***Shut the Fuck Up, Suarez!* Necroethics and Rights in a World of Shit**

**Mario Prost (Keele University)**

Films often resonate in deep and fruitful ways with complex philosophical questions. In their chapters, Fałkowska-Clarys, Koutroulis and Tabbal provide a rich and engaging analysis of films as an artistic medium for thinking about a dominant theme of contemporary legal philosophy: the subversion of law under extreme conditions.[[1]](#footnote-1) Specifically, they examine how films have historically expressed and represented the tension between law, military violence and human rights in war and counter-terrorist operations. The two chapters adopt a similar approach, drawing a typology of films based on how they interpret and resolve this tension, often to the benefit of military necessity and national security. They draw similar conclusions too: whilst films (principally Western and predominantly American) often acknowledge the presence of legal constraints on the use of force, they typically justify their setting aside on utilitarian grounds or in favour of competing normative principles under some Agambenian state of exception argument.[[2]](#footnote-2) Films, they argue, don't generally take rights very seriously, often depicting them as expendable or at any rate impractical and ill-suited to govern warfare.

In what follows, I want to complicate the chapters' main argument by critically examining some of their underlying assumptions about films, law and warfare. I start by raising some preliminary questions about what films do and difficulties involved in interpreting and categorizing cinematic works. I move on to argue that, rather than advocating the setting aside of humanitarian principles in the name of some vitally important ends, many of the films reviewed by the chapters are perhaps best understood as depicting the moral dilemmas raised by the implementation of rights in extreme conditions and reflecting on some of the profound shifts which have recently occurred in the law and ethics of warfare. I conclude with some final thoughts on the role of films in de-sanitizing war in a context where law often serves the opposite end.

***Film as resource and film as source: Cinema as the 'ultimate pervert art'***

Films can be approached from a variety of theoretical perspectives. In their chapters, Fałkowska-Clarys, Koutroulis and Tabbal look at films primarily as a narrative resource. Films are used to tell stories about law, war, terror and interrogate the meaning of specific doctrines. They provide plotlines and examples that are mobilised to think through conceptual arguments, ideas and questions. In using films in this way, the authors follow a rich philosophical tradition. Scholars have long used movies as support for giving abstract concepts or theories concrete meaning, from the question of 'doing the right thing' in *Force Majeure* (2014) to genetic determinism in *Gattaca* (1997) or the nature of the self in *Memento* (2000).[[3]](#footnote-3)

However, law and films intertwine is deeper ways too and are engaged in complex relations of reciprocal insight and influence. Films - and popular culture more generally - play an essential role in forming our affective landscapes. They provide the signs, images, stories, metaphors, plotlines and characters with which we make sense of our lives and the world around us. As such, they create a framework from which we view particular situations and a set of justifications or reasons for particular course of action. In the introduction to Sophie Fiennes' *The Pervert's Guide to Cinema* (2006), Slavoj Žižek asserts that 'cinema is the ultimate pervert art. It doesn't give you what you desire, it tells you how to desire'. For Žižek, there is nothing natural about our desires. Our desires are artificial constructs and, in the social construction of our desires, films have a potent presence. Among other things, this imaginative potency shapes our demands, expectations, values and beliefs as socio-legal agents, what we may call our collective legal consciousness.[[4]](#footnote-4)

The influence of the hit TV series *24* on public debates regarding torture in the war on terror offers a paradigmatic example of the role of film in shaping collective legal consciousness. The hugely popular show, which premiered a few weeks only after the 9/11 attacks, follows maverick counterterrorist agent Jack Bauer as he runs against the clock to foil various terrorist plots against America. Bauer is brave, single-minded, ruthless and devoted. He's also not afraid to get his hands dirty.[[5]](#footnote-5) Amid a background of ticking bombs and imminent catastrophes, Bauer and his colleagues from the CTU (Counter-Terrorist Unit) are constantly forced to make grim choices that pit civil liberties against security. When confronted with a choice between affording an uncooperative suspect due process or using torture to extract information, Bauer invariably chooses coercion. He snaps people's fingers, shoots them in the kneecap, electrocutes them with lamp wires. In doing so, Bauer does not discriminate: CTU colleagues and supervisors, ex-girlfriends and relatives are all tortured at one point in the show. Critically, the imposition of torture invariably and almost instantaneously forces suspects to speak truthfully about what they know. In *24*, the torture victims talk in a timely and accurate manner, divulging crucial information before the bomb goes off. They do not pass out, vomit on themselves or have psychotic breaks. Neither do they tell lies that waste time. Torture is practically infallible: it works, where orthodox legal methods have failed.

As is now well documented, *24* has had a significant role in framing public debates that erupted after the Abu Ghraib prison scandal and news of the US administration using 'enhanced interrogation techniques' in Guantanamo. The show has been especially influential in popularizing certain hypotheticals such as the 'ticking time bomb scenario' - a mind experiment with practically no real world relevance - and in rationalising the 'by any means necessary' approach to counterterrorism.[[6]](#footnote-6) Public officials, presidential candidates, leading intellectuals and academics have cited Jack Bauer as a pertinent exemplar for thinking about the permissibility of torture.[[7]](#footnote-7) Justice Scalia of the US Supreme Court has defended torture by appealing to Bauer to justify the use of extreme measures in extreme circumstances.[[8]](#footnote-8) In the run-up to the 2008 Presidential elections, Bill Clinton told NBC’s *Meet the Press* that, whilst America should oppose torture as a matter of policy and honour the Geneva Conventions, when confronted with the proverbial ticking bomb and terrorist in hand one ought to look to vigilante agents like Jack Bauer to do whatever it takes to keep the country safe and be prepared to live with the consequences.[[9]](#footnote-9) Philippe Sands has described how the series gave people in Guantanamo lots of ideas and made it more difficult for people objecting to torture to stop it.[[10]](#footnote-10) One commentator has even remarked that the lawyers designing interrogation techniques during the Bush administration ‘cited Jack Bauer more frequently than the Constitution’.[[11]](#footnote-11)

