the United States was in a state of armed conflict or 'at war' with 'a new kind of enemy'. This is important because the norms applicable to state conduct differ when a situation is understood as an 'armed conflict' or 'war'. In war, for instance, it is generally accepted that the state can kill an enemy combatant regardless of whether he is about to commit an atrocity. In peace, liberal human rights regimes expect that the state will try to arrest the terrorist before it is left with no choice but to target him with lethal force. In war, the state can prosecute an enemy combatant for certain offences in a military commission. In peace, the violent actor can expect to be tried in a civilian court. In war, the state can detain an enemy combatant without charge for the duration of the conflict. In peace, the liberal state is expected to release the detainee within a certain period or charge him with a criminal offence. Of course there is nothing strange about the United States being at war, but the Bush administration's decision to wage war against a non-state transnational network was unusual in several ways.

Firstly, previous US administrations had tended to see the al Qaeda threat through a peacetime law enforcement lens rather than an armed conflict. The Clinton administration did use military force in response to al Qaeda attacks, but these actions were generally seen as part of a policy that would 'counter' terrorism rather than wage 'war' on it.¹ Thus, when al Qaeda attacked the World Trade Center in 1993 the perpetrators were not labelled enemy combatants. They were instead treated as common criminals and prosecuted in a US federal court.² This approach to treating the terrorist violence of non-state

¹ President Clinton, 'Remarks in Martha's Vineyard, Massachusetts, on Military Action Against Terrorist Sites in Afghanistan and Sudan', 20 August 1998 at <<http://www.presidency.ucsb.edu/ws/?pid=54798&st=&st1=>>.

² Harold Hongju Koh, 'The Case against Military Commissions', *American Journal of International Law* 96 (2002) 337.

actors as a law enforcement issue tends to be consistent with the Westphalian international order that saw war as an interstate institution. This in part is because the state's monopolization of legitimate violence had been, as Hedley Bull noted, a significant means by which the anarchical society of states created international order.³ Of course, the law of non-international armed conflict recognized non-state actors as parties to war but there was a commonly held view that non-international armed conflicts were territorially based and not transnational or global. Geoffrey Corn, for instance, notes that 'during the five-plus decades between 1949 and 2001, the term "non-international" evolved to become synonymous with internal'.⁴

The war on terror was also unusual in a comparative sense. Few of America's close allies saw the fight against non-state terrorism in terms of war.⁵ The United Kingdom, for instance, had consistently denied that it was at war with the Irish Republican Army, despite the insistence of detainees that they were prisoners of war.⁶ The UK continued in this vein when, following the 7 July 2005 al Qaeda attacks, the Director of Public Prosecutions insisted that 'London is not a battlefield'.⁷ Leaders from across the community of liberal democracies have recognized that wars in territorially bracketed areas, primarily Afghanistan, are necessary to defeat al Qaeda; but rarely do their governments advocate treating all terrorist

³ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 2nd edn (Basingstoke: Palgrave Macmillan, 1995) 178. See also Charles A Jones, 'War in the Twenty-First Century: An Institution in Crisis', in Richard Little and John Williams (eds), *The Anarchical Society in a Globalized World* (Basingstoke: Palgrave Macmillan, 2006); Carl Schmitt, trans A C Goodson, *The Theory of the Partisan: A Commentary/Remark on the Concept of the Political* (Berlin: Duncker and Humbolt, 1963).

⁴ Geoffrey S Corn, 'What Law Applies to the War on Terror?', in Michael W Lewis et al (eds), *The War on Terror and the Laws of War: A Military Perspective* (Oxford: Oxford University Press, 2009) 8.

