

War and Peace as War

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"The Visage of War" by Salvador Dali

*For Tariq Ayoub
Jordanian Journalist
Murdered by US troops in Baghdad*

*Cursed I call all who have only one choice:
to become evil beasts or evil tamers of beasts;
among such men I would not build my home.
Thus Spoke Zarathustra*

This paper deals with the common prejudice according to which war and peace are able to follow one another, neutralize and replace one another, and create the conditions for one another. In reality, there is not, and there has probably never been, peace--never, if by peace we mean an actual reality, though peace has always been the end of many projected social utopias. Thus, war and peace as commonly understood (but here "peace" would be a misnomer) are moments of one and the same logic, the logic of war, of total war--they are moments of one and the same totality. Even before the present US administration made it explicit, we were living in a state of permanent war. To be sure, the fact that this is now made explicit is of the greatest importance, but it is not in itself the beginning of an entirely new era. Certainly, today we are witnessing a rupture and a torsion in the unfolding of world historical events, but this rupture and this torsion cannot

be located at the level of our calling into question the concepts of war and peace. In reality, we are still far from thinking the true concept of peace, let alone bringing it about in actual practice. Even if we confined ourselves to this last decade, we wouldn't be able to find peace anywhere in the world. Certainly, peace was not the outcome of the first vicious attack against Iraq. The decade of criminal sanctions and constant bombing which followed the end of hostilities in the form of actual combat can in no way be called peace. As a general rule, the formal ending of hostilities has nothing to do with the true concept of peace. Today, war is everywhere: in the Philippines, in Kashmir, in Palestine, just to mention a few situations. September 11 was not, of course, the expression of a world that had found peace: neither September 11 of 2001 nor--let us not forget--September 11 of 1973, when the democratically elected president of Chile, Salvador Allende, was overthrown during a CIA-backed military coup. It is also useful to remember that in relation to that Chilean "crisis"--which like all crises of a similar nature was "threatening US interests"--Henry Kissinger said: "We set the limits of diversity" (Lafeber, 2002, 287). In addition to these events, war is also omnipresent under other structural and chronic forms: the war on poverty, racism, social oppression and political repression all over the world, and, most fundamentally, the war on intelligence and reason. The truth is that peace will not be found, but rather a regime of war will prevail, insofar as the world remains divided between those who dominate and those who are dominated according to a class power structure. This is the real and most fundamental antagonism, which makes war an unsurpassable reality. Thus, when politicians and "leaders" talk about their commitment to peace, to constructing a more peaceful world, they are simply uttering empty words, and they know that. A true concept of peace requires that the preconditions of war be eliminated and destroyed. This is a difficult task, but it is not an impossible one. However, its possible realization does not belong to these so-called leaders who more and more show their true nature as warmongers and merchants of death, but rather to the truly democratic forces and powers that are emerging today from the struggle against capitalist globalization and dominance, from the global/no-global movement of resistance, from the ambitious attempt to think and build a humanist alternative to the paradigm of violence and death which has enshrined the world. All this became more than apparent on February 15, 2003.

Perhaps we should here briefly consider Clausewitz's famous statement according to which war is the continuation of politics (policy) by other means. War is, according to Clausewitz, not merely a political act, but a *political instrument*, "a continuation of political commerce." The statement is correct, but what are its implications? In reality, if war is a continuation of politics, then this politics cannot be a politics of peace. In other words, war cannot be a continuation of peace by other means, for such a statement would be meaningless. Yet, this is what is commonly believed. A war is waged in order to bring about peace; peace is breached to wage a war so that peace can return. The illogical nature of this way of thinking, or rather of not thinking, is self-evident. However, this is not what Clausewitz's statement means. What the statement is saying is rather that what precedes war is not (and cannot be) its opposite and absolute negation. What precedes war is, instead, war's preparatory ground and condition. If peace preceded war and war were its continuation, then war would be nothing but a form of appearance of peace and the ensuing peace (really, a "pacification" brought about through uneven and treacherous treaties or unconditional humiliations) would be a form of appearance of war. Of course, all this makes no sense. In reality, war is the form of appearance of war, namely, a particular war, *this* war; it is the individuation of a permanent state of war which underlies all history, its condition and structure. What I am saying is that war and peace are irreducible to one another. They are not part of one and the same totality. Rather, war is a totality unto itself, and peace is a totality unto itself. The struggle between war and peace is a struggle to the death. This means that true peace is *neither* war *nor* peace as

commonly understood. The modality of neither/nor must be considered as an ontological structure of neutrality which guarantees the actual possibility for the radical subversion and transvaluation of our cultural values.

Once we have established the idea that there is not, and there has probably never been, peace, we should ask the question as to whether peace is possible at all. The answer to this question is positive. Peace is possible provided that, however, the totality constituted by the logic of war is completely superseded by a different way of thinking. This totality must be broken into pieces, and its ground and conditions must be reduced to nothing. For peace to be constructed, it is not sufficient that a dictator be eliminated. It is, in fact, not a question of eliminating people, but rather one of eliminating the structures and conditions that make these people possible. Certainly, those who uphold the logic of total war must be held personally responsible and must be brought to justice; however, most important is that the conditions of their reappearing be destroyed. These people do represent the utmost of human stupidity, what I have elsewhere called *social idiocy*: the spirit of revenge and retaliation, mafia-like gangsterism at its worst. Yes, they must be brought to justice.