It is hard to quantify the impact of a show like *24* with any degree of certainty. Jack Bauer is as much a symptom as he is a source of America’s anxieties about terror and the need to resort to the dark side to defeat it. But one thing is clear: popular culture is not merely descriptive of formal systems, concepts or categories. As ideological texts, films have the power to construct socio-legal narratives that frame our understanding of what is good, possible or necessary in given situations.[[12]](#footnote-12) Like any frame, once accepted they become hard to notice or question, especially in contexts where films provide backstage access to places or practices of which viewers have no first-hand experience. Understood within the framework of legal pluralism, popular culture therefore participates in the day to day making (or unmaking) of the law. In a world where law is produced not just formally but also discursively, through the interpretation and choices of multiple actors, films are not merely fictional resources that we can mobilize to tell stories about law. By influencing how thinkers think, how judges judge, and how interrogators interrogate, they become a source of law.[[13]](#footnote-13)

***Interpreting Film: Shining a Light on Dark Deeds?***

In their chapters, Fałkowska-Clarys, Koutroulis and Tabbal elaborate cinematic typologies based on how films interpret specific legal norms and the broader question of how law ought to respond to situations of emergency. In other words, they categorize films on the basis of their jurisprudential content. This approach raises important methodological questions, some of which are readily acknowledged by the authors, but others of which warrant some further consideration. In examining these questions, I want to focus here on the possibility of assigning fixed or stable meanings to films.

What is the content of a film? This seemingly simple question represents one of the most vexatious problems of film theory and often requires looking past the film’s surface.[[14]](#footnote-14) Take the example of *Zero Dark Thirty* (2012), which Tabbal lists among a series of films justifying the use of torture in extreme circumstances and ‘leaning clearly against the respect for human rights and in favour of national security’.[[15]](#footnote-15) Kathryn Bigelow’s film about the hunt of Osama Bin Laden follows Maya – a fiercely driven and socially awkward CIA agent – in her relentless pursuit of America’s public enemy number one. The film has drawn heavy criticism for its alleged pro-torture stance and for creating the false impression that ‘enhanced interrogation techniques’ played a key role in finding Bin Laden.[[16]](#footnote-16) Much of the criticism has been directed at the film’s gruelling first act, a graphic depiction of the black-site interrogation of Ammar, a detainee with suspected links to Bin Laden’s entourage. In the lengthy scene, Ammar is strung up by ropes, waterboarded, deprived of sleep and forced into a small wooden box. Ammar provides unreliable information about a suspected attack in Saudi Arabia but supplies clues about Bin Laden’s personal courier which later prove valuable in locating his whereabouts.

Is *Zero Dark Thirty* an apology for torture? Does it provide a jurisprudential justification for the state of exception? These questions have given rise to widely different interpretations. On one level, a crucial piece of information in Maya’s investigation is elicited from a prisoner who has been tortured. Yet the actionable intelligence is not provided during the opening torture scene but later, over a relaxed meal and after Ammar is tricked into believing that he has already spoken while delirious from lack of sleep. As noted by Blistène, this scene can be understood simultaneously as showing the ineffectiveness of torture and opening the door to its redemption.[[17]](#footnote-17) Intelligence is gathered through rapport-based interrogation and ruse, rather than coercion, but Ammar’s cooperation happens on the back on intense sleep-deprivation and physical abuse. This ambiguity is later carried throughout the entire film, which is filled with false starts and failed leads. Torture is an integral part of the chain of events leading to Bin Laden’s ultimate downfall. Yet important breakthroughs happen through painstaking intelligence work, bribing informants, surveillance, and cooperation with foreign intelligence agencies.

Bigelow and her screenwriter Mark Boal have come under intense pressure over the deep ambiguity of the film. In defending it, they have insisted that the practices shown in the film tally what the CIA has admitted to in an important report released in 2009 documenting the interrogation techniques used in its black-sites. Torture was an integral part of US counter-terrorism policy and practices. As such, it is a central part of the story that could therefore not be ignored. The film, they argue, rejects cheap moralism and shows counterterrorism as it is, raising difficult questions about the ethical cost of the war on terror.[[18]](#footnote-18) More importantly perhaps, they have claimed that the decision to show the use of torture is not meant to be understood as advocating it, either morally or strategically. Depiction is not endorsement, claims Bigelow, and if it was no artist could every portray inhumane practices: 'confusing depiction with endorsement is the first step towards chilling any American artist’s ability and right to shine a light on dark deeds, especially when those deeds are cloaked in layers of secrecy and government obfuscation'.[[19]](#footnote-19)

Whether Bigelow’s authorial intent to depict torture without endorsing it removes the film’s moral ambiguities is of course debatable. As noted by Fałkowska-Clarys and Koutroulis, a central question is whether a film such as Zero Dark Thirty can *ever* be neutral. Žižek, in a scathing critique of the film and of Bigelow’s defense, raises precisely this point. To depict an act so profoundly shattering as torture in a neutral light, he argues, necessarily amounts to a form of endorsement, whatever the director’s intention might have been.[[20]](#footnote-20) The film normalizes torture not by showing it but because of *how* it shows it, i.e. without moral context or traumatic impact on those practicing it. Here, Žižek draws our attention back to the film’s narrative structure and specifically to the character of Dan, Maya’s CIA partner who tortures Ammar in the film’s opening act. Dan passes casually from torture to friendliness once the victim is broken, seemingly unaffected by the barbaric acts he has just perpetrated. Later in the film, Dan trades his blood-stained gloves for a desk job at Langley. To Žižek, there is something deeply disturbing in how Dan ‘changes from a torturer in jeans to a well-dressed Washington bureaucrat’.[[21]](#footnote-21) This, he argues, is normalisation at its purest and most efficient.