⁵ Israel's Ariel Sharon did echo Bush's statements, declaring war on terrorists on 4 December 2001, after a weekend of violence that saw twenty-six Israelis killed and 230 injured. See 'Full text of Sharon's address', BBC News, 4 December 2001 at <http://news.bbc.co.uk/1/hi/world/monitoring/media_reports/1690673.stm>. Sharon was careful not to declare war on the Palestinian Authority as this might imply some recognition of sovereign statehood. I am grateful to Alan Craig for this point. For elaboration see his 'The Struggle for Legitimacy. A Study of Military Lawyers in Israel', PhD thesis, University of Leeds, 2011. In 2006, the Supreme Court found that Israel was engaged in a 'continuous state of armed conflict' with various 'terrorist organizations' due to the 'unceasing, continuous and murderous barrage of attacks' and the armed response to these. *Public Committee Against Torture in Israel v. Israel* HCJ 769/02, para16, 14 December 2006.

⁶ 'The Government have considered it desirable in this connection to place formally on record by means of an interpretative declaration their understanding of the meaning of the term "armed conflict", which implies a high level of intensity of military operations, and their understanding of the requirements to be fulfilled by any national liberation movement which sought to invoke the protocol. Neither in Northern Ireland nor in any other part of the United Kingdom is there a situation which meets the criteria laid down for the application of either protocol.' Mr [Evan] Luard, *Hansard*, HC Deb, 14 December 1977, vol 941 cc 236–8W. Available at <http://hansard.millbanksystems.com/written_answers/1977/dec/14/war-laws-geneva-conventions>.

⁷ Clare Dyer, 'There is no war on terror', *The Guardian*, 24 January 2007.

suspects as enemy combatants.⁸ By contrast, US leaders have advocated waging a war against a transnational and globalized terrorist movement. Following 9/11, al Qaeda suspects were to be treated as enemy combatants in their own right, regardless of their location relative to a conventional battlefield and regardless of their affiliation to a particular state. For instance, the alleged 9/11 co-conspirator, Khalid Sheikh Mohammed, was detained in Pakistan and transferred to Guantánamo Bay. His enemy combatant status was based not on his participation in hostilities in Afghanistan but on the information on his computer relating to 9/11 and other hijacking plots.⁹

As well as being unusual, the US response to 9/11 was understood as being exceptional to the extent it was seen as 'exempting' itself from the normative regimes of the existing liberal order—institutions it had done so much to create.¹⁰ Insofar as the US response to 9/11 is concerned, this kind of exceptionalism manifested itself not just in its interpretation of the law of armed conflict; it also found expression in the US approach to international humanitarian law.¹¹ The Bush administration argued, for instance, that the Geneva Conventions did not apply to its war against al Qaeda because it was 'a new kind of war'.¹² It argued, for instance, that

[c]ommon article 2, which triggers the Geneva Convention provisions regulating detention conditions and procedures for trial of [prisoner of war] POWs, is limited only to declared war or armed conflict 'between two or more of the High Contracting Parties'. Al Qaeda is not a High Contracting Party. As a result the U.S. military's treatment of Al Qaeda members is not governed by the bulk of the Geneva Conventions, specifically those provisions concerning POWs.¹³

⁸ In the UK, for instance, the four men that terrorized London on 21 July 2005 with their attempt to repeat the 7 July atrocity were found guilty of conspiracy to murder by a civilian jury in a civilian court. In addition, the three men accused of being involved in the 7 July plot were also tried in a Crown court. This time the jury was dismissed having failed to reach a verdict. The trio were later acquitted in April 2009 following a retrial: BBC, 'Trio cleared over 7/7 attacks', 28 April 2009 at <<http://news.bbc.co.uk/1/hi/uk/7507842.stm>>.

⁹ Department of Defense, Office of the Administrative Review of the Detention of Enemy Combatants, Summary of Evidence for Combatant Status Review Tribunal—Muhammad, Khalid Shayk, 8 February 2007 at <<http://www.defense.gov/news/ISN10024.pdf>>.

¹⁰ On exemptionalism as a form of exceptionalism see Michael Ignatieff, 'Introduction: American Exceptionalism and Human Rights' and Harold Hongju Koh, 'America's Jekyll-and-Hyde Exceptionalism', in Michael Ignatieff (ed), *American Exceptionalism and Human Rights* (Princeton: Princeton University Press, 2005) 1–26 and 111–43.