Yet, what kind of justice? The Hobbesian state of nature in which the world has recently collapsed, a state of *homo homini lupus*, makes it clear that the word "justice" is as meaningless as the word "peace." The common cry "no justice, no peace"--which elliptically means "if there is no justice, there can't be peace either," and again "we will continue to fight until justice prevails"--can only be understood today as saying "there is, in fact, no justice, and neither is there peace." Indeed, the words "justice" and "peace," as well as many others (e.g., "democracy," "freedom") have, in our sad times, completely lost their meaning. Thus, the question of justice cannot be easily answered. Let us suspend it for now. We shall go back to it below.

The crime against humanity being committed today, the war against Iraq, the "war of liberation," really the invasion, occupation and colonization of Iraq, can be looked at in at least two ways. On the one hand, this is nothing but a moment in the progression of American foreign policy, of the expansionist logic that finds its first formulation in the Monroe doctrine of 1823 and, even before that, in the frontier mentality typical of this nation--nothing new, nothing to be surprised at. On the other hand, this war, this crime against humanity, does represent something entirely new. What is new is that the contempt for international law and the moral law is now made explicit, as is the contempt for democracy and freedom. In reality, what's happening today may very well be a synthesis of old tendencies and new points of rupture, perhaps a passage from quantity to quality, or more trivially the burst of a contemptuous laughter in the face of international and moral law provoked by the belief that now everything is really permissible and possible. It is the *mise-en-scene* of something *ob-scene*; and this, in the real sense of the word, namely, in the sense that something which has always been present but concealed to an extent, something which has remained behind or off scene, is now made fully explicit and manifest. Let's emphasize that the contempt for international and moral law is not at all a novelty in history. It is, in fact, a matter of routine for those states usually damned as rogue states, and it is routine for those nations that claim to be the defenders of law and order, of democracy and freedom at the national and international levels. The United States itself has shown this contempt on many occasions. One relevant and tragic example is the manipulations employed to exasperate the just and gentle Jacobo Arbenz of Guatemala in order to justify an invasion in 1954 (again, a "war of liberation") that would create the conditions for decades of terror. Yet, even in that case, the contempt for international and moral law was tempered and concealed.

Let us look more closely at the specific forms of this threefold contempt (for international law, for the moral law, and for democracy and freedom.) The first of these forms lies in the breaking of international law. It is beyond doubt that this war is illegal. Article 1, paragraph 1, of the Charter of the United Nations says that "The Purposes of the United Nations are to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." The action undertaken by the US and its allies against Iraq contradicts each and every point of this statement. Of course, by making the United Nations "irrelevant" one can stop worrying about what its Charter says. Yet, this is done only by taking an unlawful position. Or rather, by substituting "American justice" for an international and universal conception of justice (i.e., the difficult and never actualized conception for which the UN was established in the first place), one really reduces the higher level of positive morality standards to the narrow scheme of national interests usually represented by the positive law of one state and its system of justice. Yet, everyone knows that a system of justice may be unjust, that the positive law of any given country may be self-serving and at times outright criminal, and it is in fact for this reason that a supranational regulatory system is deemed necessary, one which aspires at bridging the gap between law and morality. The I-do-what-I-want of thugs and gangsters has always relied, not on reason, dialogue and the moral sense, but on the sheer threat and implementation of brutal physical power. The fact that this measure of violence works for a period of time (it worked decades for Saddam Hussein, albeit with the blessing of the decent world), in no way makes it legitimate. Certainly, the notion that peace can arise and flourish out of a situation such as this constitutes the most awful insult against human intelligence. The obvious irrelevance of the United Nations only confirms what I was saying above, namely, that peace and justice are meaningless terms in a world dominated by the logic of total war.

Indeed, even common sense would suggest that two states, members of the same institution, should be able to come to some form of agreement rather than clash in a politics of aggression and open conflict. In this particular case, the two states are both founding members of the UN, but it is obvious that the US doesn't consider Iraq's membership valid. Yet, what is baffling is that throughout the time of preparation for this senseless and criminal war, and after the war itself started with its massacres and carnage, the Iraqi ambassador remained at the UN, though he and his staff were harassed by local authorities. In short, Iraq has not been suspended or expelled from the UN--a first measure, one would think, to be taken against a country which is not complying with UN resolutions and whose politics is deemed irrecoverable. To be sure, this would have to apply to other countries as well, countries responsible for other atrocities, notably Israel and today particularly to the US itself. Yet, the irrecoverableness of Iraq hadn't been proven, and the UN inspectors had showed that it was not impossible to work with the Iraqi government then in power, even with Saddam Hussein himself. The fact that the latter is a criminal should not have disqualified him from this option, as it should not deprive him from the right *and* obligation to withstand a trial now that he has been caught. That Saddam Hussein is guilty of crimes against humanity no one denies, for he imprisoned, tortured and murdered his own people. But those same people were and are also tortured and murdered by the champions of liberation and freedom. After the first Gulf war, which had destroyed the country's infrastructure, sanctions were imposed on Iraq that strangled the Iraqi people (not its rulers and bureaucrats) for more than a decade and indiscriminate aerial attacks by the American and British armies continued throughout the interwar period.