What the above demonstrates is that films like *Zero Dark Thirty* defy easy categorization and invite multiple interpretations.[[22]](#footnote-22) Films are often sites of intense epistemological struggle and rarely have a single fixed meaning. This renders attempts to typologize films based on their normative content (for or against torture; narrow or extensive interpretation of the principle of distinction etc.) highly unstable and contingent upon basic assumptions regarding the film’s narrative structure, aesthetic form, substance, context, authorial intent, and how these elements interact within a given socio-economic context.

***Split-second ethics in the fog of war: 'They're gonna fry you if you're wrong'***

There is difficulty in treating films as the product of a single, consistent creative intelligence putting forward a coherent set of ideas or arguments. More often than not, films raise issues for audiences to think about, frequently coming across as ambivalent and drawing attention to complex emotions, dilemmas, contradictions rather than articulating a fixed view. Films often work as thought experiments do, i.e. as devices of the imagination used to investigate the nature of things. Most of the films analysed by Fałkowska-Clarys and Koutroulis in their chapter on the principle of distinction are perhaps best understood in this way. Rather than taking a firm position on the principle itself, films typically draw the viewer's attention to the deep ethical complexities and conundrums - the 'moral and legal quagmire'[[23]](#footnote-23) - that people making targeting decisions in war are confronted with. The thought-experimentesque nature of films is particularly pronounced in some of the works reviewed by the authors. In *Eye in the Sky* (2015), for instance, the film uses clever narrative devices - such as a miniature beetle-like surveillance drone allowing the mission operators to establish that the house occupants are suicide bombers about to cause extensive loss of civilian life - to turn some factual judgments normally covered by a veil of ignorance into clear-cut determinations, a characteristic feature of thought experiments such as trolley cases or ticking bomb scenarios.[[24]](#footnote-24)

Of course, combatants who make life or death determinations on the battlefield rarely possess the sort of certainty of knowledge found in *Eye in the Sky* or the luxury to ponder the finer points of ethics and law involved in their decisions. In *Eye in the Sky*, the ethical dilemma is posed by the certainty that striking the terrorists will, without the shadow of a doubt, lead to the death of an innocent little girl selling bread outside of the targeted house. The moral quagmire arises out of what is known to be true: the identity of the targets, their unquestionable wickedness, and the absolute innocence of the civilian passerby. However, the film simplifies and dogmatises what is often a far more complex reality, where knowledge is imperfect and combatants have little time for deliberation. The problems posed by uncertainty of knowledge are especially acute in counter-insurgency situations where warfare is not fought in pitched battles between regular armies and where a clear line of demarcation between combatants and civilians can be difficult to establish. As noted by Fałkowska-Clarys and Koutroulis, many films on the Iraq and Afghanistan wars touch on the inherent difficulty of making split-second ethical judgments in the fog of war, i.e. in the absence of certainty about one's enemies, one's friends and the consequences of one's actions.

*American Sniper* (2014) - which has been met with great controversy for offering an unrepentant whitewash of America's imperial war in Iraq[[25]](#footnote-25) - uses the psychological toll of having to make these hard decisions to humanise its main character. Directed by Clint Eastwood, the film centres on Chris Kyle - the most lethal sniper US military history - during his four tours in Iraq. Several scenes in the movie show him struggle with the decision to pull the trigger. In the film's opening sequence, a woman and a boy are approaching a US marine convoy concealing what appears to be an RKG anti-tank grenade. Perched high on a building, Kyle consults his commanding officer, who answers 'you know the ROEs; your call'. Kyle's heart-beat accelerates. His breath is racing, as his spotter mutters 'they're gonna fry you if you're wrong. They'll send your ass to Leavenworth'.[[26]](#footnote-26) The kid starts racing toward the convoy. Kyle pauses upon exhale and stokes the trigger, earning the first of his 160 confirmed kills. Later in the film, Kyle kills an insurgent who is aiming an RPG at a nearby US convoy. A young kid no older than Kyle's own son approaches, setting his sight on the weapon lying on the ground. 'Don't you fucking pick it up' mumbles Kyle. The kid grabs the RPG, shoulders it and takes aim. Kyle prepares to fire, turning nauseous at the prospect of having to kill yet another child. Just as he lays his finger on the trigger, the kid suddenly discards the RPG and runs off, leaving Kyle gasping for air and biting back his tears.

The real Chris Kyle, to be sure, did not experience these ethical conflicts. 'I could give a flying fuck about the Iraqis' he wrote in his memoir, 'if you see anyone from about sixteen to sixty-five and they're male, shoot'em. Kill every male you see'.[[27]](#footnote-27) The fictional Kyle, however, does draw attention to some of the problems and paradoxes of military responsibility and of ethics in war. *Jus in bello* requires professional killers to make determinations about legitimate targets of deadly violence in the most challenging circumstances. Whilst some cases may be fairly straightforward, others sit on the borderline. Often soldiers cannot be sure just who is attacking them, where the attack is coming from, and even whether they are under attack at all. Life or death decisions frequently have to be taken in confusing combat situations in which split second decisions can lead to legitimate acts or result in a war crime.[[28]](#footnote-28) This is especially true in guerrilla warfare where fighters will often deliberately take up position among civilians so as to render ethical determinations extremely difficult to make or entice the enemy to violate *jus in bello*. This presents the more powerful enemy with difficult choices: attack and pay a potentially high moral and political price for killing civilians, or desist from attacking and suffer potential military loss.