¹¹ Ignatieff, 'Introduction', n 10 above, 4–5; Koh, 'America's 'Jekyll-and-Hyde Exceptionalism', n 10 above, 124–42.

¹² The President first used this phrase in a telephone conversation with New York Mayor Rudolph Giuliani and Governor George Pataki on 13 September 2001 the transcript of which was made publicly available. Quoted by Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (New York: Penguin Press, 2008) 45–6. See also Donald H Rumsfeld, 'A New Kind of War', *New York Times*, 27 September 2001.

¹³ Memo 4, 'Application of Treaties and Laws to al Qaeda and Taliban Detainees. Memorandum (Draft) for William J Haynes II, General Counsel, Department of Defense, from John Yoo,

For the Bush administration then, al Qaeda operatives were not civilians guilty of committing or plotting normal crimes. They were recognized as heavily *politicized* actors and therefore worthy of the title 'enemy'. They had, moreover, demonstrated the *capability* to deliver state-like levels of violence and therefore were worthy of 'combatant' status.¹⁴ Al Qaeda was not, however, and this is the significance of the above quote, an entity that had a sovereign or political *authority* to wage war. Thus, al Qaeda detainees were neither POWs nor civilians; they were 'unlawful enemy combatants'. They could be targeted even if they were not directly involved in combat or about to commit a terrorist act. They could be prosecuted in a military commission or detained for the duration of the conflict, but the Geneva Convention's 'strict limitations' on interrogation techniques did not apply.¹⁵ There were then two underlying aspects to the US response to the situation of exceptional insecurity post-9/11: the first was the insistence that the US was at 'war' with a transnational non-state network; the second was that certain aspects of the laws of war did not apply to this 'new war'. The purpose of this book is to examine whether this approach to the al Qaeda threat has outlasted the moment of profound insecurity that gave rise to it. More than a decade on from those attacks, and following a change of administration, what influence do these arguments have on American policy?

AMERICAN EXCEPTIONALISM IN THEORY

The idea that a sovereign power may act to secure the common good in moments of emergency and not seek particular permissions is found in liberal

Deputy Assistant Attorney General, and Robert J Delahunty, Special Counsel, 9 January 2002', in Karen J Greenberg and Joshua L Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005) 48. This opinion was written, as the reference suggests, as a draft memo to the Department of Defense. The same argument appeared in the actual memo which is now published as Memo 6, 'Memorandum for Alberto R Gonzales, Counsel to the President, and William J Haynes II, General Counsel of the Department of Defense, 22 January 2002, from Jay S Bybee, Assistant Attorney General, 22 January 2002', in Greenberg and Dratel (eds), *The Torture Papers*, 81–117. It then informed the President's decision not to apply the Geneva Conventions: see Memo 11, 'Humane Treatment of al Qaeda and Taliban Detainees, from President George Bush to the Vice-President et al', 7 February 2002, in Greenberg and Dratel (eds), *The Torture Papers*, 134–5.

¹⁴ See John Yoo, *War By Other Means: An Insider's Account of the War on Terror* (New York: Atlantic Monthly Press, 2006) 4. See also Deputy Secretary of Defense Paul Wolfowitz's, Interview with *Vanity Fair*, 9 May 2003: 'I know my thinking at that point was that the old approach to terrorism was not acceptable any longer. The old approach being you treat it as a law enforcement problem rather than a national security problem.'

