

## ROUNDTABLE—WAR, FORCE, AND REVOLUTION

The roundtable was convened at 10:45 a.m., Friday, March 31, by its chair, Anne Orford of the University of Melbourne, who introduced the panelists: Philip Allott of the University of Cambridge; Nathaniel Berman of Brooklyn Law School; Ruth Buchanan of the University of British Columbia; B. S. Chimni of the WB National University of Juridical Sciences, India; China Miéville, an independent researcher from London; and Vasuki Nesiah of the International Center for Transitional Justice.

*Revolution (like terrorism) appears to represent a moment of extraordinary force which stands outside or before the law. Yet international law seems nonetheless to have a secret sympathy with the romance of revolution, indicated perhaps by the presence of self-determination as a legal principle and later a right, or by the new enthusiasm for intervention to bring about regime change. Many commentators argue that we are living through an era in which the relationship between violence, force and the grounds of law is undergoing its own revolution.*

*After these panelists were introduced, each was asked to present a two-minute statement or manifesto setting out his/her understanding of the relations between war, force, revolution and international law. Over the remainder of the session, the panelists had a conversation with each other about these themes. In the final part of the session, the audience was invited to join in this conversation. This is an edited transcript of the conversation between the panelists. It should be noted that this is a record of unscripted remarks made in the course of an agora-style exchange, and as a result the comments included in this transcript reflect the experimental format of the event and are speculative in nature.*

### **ANNE ORFORD:**

“We are living in revolutionary times.” So said Philip Allott throughout the seminar on his work published last year in the *European Journal of International Law*,<sup>1</sup> and this theme has emerged out of many of the lectures, panels, and conversations to date at this American Society for International Law (ASIL) Centennial Meeting. In the opening session, the Secretary of State, Condoleezza Rice, told us that the United States is engaged in a new kind of conflict, a new kind of war, and that international lawyers must recognize that this is a different era to the one in which the Geneva Conventions were negotiated. Professor Chimni in his Grotius Lecture told us that we are living through a time of profound transformation, in which we are moving from a world of sovereign states to one in which a nascent global state is being constructed. Grotius also lived through a time of transition from a feudal to a bourgeois order, and grasped this sense of transition to structure an international law for the times. Professor Chimni called on us to understand that the Grotian task faces us all today. And in yesterday’s session on “The Laws of Force and the Turn to Evidence,” Tom Franck declared that in the U.S. policy formulations on the use of force, we are witnessing the most radical shift in U.S. foreign policy since isolationism.

At today’s roundtable, a wonderful panel of speakers have come here to discuss this relationship between war, force, revolution and international law.

<sup>1</sup> 16 Eur. J. Int’l L. 255 (2005).

**NATHANIEL BERMAN:**

This roundtable is on a topic that is perhaps unconventional for the American Society, but perhaps it's not that incidental to the work of the Society, and I wanted to start out with the following fact. In 1906, which is the year, as you may know, that the American Society was founded, another event happened, which is that Lenin, an author known as a theorist of revolution, wrote a very long essay on guerrilla warfare. These happened around the same exact moment. And I wanted to start by reflecting on what that coincidence might mean, and to offer in my two-minute opener two possibilities. One possibility is that the international law of the twentieth century, in its institutionalized form, might be said to arise as a response to some perceived revolutionary challenge. This is what I might call the phantasmatic relationship between law and revolution. Ten years before the Society was founded, before Lenin wrote his essay, Friedrich de Martens, the famous Russian international lawyer, wrote "It is not hard to stir up the people to oppose the enemy, but it is not easy to direct the aroused forces and to oblige it to subordinate itself to the orders of government." And so the founding of the American Society at the same time as Lenin was writing a theory of revolution might be viewed as some kind of response to that perceived disintegrating threat.

There's another possible relationship here between international law and twentieth-century revolution, and that is what I would call a mimetic relationship. And by that I mean the following: that the theory of guerrilla warfare as laid out by Lenin and people who wrote and practiced revolution in his wake had the same or a very similarly structured idea about the discipline of guerrilla forces, the need to discipline them, to organize them, to keep them within structures very similarly structured to the law of guerrilla warfare as codified in the *Geneva Conventions* of 1949. So if Lenin said in 1906, "Evil does not exist in guerrilla warfare but only in unorganized, undisciplined and non-party activities," so guerrilla warfare to be legitimate has to be disciplined and organized and must belong to a party. Those are almost paraphrases, actually they are almost quotes, from Article 4 of the Geneva Conventions of 1949. In order for guerrillas to be legitimate combatants, they have to be disciplined, they have to be under command, they have to belong to a party to a conflict, although of course the word "party" might mean two different things there. However, it's the idea that there are these disintegrating forces that can be legitimate if they are under discipline. And that's what I would call a certain kind of a mimetic relationship between international law in its codified form and some of the central theories of revolution as they've emerged in the twentieth century. And I think I've kept within my two minutes.

**PHILIP ALLOTT:**

Good heavens, is it as short as that?

I always feel coming to the American Society like a visitor from Planet Earth to Planet America. We live worlds apart, and my message on this occasion is in three points if I've got time even for those.