The difficulty of making ethical or rule-based decisions in combat is accentuated by the nature of military training. A major paradox of *jus in bello* is that it requires soldiers to act in combat as morally autonomous agents when they are trained precisely *not* to do so. People are generally reluctant to hurt other human beings, this reluctance stemming from a combination of biological, psychological, social and moral constraints. Because the core business of armies is killing, they require their personnel to act against these constraints.[[29]](#footnote-29) A crucial part of training soldiers involves teaching them to ignore the limits normally placed on the use of deadly violence so that in the right circumstances they will not hesitate and will kill the enemy. Military training removes trainees 'from the framework of the inhibiting force that civilization has raised against killing'.[[30]](#footnote-30) This is done through a process of moral disengagement where soldiers are actively taught to bypass their normal moral decision-making and release aggression when ordered to. The constant repetition of training exercises in which tasks are standardized and compartmentalized reduces the necessity of making decisions and minimizes the occasions in which moral questions arise. Through exhausting physical training and strict discipline, recruits are transformed into soldiers who submit and conform to the armed forces' ethical judgments.[[31]](#footnote-31) Training affirms hyper-masculine norms of aggression, stoicism and aversion to weakness. Role effectiveness is associated with masculine potency. Failure and doubt are treated as threatening and often associated with femininity or homosexuality. This process of de-individuation can cause profound and traumatic injury to soldiers' moral centre, sometimes with tragic consequences. Kubrick's *Full Metal Jacket* (1987) exposes, among other things, the dehumanisation and loss of individuality affecting recruits as they are transformed into cold-hearted killing machines, culminating in Private Pyle's psychotic breakdown and gruesome suicide in the barrack's latrine.[[32]](#footnote-32)

Military training erodes the very self-determination and free will that *jus in bello* requires. Soldiers are thus subjected to an ethical double bind where they are simultaneously required to throw off their moral inhibitions and act in a righteous way, to suppress doubt and shame whilst at the same time exercising moral autonomy and using their sovereign mind. That tension is well captured in Fałkowska-Clarys and Koutroulis' discussion of the film *Good Kill* (2014), in which the characters of Egan and Suarez present the two sides of the double bind. Egan, the male pilot, follows orders, registering only mild discomfort as the CIA orders increasingly questionable strikes and dealing with his troubled conscience by hitting the bottle hard in the secret of his bathroom. Suarez, the female pilot, cannot turn off her moral outrage sensors the way Egan does. She objects to the illegal strikes ordered by her commanding officer and the pseudo-ethics of just war invoked to justify them. When she suggests that double-tapping amounts to a war crime, she is shut down, quite literally: 'Shut the fuck up, Suarez! [...] You wanna talk about all the shots we didn't take, waiting for some D.C. lawyer to come back from lunch? [...] So, fucking sue me. Later, Jane Fonda'. The reply confirms Suarez' assessment of the situation whilst rendering it inconsequential. Unwilling to ignore or rationalize the consequences of her actions the way her male colleagues do, Suarez eventually turns in her wrings, conceding she is not cut out for 'battlefields and blackjack', a shorthand for masculine military culture.[[33]](#footnote-33)

***The new necroethics of imperial warfare***

As noted by Tabbal in his concluding section, films reveal the progressive transformation of the war on terror. Fałkowska-Clarys and Koutroulis also insist in their chapter on the changing nature of warfare and the challenges it poses to traditional *in bello* and human rights concepts. In doing so, however, the authors focus primarily on the changing materiality of warfare, in particular the nature of belligerents and the unequal distribution of power among them. I want to suggest here that films reveal as much about the changing materiality of war as they do about the normative framework within which contemporary imperial violence is deployed. We tend to assume that modern warfare is characterized above all by profound technological changes and the increasingly asymmetric nature of conflicts.[[34]](#footnote-34) But disparities of power and vulnerabilities have been a constant feature of small wars in history. Perhaps, then, the specificity of contemporary warfare has less to do with the material conduct of armed violence than with the ethical and political norms that shape and are invoked to regulate its conduct.

The regulation of war is traditionally premised on the precept of combatant liability to, and non-combatant immunity from, the effects of fighting. Combatants, as the primary agents of warfare, are permitted to engage in hostilities and can lawfully be targeted by opposing forces. They can, in other words, kill and be killed. Non-combatants, on the other hand, inasmuch as they are not active participants in hostilities, cannot be lawfully targeted by belligerents. Unless they are engaged in direct combat support of the enemy's armed forces, they are in principle immune from intentional harm.[[35]](#footnote-35) The regulation of war is also traditionally premised on the precept of a demarcated zone of conflict, bounded in time and in space. Though there exists no clear legal delineation of the battlefield and there is inconsistency in the writings and case-law on the matter, the laws of war and the package of special rights and privileges they stipulate - including the right to kill enemy combatants at will and without process - are only intended to apply within the specific confines of an armed conflict, i.e. between identifiable belligerents and within territorially defined combat zones.[[36]](#footnote-36)