¹⁵ Memo 7, 'Memorandum for the President, Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban, from Alberto R Gonzales, 25 January 2002', in Greenberg and Dratel (eds), *The Torture Papers*, n 13 above, 119.

theory, in particular John Locke's idea of 'prerogative power'.¹⁶ The moment of extreme emergency in this sense is 'a state of exception'. The sovereign acting in this moment by no means abandons the law. In fact the exception derives its authority from an understanding that 'it is directed at re-establishing or defending the existing order'.¹⁷ It is assumed that the laws deemed inapplicable at the moment of emergency will be restored once the crisis passes. In this respect, the exception is different from anarchy and chaos. For Carl Schmitt, however, the exception exposes the superficiality of the norm. Law cannot ever truly rule because it is always contingent on the political. The ever present possibility that 'friends' will act in expedient ways toward their 'enemies' means human relations are in a permanent state of exception.¹⁸ As Tracy Strong put it, life for the Schmittian conservative 'can never be reduced or adequately understood by a set of rules, no matter how complex . . . in the end, rule is of men and not of law—or rather that the rule of men must always existentially underlie the rule of law'.¹⁹

For Schmittian international relations theory, the permanence of the exception manifests itself through what it calls 'global linear thinking'.²⁰ Where politics and war were bracketed (i.e. restrained) inside a particular community, a state of exception or anarchy existed outside. These lines were first drawn by Papal authorities in the age of discovery and they persisted with the emergence of European society of states. Beyond Europe

the 'New World' began. At any rate European law, i.e. 'European public law', ended here. Consequently, so too did the bracketing of war achieved by the traditional European international law, meaning that here the struggle for land-appropriation knew no bounds. Beyond the line was an 'overseas' zone in which, for want of any legal limits to war, only the law of the stronger applied. . . . This freedom meant that the line set aside an area where force could be used freely and ruthlessly.²¹

Europe, in other words, had restrained violence by accepting an ethic of coexistence that emerged between states as *justus hosti*. This meant gradually

¹⁶ Iain Hampsher-Monk, *A History of Modern Political Thought: Major Political Thinkers from Hobbes to Marx* (Oxford: Blackwell Publishing, 1992) 107.

¹⁷ Oren Gross, 'The Normless and Exceptionless Exception: Carl Schmitt's Theory of Emergency Powers and the "Norm-Exception" Dichotomy', *Cardozo Law Review* 21 (1999–2000) 1825. Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge: Cambridge University Press, 2006).

¹⁸ Carl Schmitt (translation, introduction, and notes by George Schwab), *The Concept of the Political* (Chicago: University of Chicago Press, 1996).

¹⁹ Tracy Strong, 'The Sovereign and the Exception: Carl Schmitt, Politics, Theology and Leadership', foreword to Schmitt, *Political Theology* (Chicago: University of Chicago Press, 2005) xxii.

²⁰ Carl Schmitt (translated and annotated by G L Ulmen) *The Nomos of the Earth in International Law of the Jus Publicum Europaeum* (New York: Telos Press Publishing, 2003).

²¹ Carl Schmitt, *The Nomos of the Earth*, n 20 above, 94–5.

abandoning the idea that objective standards were available to resolve *justa causa* disputes among sovereigns. Wars were still fought between 'enemies' but they were limited, unlike the wars fought against non-state 'foes', which took place beyond the line demarcating *jus publicum Europaeum*.²² The ethic of coexistence inside Europe was replaced by 'the standard of civilization' that imitated the normative hierarchies of the pre-modern period. Wars on the frontier in this sense took on the unlimited character of the holy wars of a pre-Westphalian period. In these frontier wars *justa causa* was the only normative test and a willingness to observe the restraints associated with European warfare was a matter of political rather than moral or legal calculation. The exception in Schmittian thinking was therefore spatial as well as situational. War beyond the line, in other words, existed in a permanent state of exception.²³

An implication of this is that one might expect the ethic of coexistence and the bracketed character of war and politics to follow the globalization of the society of states. Yet for Schmitt and his contemporary followers this did not happen because American *liberal internationalism* inevitably redrew the lines that characterized global politics in terms of friends and enemies. Illiberal enemies became foes and were excluded from the normative regimes that otherwise restrained warfare. As a consequence, liberal wars for Schmitt could take on the unrestrained character of the holy wars of pre-Westphalian Europe and the colonial wars of the frontier. Illiberal combatants were unjust regardless of how they conducted themselves on the battlefield. Liberal combatants thus had to fight for unconditional surrender and criminalize their opponent's war aims.²⁴ So, as George Schwab put it, in presuming to fight for a just cause, 'the US may thus cease to regard its opponents as "enemies" and treat them as "foes"'.²⁵