The first is that the party's over. We're coming to an end of something, it's the beginning of the end, it's the end times. The human world is going down the drain. Humanist civilization is coming to an end. And certainly the Hobbesian, Vattelien worldview has come to an end. So the question for us really is what to do in such a situation, and that's what I want to discuss this morning. The problem arises whether to call it a revolutionary situation or not. A society for me is physics plus metaphysics. Physics is the structure and the system of society, metaphysics is the ideas that a society has about itself, the story it tells itself. Law is the bridge between those two things. Law provides the structures and systems but law

enacts the metaphysics, and there is a continuous interaction between them. Therefore, in a revolutionary situation, there seems to be something to have gone wrong in the relationship between the physics and the metaphysics, the Marxist structure, and the superstructure. That I think is what's happening at the moment. The fictional state as opposed to the previous feudal monarchy is the wonderful idea of the depersonalized state, but nevertheless a state that in some senses has human characteristics, including a will that is embodied in the law. That worldview was the brilliant achievement of Hobbes. And then Vattel did the wonderful trick of turning that inside out and creating the fictional international state with some personal, human characteristics, including a will, self-consciousness, and self-interest. And then thereafter the two social processes, diplomacy and war, took over as the way this new fictional system would operate.

So that's now finished, for reasons that we know. The internal and the external are now not separate realities. The internal and the external, the national and the international, are now completely flowing into each other.

The second thing is how we respond to that, particularly as lawyers, because lawyers then have this key position between the physics and the metaphysics. Practicing lawyers, it's hopeless; they are agents, obviously, of reaction and counter-revolution, so we exclude them. Academics we exclude because they are parasites; academics are parasites on the body politic. Social Darwinism has invented the universities as a way of marginalizing tens of thousands of intelligent people so that they don't interfere with the real processes of real life. So academics we can put on one side.

The only two possible candidates for doing anything about it are, first, the middle class. As Aristotle said, the middle class actually is the revolutionary class, it has been in Britain since the thirteenth century. All our revolutions, of which we've had one every century, have been caused by the middle class. So I would say, middle classes of the world unite, you've nothing to lose but your complacency. And the final group is intellectuals, committed intellectuals. Committed intellectuals are different from other intellectuals in that they believe their job is to think in order to change the world. Very few of us left. Those are the two classes in which I rest my hope of a real international revolution.

**ANNE ORFORD:**

Could the parasites and the counter-revolutionaries please leave the room now?

**RUTH BUCHANAN:**

Ordinarily when we think of revolution, we understand it as standing in an exceptional relation to law, although I want to put that in question in my two minutes. To say that we are living in revolutionary times, just to break it down a bit more, is to suggest that there's something exceptional about our times and, moreover, that the way that our times are exceptional is the thing that we need to see as defining them. So there's a number of different ways to make the claim. One way that it's made is to suggest that it has something to do with globalization, that the interconnections that cut across state boundaries and bind us together are quantitatively so much more significant now that a qualitative shift in the nature of global society has occurred or is about to occur. As a scholar of globalization rather than of international law, I have often found myself in the position of cautioning constraint on the part of those who would overstate the case for it. So I think that identifying what is revolutionary about our times with globalization overstates the case by ascribing both teleology and agency to what is at best an imprecise and loosely descriptive term for a collection of contradictory and essentially contested processes. And further I think that emphasizing

these tendencies toward globalization as the exceptional thing about our present moment also has the effect of relegating the crucial role of the nation–state in maintaining our current order into the background, and that’s one of the things that is at stake here.

My second point is on the relationship between law and violence, because before we think about the relationship between law and revolution we need to understand how we think about law and violence. In contrast with the common sense that opposes these two things, I want to draw into the conversation alternative philosophical traditions that would posit violence as internal to law, and that’s a philosophical tradition that comes from Walter Benjamin, Derrida, Agamben, among others. The argument goes, in a grossly abbreviated form, law is violence not only in its abstract sense of having the capacity to do violence, as in the context of enforcement, or in some historical sense, that the violence predates the legal order or is necessary to founding in history somewhere a legal order, but that law is violent in a more immediate, ongoing, and perhaps even performative sense. To invoke Peter Fitzpatrick, we can understand it as deriving precisely from the failure of modern law’s search for foundations that the ongoing work of law-preserving violence becomes part of the very nature of law. What I’ve tried to do in my own work is to illuminate how this might operate by reference to the way that the frontier functions in the genre of the Western. Of course the genre of the Western is obsessed with law and violence, and it has also for that reason drawn the interest of many legal scholars, so I’m happy to elaborate on that in our discussion.

But what does this mean, this internal relationship between law and violence, for how we think about international law and revolution? Well, if we don’t necessarily buy into the traditional account of the rule of law as totally replacing or displacing violence as the means by which relationships are regulated, and further if we think of the sovereign exception as in some ways taking up or constituting the space of law itself, it seems to follow that it’s no longer possible to think of revolution as external to law, but perhaps internal to it. This would lead us to an immanent rather than transcendent conception of revolution, as we might find in the work of scholars like Hardt and Negri.

To conclude, I wanted to say a word about how I saw the role of academics and of scholars. I don’t think that any of us can locate ourselves outside of the institutions and practices that make up our social and legal worlds. And so, to think about how we can change things, we really need to think about how it is that we can work on ourselves as historically situated individuals who nonetheless can experiment within that, understanding that historical situation, with practices of freedom that might allow us to think and act differently.

**VASUKI NESIAH:**

I wanted to situate my comments and approach to this panel in two traditions, two approaches to revolution in postcolonial scholarship and activism, one that I call nostalgia and one that I call utopia. The utopian I also like to call a sort of retro-futurism, and that’s in a sense where my own affinities lie. Let me first describe each of them very briefly. Nostalgia looks to an earlier moment in which self-determination discourse, anti-colonial movements and postcolonial nation-building gave energy to revolutionary passions, and it laments the passing of that age; whereas in contrast utopia looks to the roads not taken in those very paths. In its critique of nationalism, in its immersion in the dystopias of postcolonial nation-building, in pointing to the alternative political visions, strategies, political choices, legal regimes that were eschewed—alternative paths with counter-hegemonic potential—it focuses on the contingency of the present. And that is a revolutionary function of utopia,

that constant pressing for alternative political imaginaries. In that sense it is a vision about the future and not the past. And where in a sense nostalgia laments the violence in law, the utopic is interested in interrogating the violence in law. I'll stop there.