As has been widely remarked, these traditional precepts have been subverted by the global war on terror to the point of being turned entirely upside down.[[37]](#footnote-37) On the view that they are in an transnational armed conflict with al-Qaeda, the Taliban and associated forces, the US and its allies have claimed the right to pursue and eliminate anyone, anywhere, posing a threat to their national security. In the process, militarized violence has lost its traditional limits. War has become deterritorialised, borderless and ubiquitous. Armed violence is no longer confined within the limits of a demarcated combat zone and extends to potentially all corners of the earth where terrorists and their sponsors can be found, including areas far remote from any recognized 'hot' battlefield.[[38]](#footnote-38) Because the ubiquitous enemy can never be fully defeated, the war has no end in sight. The 'everywhere war' is also the 'forever war', an indefinite campaign for the preventive elimination of uncivilized hostiles roaming imperial peripheries.[[39]](#footnote-39)

In this unbounded war, the sovereignty of other states becomes a contingent matter, conditioned on their willingness or ability to support the imperial pursuit of terrorist groups. Third World sovereignty is, in any event, assumed to be subordinate to the security interests of the imperial powers. Films such as *Eyes in the Sky* or *Zero Dark Thirty*, whilst raising important legal-ethical considerations regarding the manner in which targeted assassinations are prepared and executed, tend to obscure the deeper and perhaps more significant question of whether killing suspected terrorists on the territory of other states is appropriate at all. This uncritical embrace of extraterritorial assassination as a tool of statecraft, as noted by a commentator, says a good deal about the new normal in the era of the global war on terror.[[40]](#footnote-40)

As well as reframing the spatial and temporal coordinates of war, the global war on terror completely reverses the traditional distribution of vulnerability in warfare, in which soldiers are exposed to death and civilians are protected. Contemporary forms of imperial military violence are characterized by what Chamayou calls a new principle of 'imperial combatant immunity' in which the quasi-invulnerability of dominant powers is transformed into an over-arching political-ethical norm.[[41]](#footnote-41) To keep the everywhere war going indefinitely, Western lives have to be preserved, as such is the condition for the public to continue supporting (and funding) imperial military interventions. For the sake of preserving Western military lives, the risk of producing civilian casualties has become more widely accepted. Explicitly articulated during NATO's intervention in Kosovo - where pilots were ordered not to fly below an altitude of 15,000 feet to keep aircrafts out of reach of enemy defences, knowing that this would reduce the accuracy air strikes and endanger the lives of those the intervention was supposed to save - a new doctrine has emerged in which combatant immunity ranks higher than non-combatant immunity. Under this new meta-legal principle, non-combatants are protected so long as this does not endanger military lives.[[42]](#footnote-42)

The situation depicted in the film *The Lone Survivor* (2013) - where US Navy SEALs chose to act within the traditional bounds of IHL and spare the lives of civilians, knowing that this would bring probable death and mission failure - is an outlier. The filmworthiness of this true story derives precisely from the fact that it resolves the ethical dilemma in a way that now appears remarkably unconventional. Under the new necroethics of imperial warfare, moral dilemmas that pit the life of soldiers against that of civilians are now routinely resolved in favour of the former. In the opening scene of *American Sniper*, a man stands on a rooftop talking on his cell phone as he watches a US convoy. Thinking that he may be reporting troop movement to insurgent fighters, Kyle radios in for authorization to take him down. His commanding officer replies 'if you think he's reporting troop movement you have a green-light'. Goat, Kyle's spotter, jokingly interjects that 'he could be calling his old lady'. Kyle takes a deep inhale, dips his shoulders and prepares to take the shot, on the mere suspicion that the man is a militant with presumed sympathy for Iraqi insurgents.[[43]](#footnote-43)

As noted by Chamayou, drone warfare further radicalizes these normative swings by doing away with combat altogether. Drones eliminate the very possibility of reciprocation, as the enemy cannot defend itself or retaliate. By doing so, drones create a new, unconventional regime of violence in which imperial combatants can kill but cannot be killed, taking the principle of combatant immunity to new logical extremes. The very notion of war therefore enters into crisis. Without the possibility of reciprocation, war turns into militarized manhunt, the organised search and elimination of hostiles on the run.[[44]](#footnote-44) By sparing imperial soldiers any exposure to death, drones completely destabilize military ethics, which traditionally value courage, self-sacrifice and readiness to die. In the last scene of *Full Metal Jacket*'s opening act (the boot camp), Gunnery Sergeant Hartman - Kubrick's infamous drill instructor - lectures his men on graduation day: 'Most of you will go to Vietnam. Some of you will not come back. But always remember this: marines die, that's what we're here for!'.

If killing and be killed is the essence of warfare, drone killings, by permitting to crush the enemy without ever risking one's own skin, produces a profound crisis in military ethos.[[45]](#footnote-45) Revealingly, some of the most virulent critics of drones have been Air Force pilots, who have derided drone operation as a cowardly activity that erodes traditional military values and is 'more akin to the practices of video-gaming joystick jockeys than that of combat soldiers'.[[46]](#footnote-46) In *Good Kill*, Egan's bitterness and depression come less from the questionable morality of his actions than from a sense of dishonour and longing for genuine combat experience, having been yanked from the cockpit of his former F-16 fighter jet and placed in a trailer in Nevada: 'I am a pilot and I'm not flying. [...] I miss the fear. You're up in the sky, something can happen. There's a risk, you know? [Here] we've got no skin in the game. I feel like a coward every day. Taking pot shots from half a world away in an air-conditioned cubicle. Worst thing that can happen to me is carpal tunnel or I spill coffee on my lap'.

