

How international law legitimates violence: the semantics and grammar of 'military necessity'

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The history and function of international war law is increasingly contested, with some law scholars rejecting “the standard Western-European-centric view” characterized by the “grand narrative of international law as the purveyor of peace and civilization to the whole world” (Jouannet and Peters, 2014: 4). Critical accounts of international war law argue that this body of law in its various forms does not constrain the use of violence, but rather is a crucial source of its legitimation (e.g. Jochnick and Normand, 1994; Mégret, 2016; Normand and Jochnick, 1994; Lukin in press). Mégret argues, that treaties, statutes and customary war law sources “enable, constitute and perpetuate” war and have produced “the basic building blocks of the international grammar of violence” (Mégret, 2016, 773, 777). He has also suggested that the laws of war function to “embody a long-standing masculine ideal” (Mégret 2018).

The focus of this paper is the legal concept named “military necessity” by German-American legal scholar Francis Lieber. At the request of the general-in-chief of the American Civil War Union armies, Lieber produced the “Instructions for the Government of Armies of the United States”, where he formalised the concept and gave its first definition. Promulgated by President Lincoln in 1863, Lieber’s document became the central authority on legal matters during the American Civil War (Labuda 2014). “Military necessity” is now considered one of the “fundamental principles” in the law of armed conflict (Crawford and Pert, 2015: 41).

A legal “principle”, viewed linguistically, is no more and no less than a coherent cluster of wordings, subject to the same semiotic forces as any other act of linguistic meaning, including the two vectors of realization (the natural and the arbitrary – Halliday 2002/1992) which have been a feature of language since the semiotic “big bang”, and which are central to its always ideological character (Lukin 2019). In this paper, I will explore the wordings through which this concept has been articulated specifically in the Lieber Code (but will briefly note its currency in the 20th century e.g. in the US Military Tribunal in Nuremberg (*United States vs Wilhelm List et al* case), in the Geneva Conventions, and in the Rome Statute, an international treaty which brought the International Criminal Court into being). My central inquiry will be around the potential of linguistic analysis to provide evidence from the semantics and grammar of “military necessity” for the critical interpretations of war law, i.e. that it permits the right to life to be “sacrificed on the altar of inter-group violence” (Mégret, 2016, 776).

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