**B. S. CHIMNI:**

Although I'm still trying to grapple with the subject, what I'll do in my two minutes is to follow what Ruth said and try to see what the meaning of revolution here is and what are the revolutionary times that we are speaking about, speaking to.

As I understood it, any revolution traditionally had two features. One, that it took place within nation-states. So, whether it is 1789 or whether it is 1917, all the revolutions took place within nation-states. The second distinctive feature was that the agency of revolution was always peoples' movements. In accordance with both these criteria, it is very difficult to categorize the ongoing globalization as some kind of revolutionary change. And if we were to classify the ongoing transformation that is being brought about by global capital as a revolution, then we would have to think about alternative vocabularies in which we can advance the original intent of the peoples' revolutionary movements. The terminological confusion also extends further from my own perspective in terms of where you locate the decolonization process. Whenever you talk about revolution, you never talk about decolonization as being a revolution. From my own standpoint, I think that it was a very important revolutionary moment. And if that was a revolutionary moment, then when we talk about the existing globalization revolution, we need to understand what the impact of this is on the decolonization process itself, because from that particular vantage point this may appear to be more a counter-revolution than revolution.

A word on the relationship between law, force, and revolution. My own view is that what we are seeing for the last five centuries is the continuous use of violence, of force, to unify the global economy. If you look at the history of capitalism from the sixteenth century onwards violence has been an absolute, integral feature of it. Violence is indeed an integral aspect of imperialism. And, what you're witnessing today is not startlingly different from what the third-world peoples and others have been subjected to in the last five centuries. So my own sense is that from this perspective there is no revolution out there, there is simply continuity where some find, where some discover change. I'll stop there.

**CHINA MIÉVILLE:**

I have five points:

The stunting of social imagination is visible in a widespread inability to imagine even the possibility of fundamental social change, and the thing called revolution is therefore deemed meaningless, dangerous, or risible unless it is steered (with a kind of crippled telos) away from any carnival of the oppressed and toward client-hood for the hegemon, in which case it can also be branded. It can be an orange, or a cedar, or a tulip revolution.

If exploitation and violent coercion, which at the international level are imperialism, aren't contingent to modern capitalism, but systemic to it, then it is that totality that is fundamentally inimical to human need. And if that's the case, then in an inversion of the usual canard, it's not the revolutionary, but the reformist, who is utopian.

The practice of law cannot be the ultimate justification for theory, for legal theory. The task of jurisprudence is to *understand* law, not to be a handmaiden for practice which, after all, that legal theory might refuse even to backhandedly legitimate.

Law's specificity, the legal form itself, lies I think in the clash of abstract, formally equal, though of course politically unequal, juridical subjects. This is an expression of the conflictual

kind of social agency predicated on property under conditions of universal commodification—capitalism.

The desire to marshal international law to a fundamentally progressive or emancipatory project, without wanting in any way to belittle what I would think of as stepping stone victories along the way, but the desire to marshal it to a *fundamentally* progressive or emancipatory project is chimerical to the extent that the forms of that law are forms thrown up by and inextricable from the oppressive totality. The violence and power politics that the progressive jurist decries are inescapably the violence and power politics of juridical forms. Not that law allows or legitimates, let alone causes, such violence or politics, it is an expression of it. It *is* it. And therefore the human necessity of revolution might mean the end of law.

**ANNE ORFORD:**

I'd like now to begin to draw out some of the points of disagreement, or agreement, between the panelists, and to start with the claim that we're living in revolutionary times, or in the words that Philip used today, the party's over. I'm interested to know what we make of this claim. Are we living through a transformation, a transition, a different era to any that's gone before? Or is there nothing exceptional about our times? Do we see instead continuity, as Chimni suggested this morning, between this moment and earlier legal moments? And what are the stakes of speaking or of not speaking in terms of the exceptional or the revolutionary? And I'd like to start by asking Philip if he would open by defending the claim that we're living in revolutionary times, or that the party's over.

**PHILIP ALLOTT:**

You can't discuss that without discussing the use of the word "is." In other words, there's no answer to the question, "Are we living in revolutionary times?" It is a choice, of characterization of a time, to characterize it as revolutionary. And why one does that is to create some effect in consciousness. I think it's a terribly interesting point—why don't we call decolonization revolution? It is a profound transformation of society, very often involving violence. I take that point very strongly. But in our own societies, for example, if you define law, as I sometimes do, as a system for enforcing inequality, for enforcing injustice, then my idea of a conservative revolution or a middle class revolution is really to change the consciousness of those who benefit in the existing distribution of property in the world which is enforced by international law—to get them to realize that their property situation is threatened, above all the United States. The United States should realize that its property situation in the world, not only factually but psychically as well, is enormously under threat. So as I say you can't use "is" about it, but you may choose to identify this with the hundreds of revolutions that have gone before, on the ground that you need a change of consciousness either to defend what is, or to reimagine it, which I've tried to do in my career, reimagine the situation.

**ANNE ORFORD:**

Nathaniel, my sense is that you are someone who says, "There's nothing revolutionary about this moment."