Sacrifice and bravery are not, of course, completely absent from drone warfare. Drone pilots can experience high levels of stress, guilt and psychological trauma, from the realization of their own destructiveness and the difficulty in compartmentalising, due to the lack of transition time between mission and regular life. Yet bravery is defined no longer by exposure to violent death but by exposure of one's psychic vulnerability to the effects of dronized homicide.[[47]](#footnote-47) As noted by Tabbal, a stream of films have been produced since 9/11, including *Good Kill*, that depict the psychic wounds inflicted upon 'our' military men and women in the global war on terror. Critically though, the attention drawn to the imperial soldier's psychic wounds - as well as omitting the fact that drones inflict PTSD to entire populations in the Global South who suffer from constant exposure to death from the sky[[48]](#footnote-48) - typically serves to confer an 'ethico-heroic aura' to a cowardly killing machine, giving it a legitimacy it could not otherwise acquire.[[49]](#footnote-49)

Whatever one's position on the normalizing function of films, one thing is clear: the global war on terror completely dislocates the normative framework originally designed to regulate armed conflicts. Fałkowska-Clarys, Koutroulis and Tabbal, in their respective chapters, do not fully acknowledge the difficulty of applying old *in bello* categories to the war on terror. This is problematic since, as noted by Chamayou, 'to apply norms designed for a conflict to slaughtering practices, and to be willing to pursue the discussion without questioning the presumption that these practices still stem from within that normative framework, ratifies a fatal confusion of genres'.[[50]](#footnote-50) Fałkowska-Clarys, Koutroulis and Tabbal do allude to a certain 'inadequacy' of traditional humanitarian principles to govern new forms of war. But theirs is an argument about the changing materiality of warfare, whereas Chamayou suggests something more radical: modern imperial warfare (particularly drone warfare) is not, in actual fact, warfare at all but something altogether different, a 'unilateral relationship of death-dealing'.[[51]](#footnote-51) To apply *jus in bello* norms to something that is no longer *bellum* proper renders this transformation invisible and naturalizes it.

***Conclusion: De-Sanitizing War***

By way of conclusion, I want to respond briefly to Fałkowska-Clarys and Koutroulis' assertion that, in showing atrocities committed by armed forces without taking a strong moral stance against violations of the laws of war, films risk 'trivializing' these atrocities, influencing both the public and soldiers themselves.[[52]](#footnote-52) Through constant cinematic exposure to violations of humanitarian law, they argue, people may start viewing the horrors of war 'in a detached way' and become numb to - or more accepting of - certain behaviours in time of war. Whilst it is entirely plausible that films - and popular culture more generally - play a role in shaping public conscience and affect people's perception of what is right, what is possible and what is necessary in specific circumstances (as I have indeed argued earlier), this view needs to be qualified in important ways.

Films, to begin with, often depict certain practices to spark outrage and raise, rather than lower, our collective state of consciousness. Leaving aside the whole genre of human rights cinema - the main purpose of which is to raise awareness and knowledge of human rights (often with all the traits and biases of the human rights movement[[53]](#footnote-53)) - feature films can play a powerful role in mainstreaming human rights violations with a degree of efficacy that historians' or victims' accounts often fail to achieve. To be clear, films can elicit inappropriate responses to atrocities, for instance numbness or perverse pleasure, be it by aestheticising them or by transfiguring them into a thrilling spectacle. Films also tend to foreground what Žižek calls subjective violence - that carried out by identifiable evil agents (e.g. criminals or terrorists) - as the most visible mode of violence, at the expense of the objective violence of our economic and political systems.[[54]](#footnote-54) Much depends on who is looking at whom and how, and on the film's aesthetic and narrative choices. But there is no doubt that films can elicit compassion, challenge dominant perceptions and break through spectators' ignorance, indifference or denial.[[55]](#footnote-55)

Aside from these general considerations, I take issue with the notion that films ought to place greater emphasis on the role of humanitarian law as a principle of moderation in war. As Moyn has recently noted, there is a distinct possibility that sanitizing war by bringing its conduct within the bonds of legal constraints may paradoxically make it more enduring. The 'humanization' of war - a legitimate goal in the short term - makes recourse to it more tolerable in the long term, or at the very least renders its legitimation easier for various actors and audiences. Focusing on the 'hygiene' of war distracts us from questioning the propriety ofaggressive warfare in the first instance.[[56]](#footnote-56) The danger is that, by cleaning up war and scrubbing it of its most outrageous excesses, one renders principled opposition to it comparatively more difficult. By emphasizing the formal prohibitory aspects of *jus in bello*, lawyers and humanitarians might 'sanitize and normalize the grave reality that it regulates', thus facilitating the advent of the 'forever war'.[[57]](#footnote-57)

War is, in the words of Joker in *Full Metal Jacket*'s final scene, 'a world of shit'. Whilst law can help prevent some of the worst excesses of war, it can never completely eliminate war's inherent and unredeemable shitness. Perhaps, then, films' greatest value lies not in comforting but in unsettling the liberal intuition that war can be fought humanely, by showing that the trees of a 'good kill' always conceal 'a forest of tombs'.[[58]](#footnote-58) *Full Metal Jacket*'s finale is so great precisely because it symbolises the crushing reality of war in a decidedly unheroic tone, with no redemptive resolution. A pacifist, Joker, is turned into an agent of sadistic destruction and marches on in a wasteland of smoke and fire, as the Marines chant the Mickey Mouse Club theme song in an eerie funeral procession for their lost innocence. As the final images fade, we hear the Rolling Stones' 'Paint It Black' on the sound track, a final expression of Kubrick's tragic vision of history and lack of optimism about the possibility of change.