The contempt for international law continues today that the first stage of the war, of the war narrowly defined, the phase of combat, has come to a close (with the destruction of Baghdad, which had also already been captured and destroyed by the Mongols in 1258--an interesting notation.) This contempt continues in many ways, but fundamentally it reveals itself in the persistent arrogance and disregard of the US for the most basic rules of conventional war. The recent threats against Syria are a clear example of that. It is said that Syria will suffer serious retaliations if it decides to offer sanctuary to senior members of the Iraqi government and Ba'th Party. However, this is wrong. First of all, a country has jurisdiction and sovereignty over its territory. Second, someone who escapes a situation of war has had traditionally a right to protection. In any case, these are issues that should be settled by the International Criminal Court, not by the US. When the US tells Syria what to do and what not to do, it is committing a further act of aggression toward a non-belligerent country. Of course, Syria is now complying; everybody would, for everybody is now afraid of the US and its drive to madness. Also because the United States, in its traditional but never explained touchiness, would consider any expression of independence as defiance, if not open aggression against its "interests."

If the United Nations were to live up to its mission, it would now have to take actions against those member states that have acted, and are acting, unilaterally. Of course, this is not going to happen, given that the member states in question, the US and Britain, are permanent members of the Security Council and would always veto any resolution brought against them. This reveals the powerlessness of the UN, and perhaps its "irrelevance", yet it does not show that the spirit of international law reflected in its Charter is no longer valid. Rather, what this shows is that the United Nations is in deep and urgent need of restructuring. The structure of the Security Council, with its five permanent members holding veto power and its ten non-permanent members, is obviously inadequate. Instead, all member states should participate equally and fully, especially when at stake are questions of life and death concerning the whole international community, concerning humanity as a whole. The UN would then acquire a more democratic structure and would be able to be effective. The US would take its place as a nation among nations, without arrogance and without privileges, as is required of all. But this is a distant dream, and probably some more radical upheavals will transform the world, provide the world and humanity with more suitable structures of self-governance, before that dream (which is limited by its own legalistic and formalistic nature) could even come true.

These new forms of self-governance will be the result of non-formalistic and non-legalistic structures of agency, the result of the progressive movement building itself around issues that remain invisible at the formal, institutional level. Thus, the social forum of Porto Alegre, and similar initiatives, can be a vehicle for that. This is a movement that draws its substance and power from the concept of autonomy. Though based on the awareness that there exists an irreducible gap and an unsurpassable antagonism between itself and the institutional world which defends a logic of class power, the movement is not interested in confronting institutional power by clashing with its armies and police. We cannot be interested in this because it would be self-defeating, engendering a violence for which we alone would pay the price, for armies and police have weapons and the right to use them, and we don't. There would be no point in considering this as a viable strategy when the people whose actions and structures we want to neutralize and destroy keep sitting comfortably in their seats of power and laugh at us. Since the movement has nothing to do with violence and terrorism and death, for it is a movement of life and joy, of freedom and peace, it will not enter the terrorist logic of the institutions, the violent mentality of thugs and gangsters, the death-drive of established powers. Rather, this movement, like Nietzsche's Zarathustra, teaches the

Overman, and, acknowledging the tragic truth that God is dead, looks for new values in what is potentially creative and solid in a shaken and convalescent humanity; it looks for these values beyond the simplistic, primitive, and dangerous logic of good and evil (whether it comes from Bush or from bin Laden.) This logic is itself the only possible production of what Nietzsche calls the "last man", a sickly animal with a sickening odor, closer to ape than to the Overman.

The forms of contempt I am describing are clear symptoms of the sickness of the last man. We have seen the US contempt for international law vis-à-vis the Charter of the United Nations. This same contempt also becomes apparent in the US recent refusal to ratify the Rome Statute of the International Criminal Court (ICC). In December 2000, the US had signed the Statute. Now the Bush administration is not only unwilling to ratify it, but it is actually trying to reverse that signature. The reason for this is that the United States does not wish to be held accountable for its actions, notably the horrendous actions in Iraq; it wants impunity. However, in this case, contrary to the defiant mood with which the UN was humiliated, one can detect some apprehension and fear on the part of the US, which become particularly manifest in the recent and current US attempts to find co-signatories to a bilateral agreement of impunity. To be sure, these attempts are also very murky and vicious, for they often amount to threatening small and poor countries with economic retaliation if they choose not to submit to US offer and will. Countries such as Bulgaria, which has provided the US with some form of infrastructural aid in the present war against Iraq, could be in the position of detaining US personnel if the bilateral agreement is not signed and turn them in to the Court. This is a battle which is still going on, and it revolves around Article 98 of the Rome Statute, "Cooperation with respect to waiver of immunity and consent to surrender." It has been suggested that the US is deliberately misinterpreting this article--not an impossible thing to do given the obscure phrasing of it. The article basically says that the State to which an accused individual belongs (the ICC prosecutes individuals, not states) must agree to a waiver of the immunity before any other given state can turn him or her over to the Court upon the Court's request.¹ It follows that, if the two States in question have signed a bilateral agreement, sanctioned by international law, the requested State would be in breach of the law if it surrendered anyone. In any case, the United States has resolved to act unilaterally even on this issue: "The United States is vehemently opposed to the court because it fears the body could be used for frivolous or politically motivated prosecutions, especially for American troops. It has adopted legislation authorizing the use of 'all means necessary' to free US citizens in court's custody and has so far signed agreements with 27 countries exempting Americans from being handed over to the court."² We can imagine what this might imply: in principle, an invasion of Holland, or at least a raid, a blitzkrieg on The Hague.