Despite the criticism of Schmitt's international history, contemporary theorists have used the *Nomos of the Earth*, which they regard as 'a missing classic

²² On the distinction between enemy and foe 'which can best be understood by ascertaining whether certain accepted rules governing warfare are followed by combatants', see G Schwab, 'Enemy or Foe: A Conflict of Modern Politics', *Telos* 72 (1987) 195; also G L Ulmen, 'Return of the Foe', *Telos* 72 (1987) 187–93.

²³ Schmitt, *The Nomos of the Earth*, n 20 above, 126–7. On the brutality of colonial warfare in North America and its connection to Europe's holy wars, see John Grenier, *The First Way of War: American War Making on the Frontier, 1607–1814* (Cambridge: Cambridge University Press, 2004). On the different treatment of non-state enemies in frontier warfare, see Peter Maguire, *Law and War: An American Story*, (New York: Columbia University Press, 2001) 32–4. Maguire notes how 'the Sioux were not charged with violations of the customary laws of war because the US government did not consider them lawful combatants. To grant them the status of legitimate belligerents would have been to recognize their sovereignty and their inherent right to wage war.'

²⁴ Schmitt, *The Nomos of the Earth*, n 20 above. For further discussion, see Jason Ralph, 'The Laws of War and the State of the American Exception', *Review of International Studies* 35 (2009) 631–49.

²⁵ Schwab, 'Enemy or Foe', n 22 above, 201.

in IR [International Relations]', to interpret the war on terror and to explain post-9/11 policy.²⁶ Thus, Louiza Odysseos argues that 'the War on Terror... is the quintessential liberal cosmopolitan war'. While the US purports to represent and act on universal values that erase normative lines between insider and outsider, the liberal discourse of human rights, freedom and democracy promotion inevitably securitizes the criminal so that it is treated as an enemy, and then draws lines between enemies and foes, excluding the latter from regimes that apply to the former. So,

those who use the discourse of 'humanity' politically designate themselves as arbiters of 'humanity', drawing a line between who is human and who is in-human, who is good and who is evil, who is 'freedom-loving' and who is 'freedom-hating', to borrow from the vocabulary of US foreign policy since the terrorist attacks of 11 September 2001.²⁷

From this perspective, the US response to 9/11 is not unusual because liberal wars are always 'exceptional'. Thus, Odysseos writes that the war on terror

is an exceedingly exemplary manifestation of the paradox of liberal modernity and war: of the occurrence of ever more violent types of war within the very attempt to fight wars which would end 'war' as such. Moreover, it is an example of how the cosmopolitan order's emphasis on the erasure of geopolitical lines through universal humanity fails not only to end war, but even to bracket and limit it, causing not its humanisation but its intensification and dehumanisation.²⁸

The claim therefore is that the Bush administration's argument that international humanitarian law did not apply to the new kind of war against al Qaeda stems, at least from the Schmittian perspective, from the logic of liberal internationalism. This suggests that the state of the post-9/11 exception has less to do with the intensity of the al Qaeda threat and more to do with the nature of American liberal internationalism. This book contests this claim