**NATHANIEL BERMAN:**

No, I certainly didn't intend that. What I meant to point to was, in line with some of the things that other people have said, the way in which the fantasy of revolution, or the fantasy of an exceptional time, or the drive to reveal the violence underlying law, that move towards uncovering violence over the last century or more, has always been accompanied by some move to channel it and discipline it. In other words, whether we're living in revolutionary times or not, I think Philip's certainly right that it's not simply a description but a choice, and the choice is often an attempt to invent a new kind of discipline. I find a new kind of violence, and I'm going to invent a new kind of discipline to channel it in a better way. The construction, the projection of the violence in order to invent some new disciplinary mechanism was true both of the Russian Revolution, and also of decolonization. The project of a lot of the colonizing powers, for about half a century before decolonization, was to put in place a set of disciplinary structures so that when decolonization would happen it would be contained in some way. Again the invention of a new disciplinary channeling mechanism comes in tandem with a projection of a new force. It's not so much that I think we are not living in revolutionary times, as how we imagine that violence and what are we putting in its place. And I'm just cautioning about this certain kind of mirroring relationship between the old and the new.

**ANNE ORFORD:**

Chimni, do you want to add anything to that? In that I felt that in the Grotius lecture you seemed to be saying: this is a period of radical transformation. We're moving from the nation-state to a nascent global state. But then in your comments a moment ago you suggested well, in fact, there is continuity if we look from a different perspective.

**B. S. CHIMNI:**

Yes, I see that there is an apparent inconsistency when I make at once both those claims, simultaneously. Therefore, if I were to speak of present times as revolutionary times, then I would talk of them in terms of it being revolutionary imperialism, because it is revolutionary times in the sense that there is a structural transformation that is taking place in front of our eyes, and to that extent we cannot but accept the fact that things are changing substantially, but at the same time there is an element of continuity that binds the entire history from the sixteenth century onwards, which is the history of imperialism itself. So we need to coin a new phrase, and one possibility, one candidate would be "revolutionary imperialism," because that to me, to my mind, captures both the dimensions of the times that we are living in. There is a structural transformation taking place, but this transformation is coming about through global capital, and not through the movement of peoples, and not taking place within nation-states. In that context we need to reformulate what the agency of progressive social transformation would be, apart from international lawyers of course, which would respond to revolutionary imperialism. And I think that in most forums that I go to, we never ever reach that point of agency, as to who are the agents of this progressive social transformation that we are seeking, or will help shape our response to revolutionary imperialism.

**CHINA MIÉVILLE:**

One of the problems I have with this claim that we live in revolutionary times is that it seems to me to run the risk of either falling into platitude, which is simply that every time has its own specificity, and therefore it's different from the time that came before it, and it therefore changed and therefore you could call that a very, very little revolution; or it runs

the risk of theoretical bombast and overstating its case. The problem with the latter at the moment, I think, specifically within the international legal context, is that it allows right and left to agree on an agenda which actually obscures many truths of power. So for example, much of the mainstream left will stress how there has been a neo-conservative revolution manifested by an upsurge of violently aggressive unilateralism, a complete denigration of international law, the complete ignoring of its European partners and so on. What I would say is that in fact the American ruling elite are, and have always been, much more split and nuanced and variegated on these questions, as have the European elite, than that would suggest; and that this discourse of the European liberal left creates a kind of simplistic bogeyman. For every Richard Perle, saying that international law is dead, yay-hay, there is for example a John Yoo, very eruditely defending American imperial interests in international legal terms. You can see this repeatedly within the last twenty years—indeed much longer than that—during the invasion of Grenada, for example. There are other continuities: France's and Germany's opposition to the Iraq war, for example, have been grossly overstated for their own domestic consumption. France performed a carefully self-limited opposition. Germany provided intelligence. So this discourse of revolution—from the right it can legitimate certain things, such as Guantánamo, which I'm not prepared to legitimate; and from the left, it lets European social democracy and some apparatchiks of American power equally off the hook. So it can be a dangerous discourse I think.

**VASUKI NESIAH:**

It seems to me that the worry about calling something a revolutionary time was true of many other revolutionary times as well. And certainly at the moment of decolonization too, the claims of both the right and the left in much of the colonial world that decolonization represented a revolution is certainly part of what is contested today by Subaltern Studies and a range of other scholars as in fact a mirage, as an overstatement, as something that precisely culled aspirations for change. It claims much more than it actually delivers—the promise of revolution is a particularly problematic one, or the use of revolution in any particular case.

**RUTH BUCHANAN:**

It seems to me that we can only decide this question of whether our times are revolutionary or not after the fact, in the sense that we never know until afterwards whether violence is going to challenge or in fact be contained by the legal order. To relate this to decolonization, one aspect of the imperial international order is its remarkable capacity to adopt and continue to contain violent challenges that would otherwise disrupt it.

**PHILIP ALLOTT:**

I want to dissent from one point, namely that if one talks about globalization as a sort of imperialism, that would obscure to people the fact that our societies, so-called Western societies, are also being profoundly transformed. And particularly in America—we're very familiar with this in Europe—in America, in the United States one has to tell people that the structure of government of the world is now fundamentally changing. National government—the Americans don't know this or realize it, or are unwilling to see it—national government is becoming residual. That's to say that the sources of power are now out of control. My view is that we're now moving into a posthumanist world in which everything is going to be controlled by what I call autonomic systems, i.e., self-regulating systems, systems that no human beings control. Capitalism is such a system, science and technology

is such a system, religion is such a system, the internet is such a system. These are all vast systems that now nobody controls, and all our old theories of society are completely irrelevant to them. Democratic theories and so on are completely irrelevant. We're moving into a world that none of the old structures can control and so transcendentalism, the thing I'm so keen on, that there should be values beyond all these systems, is being internalized. Capitalism internalizes values—wealth, efficiency, and all the rest of it. It internalizes them. Religion internalizes values. Therefore, the possibility of judging any of these systems transcendently is disappearing. That's why I say humanist civilization is disappearing, that we're soon going to be all controlled. We in Europe have self-imperialized in the European Union, that is a system of self-imperializing, a removal of the focus of government from our states. So this is a profound transformation, and one has to keep saying it in America. America will be the last place to recognize this.