As its Preamble states, the Rome Statute of the International Criminal Court reaffirms the purposes and principles of the Charter of the UN. The Hague Court, as the ICC is also known, has jurisdiction over "the most serious crimes of concern to the international community as a whole" (Article 5, paragraph 1). The crimes in question are the following: the crime of genocide; crimes against humanity; war crimes; the crime of aggression. They all seem to apply to the present situation in Iraq, and certainly the last three do. Yet even the crime of genocide applies to it if one considers the effects of the sanctions, correctly referred to by many authors as weapons of mass destruction, and the effect of the use of depleted uranium during the two Gulf wars. In fact, point (c) of Article 6 of the Rome Statute defines genocide as "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Crimes against humanity go from murder to deportation, from torture to rape, and the last point (k) is generic enough to cover many criminal activities that in a regime of declared

and actual war must become a matter of routine. It says that crimes against humanity are "inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health." Article 8 on war crimes includes "wilful killing" and "wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial." Of this crime the US is already guilty with respect to the invasion of Afghanistan and the deportation of prisoners of war to Guantanamo Bay, Cuba, where they are deprived of any legal status, even that of being prisoners of war. The violations described in the Rome Statute are many, and most of them apply to the present situation. Just to give another relevant example, I will quote point (b) (iv) of the same article: "Intentionally launching an attack in the knowledge that such attack will cause individual loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated." The last crime contemplated by the Rome Statute, the crime of aggression, has not been defined yet. It is, however, worth noting that the crime of aggression entered the Statute only as a result of the insistence of the caucus of the Non-Aligned Movement (Schabas, 2001, 16 and 26). As the statement made by the US delegation at the Permanent Council of the Organization of American States (OAS) shows, the inclusion the crime of aggression in the Rome Statute constitutes one of the main objections of the US to the ICC. The reason for this objection is "the potential for conflict with the United Nations Charter, which provides that the Security Council determines when an act of aggression occurred".³ It goes without saying that US attention for what the UN Charter guarantees is very surprising. But of course all this comes down to the US establishing what is and what is not a crime of aggression--the US having the most powerful voice within the Security Council itself. The other objections, as spelled out in the statement to the OAS, are also very interesting and telling: the International Criminal Court undermines national sovereignty, it also undermines the role of the UN, and finally it lacks an adequate system of checks and balances. From many quarters, these are exactly the charges moved against the new imperial policy of the US. The fact that the US now uses the same charges against the ICC may be a sign of the awareness and fear that the ICC may be in fact the only entity able to challenge its monopoly on power.

The International Criminal Court, just like the UN, certainly represents an effort toward the elimination of war and institutional violence, or rather the violence of institutionally empowered individuals. The ICC and the UN are both the result of the tragic experiences of the twentieth century and take humanity and history into deep consideration. However, for the legal discourse of these two institutions to become an actual reality many other problems must be addressed and solved, much time must elapse. Fundamentally, what must be overcome is the social and political antagonism that divides the world's societies, the deep injustice that keeps a relatively small number of people in power, and gives them wealth, while keeping the majority of us either in utter distress and poverty, condemned to sickness and ignorance and death, or at gun-point for the enlightened and courageous ideas we uphold. This antagonism cannot be eliminated by the workings of those same institutions, for, precisely, their institutional character ultimately ties them to the interests of the dominant class, now dominant at a global level. If one thought here that the opposite could be the case, namely, that the legal and institutional venue might in fact be of great service to the cause of humanity, one would only be deceiving oneself, fall into that strange optimism experienced by some before the war started; for it made sense to think it couldn't be true, they wouldn't really decide to wage this war--because the international community (at the institutional level) was largely against it, the people of the world were enraged and flooded the capitals and cities and towns of all continents, and John Paul II spoke forcibly against it. But to no avail: "We need no permission," was the answer. That optimism naturally changed to

frustration and sadness and rage. It radicalized positions that were already radical. Thus, that kind of optimism is no longer an option. Things have radically and permanently changed. The world cannot go back to what it was before. Not because before the war started we hadn't experienced enough violence and tragic convulsions and insults to what it means to be human. Rather, because there was then a sense, an illusory sense to be sure, of a limit. This limit is gone. What has become *the* war has brought back the entire plane of memory of a murderous century. Before this war, and because of that historical memory, we had a keen sense of the importance of sharpening and nurturing our intelligence, being vigilant and recuperating reason. Now our intelligence is under attack, and so is reason--an attack which, precisely because of our greater awareness, is of unprecedented proportion.