²⁶ Louiza Odysseos and Fabio Petito, 'Introduction: The International Political Thought of Carl Schmitt', in Louiza Odysseos and Fabio Petito (eds), *The International Political Thought of Carl Schmitt. Terror, Liberal War and the Crisis of Global Order* (London and New York: Routledge, 2007) 2. For others who saw the relevance of Schmitt, see William E Scheuerman, 'Carl Schmitt and the Road to Abu Ghraib', *Constellations* 13 (2006) 109–23; and Sanford Levinson, 'Constitutional Norms in a State of Permanent Emergency', *Georgia Law Review* 40 (2006) 706; and 'Preserving Constitutional Norms in Times of Permanent Emergencies', *Constellations* 13 (2006) 59. For the criticism of Schmitt's history, see Martti Koskeniemi, 'International Law as Political Theology. How to Read *Nomos der Erde*', *Constellations* 11 (2004) 492–511; William Scheuerman, 'International Law as Historical Myth', *Constellations* 11 (2004) 537–50; Jason Ralph, 'The Laws of War and the State of the American Exception', *Review of International Studies* 35 (2009) 631–49.

²⁷ Louiza Odysseos, 'Crossing the Line? Carl Schmitt on the "spaceless universalism" of cosmopolitanism and the War on Terror' in Louiza Odysseos and Fabio Petito (eds), *The International Political Thought of Carl Schmitt. Terror, Liberal War and the Crisis of Global Order* (London and New York: Routledge, 2007) 126.

²⁸ Odysseos, 'Crossing the Line?', n 27 above, 137.

theoretically and empirically. The remainder of this section addresses the theoretical concerns and opens up the possibility of an alternative liberal approach to the terrorist threat, while the final sections of this chapter summarize the empirical evidence used to marshal the central argument, which is that liberal ideas were in fact a source of opposition to the war on terror and in certain respects acted as a political counterweight to the Bush administration's policy.

The Schmittian claim that the war on terror and the post-9/11 exception is embedded in the logic of liberal internationalism rests on a particular reading of liberalism and its influence on US foreign policy. It describes what is better identified as a neoconservative or 'hard' Wilsonian approach to foreign policy.²⁹ This simultaneously embraces and rejects liberal ideas. On the one hand, neoconservatism embraces liberal democratic peace theory and is committed to what Benjamin Miller called an 'offensive liberal' strategy of regime change and democracy promotion.³⁰ On the other, the neoconservative commitment to democracy promotion is a reaction against liberalism. It stems not from a reading of Kant or the republicanism of the founding fathers (see below). It stems instead from a fear that without a national purpose to bind its citizens, American society will descend into nihilistic chaos and will be unable to secure itself in an international system that is always characterized by power competition.³¹ 'Democracy promotion' is a cause that provides that sense of purpose because it informs a 'heroic' conception of national identity. What William Kristol and Robert Kagan called a true 'conservatism of the heart' should 'emphasize both personal and national responsibility, relish the

²⁹ See Ralph, 'The Laws of War', n 26 above, 643–8. For the use of the term 'hard Wilsonianism' see Max Boot, 'Neocons', *Foreign Policy*, 140 (2004) 20–8. Others have distinguished similar differences within Wilsonian liberal internationalism. Yuen Foong Khong, for instance, prefers 'muscular Wilsonianism': Yuen Foong Khong, 'Neoconservatism and the Domestic Sources of American Foreign Policy', in Steve Smith, Amelia Hadfield and Tim Dunne (eds), *Foreign Policy: Theories, Actors, Cases* (Oxford: Oxford University Press, 2007); Pierre Hassner, 'The United States: The Empire of Force or the Force of Empire?', *Chaillot Papers No 54* (Paris: Institute for Security Studies, 2002); and John Mearsheimer, 'Hans Morgenthau and the Iraq War: Realism versus Neoconservatism', 18 May 2005, at <http://www.opendemocracy.net/democracy-americanpower/morgenthau_2522.jsp>; Daniel H Deudney, 'One-legged Wilsonianism', in *Bounding Power: Republican Security Theory From the Polls to the Global Village* (Princeton and Oxford: Princeton University Press, 2007) 186.