**B. S. CHIMNI:**

I think I agree with the empirical content of your description, which is that Western nation-states themselves are finding themselves somewhat not in control of their "life," policies and strategies. So what is specific to the current phase of imperialism is that it is not about one state dominating another state as it did in the era of colonialism. To my mind the specificity of the current stage of imperialism is that you have a global ruling class that is emerging, and because it is a global ruling elite every nation-state tends to feel a sense of loss. So I think we need to debate the specificities about the current phase that compel us to describe it as revolutionary and the social forces driving that change.

**ANNE ORFORD:**

I'd like to bring international law in at this point and ask a question about the relationship between international law and twentieth century revolution and war. I was struck—I'm not sure how many other people here went to the "Adjudicating Iraq" panel this morning—but I was struck by the beauty of the language there and by the reassuring civility through which war became part of a communicative exchange. I did find it quite a lovely exchange to watch. That seemed to be in stark contrast to the Dada exhibit to which I went yesterday at the National Gallery, which I thought was a powerful reminder of a different response to war, in which language is seen to have been completely destroyed. I'm interested in the fact that international law retains a faith in the word and also in the state in a way that, say, Lenin didn't in 1917. So I wondered how, then, the panelists thought we should understand the relationship between international law and force and revolution? Is international law in its current incarnation revolutionary? Is there a potential, a revolutionary potential inherent within international law? Does international law organize violence in a way that shares something with the approach of revolutionaries, as Nathaniel suggested in his opening comments? Or is international law a counter-revolutionary system, as has also been suggested? China, would you like to start?

**CHINA MIÉVILLE:**

I think my particular take on the potential revolutionary applicability of international law is probably fairly clear from my initial statement. The only thing I would say is about violence. There's a lot more to be said on this, but on this specific issue of the relationship between international law, revolution and violence—to a certain extent I think it's a truism that law is predicated on violence, and we know this from Derrida, Agamben and in different iterations back through legal theory to Jhering and so on. Law is predicated on violence—

it has to be. And therefore I think the simplistic counter-position of “law stops violence” doesn’t work. It particularly doesn’t work in the international arena in which the litigants are also the judges and the executioners. The ultimate decider of law is the more powerful coercive agent. Whether it comes to actual blows or not, that’s there, embedded. Now the thing with revolutionary violence; I think one of the reasons that Lenin is such a bogeyman in a way that theorists such as Gramsci and even Trotsky to a certain extent are not, one of the things that makes Lenin so much more difficult to domesticate, is that he insisted on the right of the oppressed to realpolitik, just like the ruling class. He said, we also have the right and necessity to use coercion, and that means violence. *But* Nathaniel’s quote about the guerrilla violence is very, very important for several reasons, one of them being that what Lenin talks about is the *restraining* of violence. You see the same thing for example in the Paris Commune of 1871 when hostages were taken: this was a genuine revolution, and revolution is among other things an upsurge of social resentment and anger, and people wanted to execute hostages out of a kind of class rage. And it was the revolutionaries who were attempting to stop them. It was the members of the First International, like Eugène Varlin, who were saying no, this is not what this is for. The point being that a revolution that is channeled, by a party, in a systematic revolutionary project, as opposed simply to an explosion of social rage, is actually much more to do with *restraining* violence, than law, which is predicated on it. I would invert if you like the clichéd opposition.

**VASUKI NESIAH:**

In a sense, if what we see as revolutionary is perhaps in a different tradition of Emma Goldman or an anarchist tradition then the dominant left tradition of revolution is directly in opposition to that in its desire to constrain violence, or perhaps to constrain not just violence but also to constrain our political imagination, our aspirations for change.

**NATHANIEL BERMAN:**

One thing I want to throw on the table here is the way in which, if we’re talking about the relationship between law, in fact normative discourse in general, and violence, the clearest example would be the war or the struggle over the meaning of September 11th. There have been a number of different attempts to give meaning to it. One of things they all have in common is that in a way, pardon the expression, September 11th was a godsend, so to speak, in the creation of new meaning. And I want to come back to what Philip said a few minutes ago about the anxiety that we’re no longer governed by anything, it’s all these autonomous systems that have escaped from our control. That was one of the creeping anxieties of the nineties, and then September 11th happened and people from all over the spectrum thought, “Aha, now we can create new meaning.” So the first meaning was that the United States said, “Well, we’re going to engage in a global war on terror.” And that’s a new justification for a new kind of U.S. power. One of the interesting things of course is the displacement of the global war on terror to the regional war against Iraq. It almost seemed like it was too much even for those guys in the White House, that it was almost too anxiety-provoking to have a war on terror. They had to turn it into something more familiar, which is to invade an actual nation-state. Bin Laden’s speeches after September 11th also were a bid to divide the world, to create two different groups. He gave this long speech after September 11th in which he talks about the whole world as divided up into those people who applauded September 11th and are horrified by the invasion of Afghanistan, and those people who are horrified by September 11th and applauded the invasion of Afghanistan. And it was an attempt to give a meaning structure to the world. From all over the political spectrum, the