At this point, we can perhaps try to answer the question we left pending above. What kind of justice? We now see that justice, just like peace, is an empty word. What really characterizes the world and history today is the coming together, and working together, of war and injustice: a logic of war, a system of injustice--injustice which is systematic and systemic. These are the fruits of human progress and civilizations. Perhaps the hope that through the institutions we can bring about a different world must be abandoned; yet hope itself cannot follow the same destiny. The system of injustice that seeks to destroy intelligence, reason, and hope, the logic of total war that wants to reduce life to a fearful and gruesome hideout, the logic of security that entails carelessness and lack of respect, and thus utter insecurity, for anyone not included in the "se-" part of the word "securitas," the part which means "by oneself, by itself, apart"--all these are typical traits of the isolationism and arrogance of the conquerors and masters. They are the features of their contempt. On this basis, we cannot expect any future peace or justice, but more violence and repression, more thoughtlessness and contempt. The United Nations, an institution that should be closer to the plight of people than any State could ever be and should speak the balanced voice of reason, has been insulted and humiliated; it has been made completely powerless and, yes, "irrelevant". The same exercise of power is now being tried against the International Criminal Court, by way of boycotting its project, again, by insulting its purposes and aspirations, by saying its *modus operandi* could be "frivolous". Yet, what concretely exceeds the State is not really a supranational entity that remains at the mercy of the most powerful State, but rather the ideas and actions of individuals, millions and millions of people, who reject any readymade and shallow concept of identity in the name of universal difference. This is not to say that there is anything less than noble in the Court's intentions (the same is the case with the American Constitution and the UN Charter), and the recent election of the Argentine lawyer Luis Moreno Ocampo as first Prosecutor is a very good sign, an excellent beginning. Moreno Ocampo helped convict the military junta responsible for the death of fifteen thousand people during the years of State terror in Argentina. The only hope is that the Court, unlike the UN, can maintain its autonomy and be effective, and that its Prosecutor will be able to listen, not only to States' Parties and the Security Council, but also and particularly to non-governmental and institutional organizations as well as to individuals.

The second form of contempt lies in the breaking of the moral law. It is beyond doubt that this war is immoral, and its immorality is even more troubling than its illegality.⁴ Positive law, whether national or international, can be wrong. The same does not hold true for the moral law, at least if one takes a Kantian stand on this, as I do. For Kant, the moral law, in its objectivity and autonomy from empirical matter, as well as in its universality, must hold true for all rational beings and be permanent. It is not objective because it may command, accidentally, universal assent, "on the contrary, it is the objective validity which alone constitutes the basis of a necessary universal consent" (Kant, 1996, 23). But this objective validity can be heeded only by those who are able to

rise to the level of the will determined by reason, in itself a universal will, an autonomous will, not contaminated by particularistic interests such as money, oil, and power. A "coalition of the willing" will never be able to reach into the universality of the rational will, for that coalition is bound to impose, to that same universality, the dominion of a partial will. However, in the long run the imposition of such a dominion will turn out to be an impossible task, for universality, as a true totality, exceeds the partiality of political power and provides the foundations for its own ethos. The universal and rational will moves then from the uncertain terrain of politics to the solid ground--solid in its unconditional and unconditioned nature--of ethics and freedom.

But let us go back to the idea that positive law can be wrong. History provides many examples of legal arrangements which are now considered criminal practices: slavery, the system of apartheid, to name but two. It is obvious that these practices and institutions did not become criminal and wrong only after their demise; rather, they were criminal and wrong throughout. Yet, they were not criminal and wrong from the point of view of positive law, for from that point of view they were legal and "right." They were, as they are, criminal and wrong only from the point of view of the moral law, and that is an objective and universal point of view--not at all a matter to be left to anyone's petty opinion. It is, then, again, obvious, that many practices and situations are legal (or made legal) today, but they are essentially criminal. An eminent example is provided by Israel's occupation of Palestine. Of course, Israel is in breach of international law, as well as of the moral law, but it is nonetheless capable of resisting that accusation, not only because of its US-funded military force, but also out of a formal appeal to the right to defend itself. The same is true of the US in Iraq: the US, it has been remarked, has carried to this distant land the same formal understanding and actual tactics of "self-defense" as those practiced by the Israelis in the Occupied Territories. As an Israeli analyst has remarked, the Americans have no choice but to consider all Iraqi civilians as potential enemies. This is called the right to self-defense, and, so framed, it gives the impression to many that it is really *right*. Indeed, how could a right be wrong? A right is right by definition. In fact, things stand otherwise. Let us give a different example. The right that the slave-owner had to apprehend "his" fugitive slave, after the Fugitive Slave Law passed in 1850, was not right; it was wrong. It did not become wrong only after slavery was abolished in the US; it was wrong even when it was right. The truth of its wrongness lay, not in the letter of the law (the positive, empirical law), but in the self-evident truth that slavery is an aberration and an abomination, the "sum of all villainies" in the words of one of the greatest Americans, John Brown. One does not need a law to see that. And, in fact, laws change for the better, when they do, only insofar as they are forced to, and they are forced to change and improve by the movement that finds its source of aspiration in moral thinking. This source will not be found in the deliberate blindness, the will to lie, of the institutions. Let us consider the example of institutional and mainstream media, which perform today a fundamental educational function. Let us consider, as an example, *The New York Times*, which, for all its chosen philosophy of objectivity (an objectivity, to be sure, of a positivist, not of a Kantian, type), cannot claim immunity from that charge.⁵