³⁰ Benjamin Miller, 'Democracy Promotion: Offensive Liberalism versus the Rest (of IR Theory)', *Millennium Journal of International Studies* 38 (2010) 561–91. On the overlap between neoconservatism and what he calls a 'neoliberal' commitment to democracy promotion, see Tony Smith, *A Pact with the Devil: Washington's Bid for World Supremacy and the Betrayal of the American Promise* (New York and London: Routledge, 2007). In a similar vein, see Inderjeet Parmar, 'Foreign Policy Fusion: Liberal Interventionists, Conservative Nationalists and Neoconservatives—the New Alliance Dominating the US Foreign Policy Establishment', *International Politics* 46 (2009) 177–209.

³¹ For a view that neoconservatism is a form of neoclassical realism that appeals to liberal values only to mobilize state power, see Jonathan D Caverley, 'Power and Democratic Weakness: Neoconservatism and Neoclassical Realism', *Millennium Journal of International Studies* 38 (2010) 593–614.

opportunity for national engagement, embrace the possibility of national greatness, and restore a sense of the heroic'.³² This in turn works to rescue American citizens from what is seen as the corrosive influence of liberal individualism.

The idea that national 'myths' of this kind can inspire a corrupted citizenry is often traced to the philosophy of Leo Strauss.³³ It is found more recently in Kristol and Kagan's call for a 'Neo-Reaganite' foreign policy. For them, an ideological foreign policy backed by massive increases in defence spending (i.e. material superiority) creates 'an elevated patriotism' and serves the task of 'preparing and inspiring the nation to embrace the role of global leadership'. The 'remoralization of America at home', they write, 'requires the remoralization of American foreign policy'.³⁴ To mobilize this kind of patriotism, Kristol and Kagan attack the exemplarism of the republican tradition. The possibility that history is moving in a democratic direction and that all the United States has to do is provide a good example for others to follow is dismissed as naive and irresponsible. Because 'America has the capacity to contain or destroy many of the world's monsters, most of which can be found without much searching... the responsibility for the peace and security of the international order rests so heavily on America's shoulders'. It is 'in practice a policy of cowardice and dishonor' to do otherwise.³⁵ It is, moreover, symptomatic of the wider crisis of liberal modernity. This is found for instance in the work of

³² William Kristol and Robert Kagan, 'Towards a Neo-Reaganite Foreign Policy', *Foreign Affairs* 75 (1996), 32. 'A true "conservatism of the heart" ought to emphasize both personal and national responsibility, relish the opportunity for national engagement, embrace the possibility of national greatness, and restore a sense of the heroic'.

³³ On the Straussian idea of the 'myth', see Shadia B Drury, *Leo Strauss and the American Right* (London: Macmillan Press, 1999) 11–19. For a sympathetic view, which stresses 'a sort of political responsibility' for protecting the city 'from the dissolving and irresponsible action of philosophy, which questions and challenges received opinion', see Catherine Zuckert and Michael Zuckert, *The Truth about Leo Strauss* (Chicago: University of Chicago Press, 2006) 132. For Strauss's influence on neoconservatives like Irving Kristol and the need for foreign policy to provide nationally inspiring myths, see Michael C Williams, 'What is the National Interest? The Neoconservative Challenge in IR Theory', *European Journal of International Relations* 11 (2005) 307–37; and 'Morgenthau Now: Neoconservatism, National Greatness and Realism', in Michael Williams (ed), *Realism Reconsidered. The Legacy of Hans Morgenthau in International Relations* (Oxford: Oxford University Press, 2007) 216–40. The Straussian influence is just one part of the neoconservative movement. As Tony Smith notes, 'it is quite possible to subscribe to these concepts without ever having been exposed to Strauss': *A Pact with the Devil*, n 30 above, 29; see also Williams, 'What is the National Interest?', 309. For useful histories, see John Ehrman, *The Rise of Neoconservatism: Intellectuals and Foreign Affairs, 1945–1994* (New Haven, CT: Yale University Press, 1995); and Stefan Halper and Jonathan Clarke, *America Alone: The Neo-Conservatives and the Global Order* (Cambridge: Cambridge University Press, 2004).