response to September 11th seemed to be, “Aha, now we can invent meaning,” whereas before we were so anxious about all these autonomous systems that seemed to be meaningless. So, in that sense the violence or the upsurge of violence, the appearance of violence on the world stage, was a boon to the creation of meaning, and I think that’s an important dimension to what violence means, or to how violence means, how violence creates meaning. And in that sense it’s no accident that one of the main forms of protest violence over the last ten years or so in the antiglobalization protests and other kinds of protest is this so-called anarchist violence that everyone seems to be against (and I’m sure I’d be against it too if something was thrown in my direction), but why is there this anarchist violence? Well, it’s an attempt by some people, maybe misguided, maybe jerks, whatever, to say, we’re going to engage in something that can’t be recuperated. There seems to be some desire to say, I will not allow my violence to be recuperated, I’m going to do something insane to prevent it from being recuperated. We saw it in Seattle, we’re seeing it in Paris today, and I think that’s no accident. And just to throw out another name here, I think Sartre in the sixties actually anticipated a lot of this—when he was in his most proviolence phase, he talked about a kind of violence against a faceless system. People attacked him and said you’re just preaching anarchism and nihilism, but in a way he got something. There was something he was on to, he was trying to prevent this recuperation of revolution or violence or protest, recuperation by some disciplinary system. And I think that the struggle over defining September 11th was a carnival of definition, of people trying to recuperate it, for left wing, for right wing, for Islam, for Christianity, whatever, and everybody sort of enjoyed their September 11th in that way.

**PHILIP ALLOTT:**

I want to pick up two points. One: I think one should be very slow to found law on the idea of violence. I think certainly from an Anglo-American view, the Weberian view that in the end law is based on violence is extremely undesirable. The better view we would say is the Humean view that government is in the end based on opinion, and unless government can get the support of the opinion of the people who are subject to the law, it will never succeed. You can’t use violence to enforce the whole of the law—it has to be accepted. So that for me means that we have to work on opinion, what I call the metaphysics of the whole situation.

Picking up your point about the debate on Iraq, I absolutely agree with you, Anne. It makes me absolutely sick to hear lawyers discussing what is the meaning of the comma in the middle of operative paragraph 2 of something or other. It’s terrible. I have myself suggested that we abolish the whole law of war. It’s revolting that there should be law about war, which is the mass murder of human beings. It’s revolting. I also believe we should abolish the law of human rights, which is a terrible development, which has detranscendentalized the highest human values into a game for lawyers. It’s terrible. So I’m a great believer in philosophical violence, that’s to say causing ideas to change rather strongly. And the Iraq war, to say why one has supported the Iraq war, I see that as a sort of revolutionary step by the United States, essentially by the United States middle class or at least the U.S. administration acting on behalf of a notional American middle class, trying to defend its interests in the world; and I have enormous sympathy with that. And the British government supporting it—we’ve had revolutions, as I’ve said, in Britain every century since the thirteenth century, all of them middle-class revolutions. And the British government perceived, I believe, although of course they didn’t know that they’d perceived it, that the middle class world

was enormously under threat, given the threat to oil, and Islam and such. So that it was a revolutionary act by the American government and the British government, which they themselves didn't understand.

**ANNE ORFORD:**

Given that we're here, amongst other reasons, to mark 100 years of the ASIL, I wonder what would happen if we added the word America to the list of names in the title of this roundtable—so war, force, revolution, America? This came up for me in the debate on the resolution yesterday before the general meeting, where the question of the insertion of the proper name "United States of America" became quite a sticking point in that resolution.<sup>2</sup> In the opening session, we heard the Secretary of State, as well, pointing a number of times to U.S. exceptionalism. At one point in her remarks, she endorsed the view of the U.S. President that the advance of freedom is the story of our time, and suggested that the United States has a role to play as the facilitator of democracy in the world; and in her exchange with Judge Higgins she pointed out that the United States has a very different culture to Europe and that, with all due respect, she said, we broke from Europe, and we have a different history, so a kind of revolutionary moment. And Philip Alston in his response to Chimni's Grotius lecture urged us to indict the United States of America rather than some other kind of more amorphous global system. So I wondered whether there's an American tradition to thinking about the relationship between war, force, revolution and international law, and if there is such a tradition, is it one that we might find helpful, or inspiring, or troubling . . . or unremarkable?

**RUTH BUCHANAN:**

I can't speak to the American tradition because I stand outside of it but I would say that America does stand in an exceptional relation to international law. It's a relation that arises from and is in a sense authorized by the very form of international law itself. It's the form that we've already discussed. It's a form of imperialism that basically contains in it the contradiction that we have in our current order, in which we can talk about some states as more equal than others. So with this notion of the relationship between international law and imperialism in mind, a notion that posits developing states as on the path to becoming more like exemplary states, I can now talk about the place of the United States. I won't make the claim that there is a particular American approach to the rule of law that could be contrasted with some other European or Canadian approach, but the United States stands as, or seeks to occupy, this place of the exemplary nation-state or universal nation—the ultimate sovereign who occupies this space between law and non-law. And to illuminate that very briefly, I would draw on a telling formulation from Robert Kagan's book, *Of Paradise and Power*, in which he says that the United States mans the walls of the European Kantian paradise but cannot walk through the gate because it has to stay outside to deal with the Saddams and the Ayatollahs.<sup>3</sup>

**B. S. CHIMNI:**

My own tentative understanding of all this is again that we should not read too much into American exceptionalism. To my mind, historically American exceptionalism is following

<sup>2</sup> The text of the resolution as adopted is available at <<http://www.asil.org/events/am06/resolutions.html>>.

<sup>3</sup> ROBERT KAGAN, *OF PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER* (2003), as cited in Ruth Buchanan and Sundhya Pahuja, *Law, Nation and (Imagined) National Communities*, 8 *LAW TEXT CULTURE* 137, 148 (2004).

what I would call British exceptionalism of the nineteenth century. In this case we have a revolution in the literal sense of the term. We've actually reverted back to the law relating to the use of force that was prevalent in the nineteenth century, and this reversal is to my mind very necessary to achieve the unification that is so revolutionary about our times. I see an element of continuity here. Anyone who has read Sir John Stuart Mills' essay on nonintervention will find all the justifications that are being offered today for all the "humanitarian" interventions that are taking place. So in that sense some of these old texts are remarkable; all you need to do is read them again and you find the elements of all that is being published in some of our best law journals today.