When *The New York Times* began its publication on September 18, 1851, it was obsessed with two main topics: Cuba, which had been attacked by filibusters, and the resistance of fugitive slaves and their friends to the Fugitive Slave Law of 1850. As we shall see, *The New York Times* was lenient with the annexationists and filibusters, but it was very harsh with those who broke the vicious new law.

Narciso Lopez, the Venezuelan-born filibuster who tried to seize Cuba from Spain in 1851, had already been executed in Havana when *The New York Daily Times* issued its first number. However, the *Times* still wrote about him and his expedition (made up

almost exclusively of Americans), for many Americans were still in Spanish hands. The US government tried, indeed successfully, to have the Queen of Spain relieve them.

On its first day, September 18, 1851, *The New York Times* had a long article on Cuba. The article makes three main points: (1) a condemnation of Cuba; (2) a defense of the United States; (3) a reluctant but necessary denunciation of the illegality of Lopez's invasion. The first point basically argues that Cuba did not desire independence and freedom, or else it would have welcomed the illegal action of the filibusters: "Nothing can be clearer than the fact that, for the present at least, the inhabitants of Cuba do not desire freedom. This has been made so evident by the fearful hostility which LOPEZ encountered from the inhabitants of the island, from the hour when he first landed upon their coast, that any new invader will require conclusive evidence of their favorable disposition, before he will trust himself among them." Of course, here freedom only means independence from Spain and annexation to the US. This annexation was the continuation of the project of expansion which had seized large parts of Mexico a few years earlier, and it had one main goal: building a slave empire in the South.

The second point made by the article presents a defense of the Americans' "natural" desire to "free" Cuba: "There has been a good deal of sympathy throughout the United States with the project of revolutionizing Cuba." Indeed, the Cuban annexationists wanted "freedom" in order to be free to keep the slaves. The American "sympathizers," on the other hand, wanted Cuba in order to expand their slave territories. However, the article makes no mention of slavery, which was the real intention of the expedition and general project to "free" Cuba. Instead, we read: "The island is large, rich, and of undeveloped resources. Americans *naturally think* that it is not well taken care of now; and they crave the task of cultivating its soil, governing its people, and pocketing its rich returns" (emphasis added). It is striking to see how, after one and a half centuries, the situation has not changed much. Why Americans "naturally think" what they think is not stated in the article, but it is obvious. As Philip Foner says, "according to the annexationists, Cuba lay in the path of America's destiny, and belonged "naturally" to the United States" (Foner, 1963, 31). *The New York Times* goes further and says that this "natural" thinking precedes and overruns morality and legality: "Whether it be right or wrong,--whether it be in accordance with, or against, the principles of international law,--whether it be any of their business or not,--the Americans will always sympathize with any people struggling against oppression." Subsequent history has illustrated this point very well, and an eminent example of this tendency is provided by the present situation with respect to Iraq. The article also says: "Certain it is, that no struggle for liberty will ever go on in any part of the earth without enlisting the sympathy, the good will and the aid of the American people."

The third point of the article presents both a denunciation of the illegality of Lopez's invasion and an attempt at justifying it. Now *The New York Times* must take distance from those Americans who were part of Lopez's expedition--an expedition which, however, as Foner says, had the connivance of the US government. *The New York Times* says: "They ceased to be American citizens the moment they set out, as invaders, for the shores of Cuba." Formal condemnation is now necessary in order to please the offended Spanish authorities and to remain on the plane of objectivity. It has to go as far as to say that "their conduct was criminal at home as well as in Cuba." Those "American adventurers" were not motivated by feelings of sympathy and solidarity, says the paper: "They were induced to enlist, in most cases, by promises of large rewards." Once on the island, "[t]hey found no aid. Not a Cuban joined them. They were treated as pirates and robbers." What seems to be a reproach is, in actual fact, a justification. What is really being condemned is the ambiguity of the Cuban annexationists: they had the Americans

believe that a revolution was going on in Cuba, but that wasn't the case; when the Americans got there, they were betrayed and lost: "American adventurers, never too scrupulous as to the nature of the enterprises which attract their minds, enlisted and were ruined." And indeed there was much that could attract the mind of anyone: an island "large, rich, and of undeveloped resources," one which was "not well taken care of." The article ends with a plea which is also, and in reality, an insult and a warning against the Spanish government which "undoubtedly"--this time not "naturally"--"alarmed," reacted under "the impulse of vengeance". And it says: "After Lopez was executed and his force in captivity, the [Spanish] government seems to have resumed, in some degree, its dignity and judgment. Passion did not prevent it from being considerate." After this insult, there is a promise, which is also a warning: "the release of [the prisoners] will do more to prevent future invasions of Cuba from the United States, than the slaughter of thousands in the fields or upon the scaffold." Let us keep in mind that when this happened and was written about, the specter of communism had just been announced, but it was limited to Europe alone, and Fidel Castro was still in the mind of God. Yet, the American adventurers were training for actions yet to come, not only with respect to Cuba, but to Central America in general and the whole world; for instance, the successful invasion of Guatemala in 1954, and the shamefully failed invasion of the Bay of Pigs in 1961.