*I look inside myself and see my heart is black*

*I see my red door I must have it painted black*

*Maybe then I'll fade away and not have to face the facts*

*It's not easy facin' up, when your whole world is black*

1. For a recent take on this theme, see Thomas Eger, Stefan Oeter and Stefan Voigt (eds), *International Law and the Rule of Law under Extreme Conditions* (Mohr Siebeck 2017). [↑](#footnote-ref-1)
2. Giorgio Agamben, *State of Exception* (University of Chicago Press 2005). [↑](#footnote-ref-2)
3. See e.g. Julian Baggini, Christine Korsgaard, Ursula Coope, Peter Singer, Susan Haack, Kenneth Taylor and Slavoj Žižek, 'I Watch Therefore I Am: Seven Movies that Teach Us Key Philosophy Lessons', *The Guardian* (14 April 2015). See also Mary M. Litch, *Philosophy Through Film* (2nd edn, Routledge 2010). [↑](#footnote-ref-3)
4. See generally Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (University of Chicago Press 2000); Lawrence M. Friedman, 'Law, Lawyers, and Popular Culture' (1989) 98 Yale Law Journal 1579. [↑](#footnote-ref-4)
5. For a philosophical analysis, through *24*, of the problem of attaining good ends through morally dubious means, see Stephen de Wijze, 'Between Hero and Villain: Jack Bauer and the Problem of "Dirty Hands"' in Jennifer Hart Weed, Richard Davis and Ronald Weed (eds), *24 and Philosophy - The World According to Jack* (Blackwell 2008). [↑](#footnote-ref-5)
6. Ron E. Hassner, 'The Myth of the Ticking Bomb' (2018) 41 Washington Quarterly 83; Olivier Corten, 'La banalisation de la torture comme un instrument de lutte contre le terrorisme: comme au cinéma?' (2017) 79 Revue interdisciplinaire d'études juridiques 229. [↑](#footnote-ref-6)
7. Kelly M. Greenhill, '24 on the Brain', *Los Angeles Times* (28 May 2007); Dahlia Lithwick, 'How Jack Bauer Shaped US Torture Policy', *Newsweek* (25 July 2008); John Yoo, *War by Other Means - An Insider's Account of the War on Terror* (Atlantic Monthly Press 2006). [↑](#footnote-ref-7)
8. Colin Freeze, 'Justice Scalia Cites Jack Bauer as Example in Discussion Over Torture', *The Globe and Mail* (20 June 2007). [↑](#footnote-ref-8)
9. Joe Mathews, 'Bill Clinton and the Jack Bauer Exemption', *Los Angeles Times* (30 September 2007). [↑](#footnote-ref-9)
10. Philippe Sands, *Torture Team* (Palgrave 2008) 63. [↑](#footnote-ref-10)
11. Lithwick (n ). [↑](#footnote-ref-11)
12. On the relationship between films and ideology, see the general introduction to this volume. [↑](#footnote-ref-12)
13. See Desmond Manderson, 'Trust Us Justice: *24*, Popular Culture, and the Law' in Austin Sarat (ed), *Imagining Legality: Where Law Meets Popular Culture* (University of Alabama Press 2011). [↑](#footnote-ref-13)
14. See e.g. David Bordwell, *Making Meaning: Inference and Rhetoric in the Interpretation of Cinema* (Harvard University Press 1991). [↑](#footnote-ref-14)
15. Tabbal in this volume, at XXX [insert page number] [↑](#footnote-ref-15)
16. See e.g. Alex von Tunzelmann, 'Zero Dark Thirty's Torture Scenes are Controversial and Historically Dubious', *The Guardian* (25 January 2013); Jane Mayer, 'Zero Conscience in Zero Dark Thirty', *The New Yorker* (14 December 2012). [↑](#footnote-ref-16)
17. Pauline Blistène, 'Torture et prisons secrètes: Zero Dark Thirty, l'insoutenable figuration du réel?' (*Culture-pop et droit international*, 2 mars 2016) <http://cdi.ulb.ac.be/zerodarkthirty> accessed 19 April 2019. [↑](#footnote-ref-17)
18. Melena Ryzik, 'Kathryn Bigelow Steps Up Defense of "Zero Dark Thirty"', *The New York Times* (16 January 2013). [↑](#footnote-ref-18)
19. Ben Child, 'Kathryn Bigelow on Zero Dark Thirty: "It's Illogical to Ignore Torture"', *The Guardian* (16 January 2013). [↑](#footnote-ref-19)
20. Slavoj Žižek, 'Zero Dark Thirty: Hollywood's Gift to American Power', *The Guardian* (25 January 2013). [↑](#footnote-ref-20)
21. ibid. [↑](#footnote-ref-21)
22. Daniel Joyce and Gabrielle Simm, '*Zero Dark Thirty*: International Law, Film and Representation' (2015) 3 London Review of International Law 295, 311. [↑](#footnote-ref-22)
23. Fałkowska-Clarys and Koutroulis in this volume, at XXX [insert page number]. [↑](#footnote-ref-23)
24. As noted by Marko Milanovic, 'Eye in the Sky' (*EJIL Talk!*, 9 May 2016) < https://www.ejiltalk.org/eye-in-the-sky> accessed 19 April 2019. [↑](#footnote-ref-24)
25. Stephen Maher, 'Hollywood at War', *Jacobin Magazine* (22 February 2015). [↑](#footnote-ref-25)
26. Leavenworth is a military correctional facility located in Kansas. [↑](#footnote-ref-26)
27. Chris Kyle, *American Sniper - The Autobiography of the Most Lethal Sniper in US History* (Harper Collins 2012) 188. [↑](#footnote-ref-27)
28. Eric David, *Principes de Droit des Conflits Armés* (3rd edn, Bruylant 2002) 921. [↑](#footnote-ref-28)
29. Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (Back Bay 2009). [↑](#footnote-ref-29)
30. Theodore Nadelson, *Trained to Kill: Soldiers at War* (Johns Hopkins University Press 2005) 43. [↑](#footnote-ref-30)
31. David Gee, *The Last Ambush? Aspects of Mental Health in the British Armed Forces* (Forces Watch 2013) 31. [↑](#footnote-ref-31)
32. Rich Schweitzer, 'Born to Kill: S. Kubrick's *Full Metal Jacket* as Historical Representation of America's Experience in Vietnam' (1990) 20 Film and History 62. [↑](#footnote-ref-32)
33. See the insightful analysis by Rebecca Adelman, 'Imperial Cry-Faces: Women Lamenting the War on Terror' in Scott Laderman and Tim Gruenwald (eds), *Imperial Benevolence: US Foreign Policy and American Popular Culture since 9/11* (University of California Press 2018). [↑](#footnote-ref-33)
34. See e.g. Herfried Münkler, 'The Wars of the 21st Century' (2003) 849 International Review of the Red Cross 7 [highlighting, in particular, asymmetry, demilitarization and privatization as the salient features of the 'new wars']. [↑](#footnote-ref-34)
35. Gary D. Solis, *The Law of Armed Conflict - International Humanitarian Law in War* (CUP 2010) 187-8; Hugo Grotius, *The Rights of War and Peace* (Waltern Dunne 1901) 325-6 [in which Grotius defines killing or otherwise injuring the person of a public enemy the most essential 'right of war'] [↑](#footnote-ref-35)
36. Jonathan Crowe and Kylie Weston-Scheuber, *Principles of International Humanitarian Law* (Edward Elgar 2013) 14-5; Ingrid Detter, *The Law of War* (2nd edn, CUP 2000) 168. [↑](#footnote-ref-36)
37. Frédéric Mégret, '"War"? Legal Semantics and the Move to Violence' (2002) 13 European Journal of International Law 361; Jason Ralph, *America's War on Terror: The State of the 9/11 Exception from Bush to Obama* (OUP 2013). [↑](#footnote-ref-37)
38. Jennifer C. Daskal, 'The Geography of the Battlefield: A Framework for Detention and Targeting Outside of the 'Hot' Conflict Zone' (2013) 161 University of Pennsylvania Law Review 1165. [↑](#footnote-ref-38)
39. Derek Gregory, 'The Everywhere War' (2011) 177 Geographical Journal 177. [↑](#footnote-ref-39)
40. Susan Carruthers, 'Zero Dark Thirty' (2013) 38 Cinéaste 50, 51. [↑](#footnote-ref-40)
41. Grégoire Chamayou, *A Theory of the Drone* (New Press 2013) 127. [↑](#footnote-ref-41)
42. This was theorized most prominently by Kasher and Yadlin, who argue against the principle of combatant liability/non-combatant immunity in favour of a simpler, over-arching principle of safeguard of one's national lives according to which soldiers may impose greater risks on foreign civilians if this minimizes risks to themselves. See Asa Kasher and Amos Yadlin, 'Military Ethics of Fighting Terror: An Israeli Perspective' (2005) 4 Journal of Military Ethics 3. See also the discussion in Adil Ahmad Haque, *Law and Morality at War* (OUP 2017) 159-60. [↑](#footnote-ref-42)
43. The man on the roof is not shot as he hangs up and steps away before Kyle is able to pull the trigger. [↑](#footnote-ref-43)
44. Chamayou (n ) 30-7. [↑](#footnote-ref-44)
45. ibid 96-106. [↑](#footnote-ref-45)
46. Jesse Kirkpatrick, 'Drones and the Martial Virtue Courage' (2015) 14 Journal of Military Ethics 202. [↑](#footnote-ref-46)
47. Chamayou (n ) 103. [↑](#footnote-ref-47)
48. James Cavallaro, Stephan Sonnenberg and Sarah Knuckey, *Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan* (Stanford International Human Rights and Conflict Resolution Clinic 2012). [↑](#footnote-ref-48)
49. Chamayou (n ) 105. [↑](#footnote-ref-49)
50. ibid 163. [↑](#footnote-ref-50)
51. ibid 162. [↑](#footnote-ref-51)
52. Fałkowska-Clarys and Koutroulis in this volume, at XXX [insert page number]. Tabbal, in a similar vein, concludes his chapter with a call for films to take international law more seriously in their dealings with the war on terror. [↑](#footnote-ref-52)
53. See Sonia Tascon, 'Considering Human Rights Films, Representation, and Ethics: Whose Face?' (2012) 34 Human Rights Quarterly 864. [↑](#footnote-ref-53)
54. Slavoj Žižek, *Violence* (Profile Books 2008). [↑](#footnote-ref-54)
55. On these themes, see Shohini Chaudhuri, *Cinema of the Dark Side: Atrocity and the Ethics of Film Spectatorship* (Edinburgh University Press 2014). [↑](#footnote-ref-55)
56. Samuel Moyn, 'Toward a History of Clean and Endless War' (*Just Security*, 9 October 2015) < https://www.justsecurity.org/26697/sanitizing-war-endlessness> accessed 19 April 2019. [↑](#footnote-ref-56)
57. Eliav Lieblich, 'The Facilitative Function of *Jus in Bello*' (2019) 30 European Journal of International Law (forthcoming). [↑](#footnote-ref-57)
58. Chamayou (n ) 190. [↑](#footnote-ref-58)