**VASUKI NESIAH:**

Speaking of the American tradition, we may need to revolutionize what counts as "the American tradition" and we may find that in fact the enemy is us, that in fact speaking as an American is then speaking as the American dream animating everything from the suburbs not only within the borders of the United States but also the suburbs of Capetown, of Bombay, of Nairobi, of a whole range of other contexts. The model I would lean toward is not of American domination but of Empire, à la Hardt and Negri. In a sense we are also participants in that, on both sides, in our revolutionary moments and in our counter-revolutionary moments.

**PHILIP ALLOTT:**

I think one should be slow to discuss the fantasies of other nations, but the Americans are a special case in the sense that one has to discuss their fantasies. What saddens me about American exceptionalism is that the generosity of it seems to have disappeared. American exceptionalism contains some beautiful ideas, as there have been very many American internationalists who had very fine ideas. In 1906, there were lots of Americans who had extremely progressive and positive views about the international system. The regrettable thing now I think is the impoverishment of that idea of America—it was a generous idea. American idealism is the other side of American isolationism, and America keeps oscillating between isolationism and idealism or internationalism. It's a generous idea—that the world should be like America in the best sense of American ideals—that was a very fine idea. But it's gotten reduced to this rather ridiculous notion called democracy, that they're going round the world imposing on people, not realizing themselves that America is infinitely more than these simplistic ideas of democracy. Although Justice Kennedy yesterday in a wonderful speech said that no, we're infinitely more than that. And I wish that they would have a crusade of another kind, which is an idealistic crusade. The danger of crusades of course is that they lead to counter-crusades by other people who have opposite ideas.

**CHINA MIÉVILLE:**

I want to disagree very strongly with the notion that the opposite of American isolationism is American idealism. And I think, to go back to what I was saying before about the problem of the parodic sense of American isolationism that is being pushed a lot—I'm not suggesting that Philip was saying this, but certainly some people on the left in Europe are pushing it—is how much it leaves out. It is, frankly, a disgrace, the lack of discussion of Haiti in international law, and in progressive international law, for example. It is an absolute disgrace. And what's happened in Haiti is an extraordinary situation brought about in part very directly through pushing the notion of liberal American democratic law. Among the first people the American organizations started to use to overturn Aristide in Haiti were certain sections of the Haitian judiciary—they said because the judiciary is not independent "like it is in the

United States.” Haiti is not a democracy, Haiti is a dictatorship. And then what we have is a model of *multilateral* intervention. And that is why the left is so uncomfortable even thinking about Haiti: because what you have in Haiti is a vicious imperial intervention, a reign of terror in the slums of Port-au-Prince, a reign of terror carried out by the United Nations at the behest of sweatshop owners under the Group of 184, pushed by America, Canada, France, in particular, and other countries as well. Now this is the hard case for the left in international law. Iraq is easy. We have it easy on the left in international law because Richard Perle makes it easy for us, the idiot pronouncements of Rumsfeld and so on make it easy for us because they say “We have no time for international law.” They say explicitly, department of defense briefings link people who turn to international law to terrorism. This is explicit, I have the references in front of me.<sup>4</sup> This is easy for us: we can say “Oh, so shocking, so shocking.” But you know, an opposite of that kind of American isolationism is this—Haiti, the mass murders in Haiti by the blue helmets, backed by the Americans: that is so-called American idealism. This is multilateralism as terror.

**ANNE ORFORD:**

And a word from what I’ve just realized is our token American . . .

**NATHANIEL BERMAN:**

I clearly agree with China about Haiti. I had the opportunity to be in Haiti as an election monitor and Port-au-Prince was a new world order playground where only blue-helmet type people were allowed to be riding around in their vehicles and there I was, as a force for good, you know, because of being an American. And I was struck by that experience of the disproportion between our power, all the people who were riding around in the white vehicles, and the people who we were administering, even just as these neutral election observers.

But I wanted to come back to Anne’s original comment that the refusal yesterday to name the United States in the resolution passed by the American Society was really quite fascinating in a way. The resolution, for people who read it, was quite tautological. It was to say all states are bound by those treaties that they might have ratified, if any, and will observe the law if applicable under the circumstances that might be relevant. It was quite a tautological resolution. Nonetheless, the refusal to name the United States, or the argument about it, really had to do with the response to a situation of extreme American violence in the world that we’re living in, on any number of planes. And what would be the response to that? The response as adopted by the Society was, well, let’s reconsolidate in response to American violence, this would be a good opportunity to reassert the transnational liberal elite, *bien pensant* class, and actually try to construct such a class, precisely through not naming it. We liberal Americans, we’re with you the French, and with you the British, and with all states and we’re all together on this, and it’s an opportunity for reconsolidation of that liberal elite class. Again, extreme American violence is giving rise to that opportunity. Those who wanted to insert the United States into the resolution, tautological as it was, were attempting to say no, actually, the meaning of this extreme American violence is something else. There is actually a need to combat it or to consolidate a different set of alliances in response, in a situation of that kind of violence. And when China invites us to think about Haiti, which I

<sup>4</sup> “Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism.” U.S. Department of Defense, *5 The National Defense Strategy of the United States of America* (2005), available at <<http://www.defenselink.mil/news/Mar2005/d20050318nds2.pdf>>.

think is a very important reference here, there have been a variety of kinds of interventions in Haiti during the last century, some of them overtly unilateral American occupation for many years in the early part of the century to the new multilateral interventions and the different modalities of that and the different constructions of the world, these are different things, even though at the end of the day for the Haitians maybe the end result was a depressingly similar set of sufferings. But they are different kinds of ways of constructing world power in responding to perceived violence and in projecting violence in response to it.