If in the case of Cuba we saw American adventurers breaking the laws of Spain, when it comes to slavery we see fugitive slaves and their friends breaking the laws of the United States. In the former case, *The New York Times*, a faithful mirror of mainstream society and official politics, appeals to human consideration and compassion, in the latter the appeal is only to Justice.

There was, in Pennsylvania, a "lamentable" fugitive slave riot in which a certain Edward Gorsuch, the Baltimore owner of runaway slaves, was killed. It is on the death of this man that *The New York Times* builds its first case on slavery. What made it possible for Gorsuch to leave his Maryland plantation and meet his death in a Pennsylvania woods was the Fugitive Slave Law of the year before. As Howard Zinn says: "The Fugitive Slave Act passed in 1850 was a concession to the southern states in return for the admission of the Mexican territories (California, especially) into the Union as nonslave states. The Act made it easy for slave-owners to recapture ex-slaves or simply to pick up blacks they claimed had run away" (Zinn, 1980, 176). The Mexican war, which expressed the greed of the Polk administration representing the slaveholding South, is at the basis of the two obsessions we are presently considering: Cuba and slavery.

I will not repeat here the story of the killing in what *The New York Times* calls "The Christiana outrage" (Christiana being the town where the riot occurred). What is important to note is that some of the rioters (some of them were whites) were arrested and charged with "treason and levying war against the United States" (*The New York Times*, September 19, 1851). But here, too, as in the case of Cuba, there is an adverb that should be noted: "the negroes rushed upon the officers, and *savagely* butchered Mr. Gorsuch" (September 20, 1851; emphasis added). Later: "A mulatto man, supposed to be the slave owned by Mr. Gorsuch, was seen yesterday on the hills, and several citizens had gone in pursuit of him."

The New York Times also publishes the "excellent letter" of Governor Johnson in reply to "a memorial addressed to him by a number of citizens of Pennsylvania, requesting him, as the Chief Executive, to 'vindicate the laws and uphold the dignity of the Commonwealth'"--a dignity based on slavery and the defense of slavery. Johnson's letter gives the good citizens assurance that the criminals will be severely punished. However, the governor, and *The New York Times* with him, resists calling the riot and

murder treason: "He thinks it unwise to give the crime committed undue dignity, or to pursue such a course as shall inspire distrust of the regular course of law. We think so too" (September 19, 1851). Dignity, again--dignity of the law and morality: "The moral law is in fact a law of the causality of free agents" (Kant, 1996, 65).

On Saturday, September 21, *The New York Times* gets even harsher with respect to the Christiana affair: "The affair was even worse than we had supposed. It was evidently a conspiracy, planned beforehand, to resist the officers of the law in the execution of their duty." The duty was to recapture the fugitive slaves, and that is, people who had returned to their fundamental and inalienable freedom. The new aspects, which offended the innate moral sense of the *Times*, emerged from the revelations of Mr. Gorsuch's son, "who is a clergyman, and a man of good standing and character," and who was also shot but didn't die. "It was a brutal murder, planned beforehand and executed with the utmost barbarity." The call is for the rioters to be punished. In particular, "every white person in any way connected with this atrocity [should be] punished with the utmost severity of law."

There is a great, though only formal, similarity between the Christiana affair and Lopez's invasion of Cuba. What I mean is that when we abstract from the empirical content, we find the same structural form: the breaking of laws. Yet, the *Times* asks for two completely different measures. In the case of Cuba, it asks for the release of the prisoners; here, for the most severe punishment. Deliberate irrationality and ambiguity are made apparent in the following passage: "There is no use in making laws [the reference is to the Fugitive Slave Law], if organized gangs of men [in the case of Cuba they were called "American adventurers"] can conspire to break them and murder the officers charged with their execution with impunity" (September 20, 1851; brackets added). The paper continues: "We trust these negroes, and the whites who aid them, to feel the utmost penalty of the Law." On the same day, we read about the prisoners in Cuba: "There are some among our people who are clamorous for the execution, or the severe punishment of these, their countrymen. It seems to us that they have suffered enough already."

Impunity. The contempt for the moral law--not a novelty in world history, not a novelty in American history--makes very often use of a legal semblance, but it is in reality the most despicable trait human beings can show. It would not be too far from the truth to say, always in keeping with Kant, that by despising and deliberately breaking the moral law one really becomes sub-human--in the sense that one reaches that modality typical of historical decline, which Edward Gibbon described as a "diminutive stature of mankind." Impunity is nothing but lawful lawlessness, legal illegality. To the contrary, the lawlessness entailed by acts of civil disobedience, or the lawlessness of a John Brown, makes no appeal to impunity, for it rests on the higher plane of over-humanity.