³⁴ Kristol and Kagan, 'Towards a Neo-Reaganite Foreign Policy', n 32 above, 31. As Michael Williams puts it: 'Attitudes toward the national interest are as much a concern of domestic political virtue as a dimension of foreign policy. Indeed the two are seen as inseparable.' Williams, 'What is the National Interest?', n 33 above, 321.

³⁵ Kristol and Kagan, 'Towards a Neo-Reaganite Foreign Policy' n 32 above, 31.

Francis Fukuyama who warned that the liberal triumph in the Cold War could create what Nietzsche called 'men without chests'. What gave life meaning was not simply the acknowledgement and respect of individual rights. Recognition involved the satisfaction of *thymos*, which is

the side of man that deliberately seeks out struggle and sacrifice, that tries to prove that the self is something better and higher than a fearful, needy, instinctual, physically determined animal. Not all men feel this pull, but for those who do, *thymos* cannot be satisfied by the knowledge that they are merely equal in worth to all other human beings.³⁶

Only by seeing relations with the non-liberal world through the 'friend-enemy' lens could post-Cold War liberals escape the moral torpor of modern life.³⁷

Neoconservatism thus embraces the democracy promotion side of the liberal internationalist agenda, but it also adopts a Schmittian-type critique of liberal internationalism. This insists, first and foremost, that sovereignty lies with the state and that the idea of a global international society is superficial because it lacks the 'concrete' bonds to inspire action in defence of liberal values.³⁸ It is not only superficial, it is also dangerous. This is because it plays directly into the hands of enemies; enemies who happen to understand politics

³⁶ Francis Fukuyama, *The End of History and the Last Man* (New York: Maxwell Macmillan, 1992) 304.

³⁷ As David Luban notes, Straussians shared the Schmittian view that it would not be desirable 'to expunge deadly friend-enemy dyads from the world' even if it were possible. 'It would shrink the meaningfulness of human life to mere entertainment; life would at most be interesting, but never meaningful.' David Luban, 'Carl Schmitt and the Critique of Lawfare', Georgetown Public Law and Legal Theory Research paper no 11-33, 28 March 2011 at <<http://ssrn.com/abstract=1797904>, 11>. To make this connection, Luban cites Strauss's notes on Schmitt's thesis in the 2007 expanded edition of *The Concept of the Political* (Chicago: University of Chicago Press, 2007). The differences are important to note, however. While Straussians shared Schmitt's criticism of liberalism for its apparent dismissal of politics they did not celebrate the autonomy of politics. As Shadia Drury put it, Straussians politics had to be 'wedded to the most serious questions about right and wrong, good and evil, truth and falsehood' if it was 'to rescue humanity from the triviality of liberalism'. Without this, 'politics cannot succeed in accomplishing its task of uniting people and making them willing to lay down their lives for the collective'. By linking faith and politics, Drury concludes, 'Strauss makes the latter more dangerous and more bloody', which is exactly Schmitt's criticism of liberal internationalism. Drury, *Leo Strauss*, n 33 above, 92-3. Likewise, Alan Wolfe reminds us that when Strauss noted 'that "natural right must be mutable in order to be able to cope with the inventiveness of evil", he left considerable room for those inventive in finding ways to justify the suspension of agreed-upon constitutional procedures to combat evil'. Neoconservatives, he concludes, 'should not be included in the Schmitt camp, but a propensity toward Schmittism can nonetheless be found among them'. Alan Wolfe, *The Future of Liberalism* (New York: Vintage Books, 2010) 139. On the moralization of Schmitt's concept of the political, and the manner in which neoconservatism ultimately ends up 'collapsing this fundamental political distinction into a universal ethics that purports to establish the moral authority of US sovereignty over the procedural universalisms of international law and institutions', see Jean-François Drolet, *American Neoconservatism: The Politics and Culture of a Reactionary Idealism* (London: Hurst, 2011) 182-5.

³⁸ For the neoconservative critique of global liberal governance, see Jean-François Drolet, *American Neoconservatism*, n 37 above, 161-87.