**ANNE ORFORD:**

I wanted to finish this part of the session by returning to the conference theme, “A Just World Under Law” and exploring the relationship between justice, law, and revolution. Or to give this a slightly different character, to ask what is the responsibility or the task of the jurist in revolutionary times, or perhaps in *these* revolutionary times? One take on this might be that of Morgenthau’s position, that “to struggle for absolute justice [is] to lose both relative justice and peace. Such an attitude may be proper for moralists or revolutionaries, but not for the jurist.”<sup>5</sup> To give a slightly contemporary flavor, Tom Franck’s objection to the invasion of Iraq is “because the process by which law is now being made has not been approved by the international community . . . Now what is being proposed is an entirely new system for making law, dictatorship by the political strength of a single nation . . . This is a totally unacceptable, immoral way of bringing about radical reform in the law.”<sup>6</sup> And yet, on the other hand, there are many for whom to abolish the possibility of suspending the law is to abolish politics. Just to return again to the opening evening, the Secretary of State said we should be careful not to stretch the Geneva Conventions and risk destroying them—we should suspend the law to preserve it. And in his Grotius lecture, Chimni said that faced with an emerging global state, and this is my interpretation, we should work for a bourgeois revolution at the global level. So, my question then to close this part of the session is, should we as international lawyers, as critics, as political actors, as academics, be for a suspension of the law, perhaps even for redemptive violence in the name of justice, or is this to abandon our proper role? Chimni, perhaps we might start with you?

**B. S. CHIMNI:**

That’s a huge question, but my own take on this is that a key task of international lawyers is what I would call demystification of global commodity fetishism. The effect of global commodity fetishism is the veiling of inhumane social relations and the commodification of the idea of good life. The problem is not simply corporate profit but a conception of good life that disregards the humanity of producers and consumers.

One thing that is happening is that earlier, within nation-states, you had inhumane social relations being veiled, being masked, yet they were physically visible to the rest of the society. What is happening now with globalization of production is that one part of the world cannot even physically see inhumane social relations or human suffering. I’ll just give a very small example of how international lawyers are trying to deal with it. Their response to this is that every item of clothing that is marketed in first world supermarkets must now carry a label as to whether it is manufactured by child labor or not, which is a response to

<sup>5</sup> MARTTI KOSKENNIEMI, *THE GENTLE CIVILISER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* 458 (2001).

<sup>6</sup> Remarks of Thomas M. Franck, *Review Essay Symposium. Thinking Another World: “This Cannot Be How the World Was Meant to Be,”* 16 *EUR. J. INT’L L.* 255, 261–62 (2005).

the distancing of some parts of the world from human suffering elsewhere. So that is one problem, the distance from human suffering. The second is the colonizing of the meaning of the good life itself. This is again taking place through the globalization process, through the marketing of certain images and ideas about good life. Most of our international economic laws can be analyzed from this perspective.

In short, I think we need to address problems at a more fundamental level. This will help offer some resolution to these problems. Because I can't believe that there are people who would not be moved by human suffering, if only it can be made "visible" to policy-makers and ordinary citizens in dominant states. And if it can be made more visible—and I am not entirely sure how international law can make it visible—we will have performed an important task. Of course, on another plane I think it is the task of international lawyers to assist the global movement for global justice in whatever ways they can, in whatever locations that they occupy.

**PHILIP ALLOTT:**

There's a peculiar problem in Marxism when Marx suggested that there can be two conceptions of justice in a society. That's always been thought to be an incoherence in Marxism. How can there be a revolutionary sense of justice if the ideas of justice are determined by the ruling class? That's a famous problem of Marxism. But I think he was absolutely right. Societies can contain two ideas of justice at the same time and I take Professor Chimni's point very, very strongly that what we're really talking about is a new debate about the good life. The world needs a new debate about the good life, an ancient idea, and that includes the idea of discussing what justice in a transcendental sense means, and reminding people that what is going on in these countries full of terrible, terrible suffering, unspeakable suffering, is an affront to universal ideas of justice, even if the law, and particularly international law, blesses and rationalizes these shocking conditions. So my short answer again is that international lawyers should have nothing to do with higher things, in my view. Not their job. Just as it's not the job of the Enrons and Shells and BPs of the world to think about higher things. There was a wonderful moment in London recently when it was reported that people in the city of London, the sort of Wall Street of London, had started going to church at lunch time. And the head of the Confederation of British Industry, which is the directors of all the companies, was asked, is this an interesting phenomenon? He said, it's completely ridiculous, we have a job to make money for our shareholders and spiritual things have got nothing whatsoever to do with the job of the City of London. And that's my view about international lawyers. The law only exists in the context of ideas that are far beyond law and lawyers, and only when we reconstruct that universal idea, particularly of justice, will international law be a respectable profession at all.

**RUTH BUCHANAN:**

I agree with what's been said, but I would add that in trying to move towards the possibility of thinking differently, we also have to take into account the dimension of social practices. So we also need to think about how we can not just sit in our offices and think differently about the books that we read, but also go out into the world and interact differently with other human beings, and build different kinds, different forms, of social engagement. And in my work on global social movements I see one potential site of this in the World Social Forum, where there is an explicit disavowal of hierarchical forms of social organization, an embrace of decentralized network forms, and also an attempt to engage across difference,

without reference to a universalized ideal of humanity, but a more polycentric notion of how one engages across and between very different understandings, different concerns in different social positions.

**ANNE ORFORD:**

And so we've come to the end of our time, the party's over—I'd like to invite you all to join with me in thanking the participants.