The culture of sub-humanity, which is the opposite of Zarathustra's promise of the Overman, finds its roots and causes in the fear which is provoked in the structures of established power by human intelligence, namely, the ability to see and speak the truth. The word "intelligence," in the context of national and international politics, is used in a very strange way--a use that in and of itself is an affront to human intelligence proper. Thus, "intelligence" refers to the institutional ability to control, investigate, fabricate evidence, interrogate, manipulate, torture, repress, and kill. But this is in reality the exact opposite of intelligence, its absolute and brutal negation. The methods of army and police are not methods of intelligence, but of sheer force, conspiracy, and violence. When the police confront people who exercise their democratic rights and act violently against them (as it recently happened in Oakland, New York, and Washington), they fully

manifest the third form of contempt I am speaking about: the contempt for democracy and freedom. Of course, individual officers and soldiers do what they are told and what, at a given point in the history of a society, becomes permissible. This has always been the case. It is as true in the US today as it was in Saddam Hussein's Iraq or in Hitler's Germany. Police officers and soldiers are often simply the carriers, but also ultimately among the victims, of the "banality of evil" that for Hannah Arendt finds its motor in *thoughtlessness*. This modality of thoughtlessness is deliberately created by the structures of institutional power. At the level of the production of those structures there is a tremendous fear that things can get out of hands, power can slip away, the world can turn upside down--a correct feeling, for all this is indeed possible. However, this fear is coupled with a sense of self-righteousness and contempt. Fear and contempt on the part of institutional power produce the urgency for the most basic war in the many wars that make up the logic and time of total war: the war against intelligence. The bombing of Hotel Palestine in Baghdad, the murder of Tariq Ayoub, are thus fully explained--a murder that, notwithstanding all circumstantial differences, recalls that of Federico Garcia Lorca by Franco's death squads, or any other attack against intelligence, sensibility, and reason, against humanity.

The contempt for democracy and freedom has, particularly, the appearance of a paradox, given the fact that the US poses as the champion of democracy and freedom. However, there is no paradox: only a high degree of hypocrisy, which informs most of the history of US foreign policy.

Democracy and freedom are perhaps the most cherished values of our western civilization. Hence, we are quick to rise in protest as soon as they are diminished, let alone taken away. When this happens, voices of dissent emerge from everywhere--voices that say that freedom cannot be curtailed, or else it isn't freedom; democracy cannot exist if all opinions aren't represented. A case in point is, once again, Cuba. The most recent "repression" of "dissidents," the arrest of over seventy people, the execution of three men, has provoked outrage from every side of the political spectrum. Everybody now discovers that Cuba is not a democracy, and, in the midst of the most criminal war empire has unleashed, even leftists feel compelled to denounce Cuba on that ground. History forgotten, we are no longer able to see that Cuba has no choice but expose the doings of the US Interests Section, in the person of James Cason, stop the series of US-sponsored hijackings that are creating great disorder on the island and the conditions, like at the times of Lopez's expedition, for "revolutionizing" Cuba. *Cuba has no choice*--but, it is said, it could "democratize" its state and institutions. And we on the left really appear not to have understood anything, for we still believe in the formula of representational and institutional democracy. Whereas it is clear that today "democratizing Cuba" only means losing Cuba, or rather turning it again into one of the US backyards, a banana republic; it means condemning Cuba to share the fate of Arbenz's Guatemala, of many other countries blessed with the gift of democracy and freedom by the US.

The truth is that the present, institutional concept of democracy is based on the contempt for true and pure democracy. We complain that there is no democracy as soon as we detect elements of what goes under the name of authoritarianism. But we are more prone to pass under silence, and in fact forgive, the presence of gross authoritarian structures as long as they are covered up by formal curtains of democratic flavor. Thus, we insist we need a democratic state. But why have a state at all? We become very upset because Cuba still has and applies the death penalty, but then we should also be upset that Cuba still has prisons. Of course, the death penalty is something that must be universally abolished; but so are prisons, and so are states, with their police, armies, and institutions.

If we are seriously interested in speaking about democracy, then all these questions must be addressed.

Let me summarize the main points of this essay. I started by saying that we live and have lived in a state of permanent and total war, long before this became official policy. I also said that this state of war is now made explicit by way of articulating and unfolding a threefold modality of contempt: the contempt for international law, moral law, and democracy and freedom. Admittedly, I gave less space to the last form of contempt for the simple fact that, in the necessary overlapping of the three forms, I had already dealt with it when speaking of the others. Indeed, contempt for institutions such as the United Nations and the International Criminal Court is already contempt for democracy. In the same way, the contempt for universal dignity and ethics is contempt for freedom. However, there is a point which must be stressed again: the contempt shown for that new and global "*general will*," the ensemble of subjectivities, the multitudes that emerged particularly on February 15. It is, in fact, in relation to this historical event that the contempt for true democracy and freedom manifests itself in the most eminent way. The people of the world have spoken with the voice of reason, which is universal and local at the same time. They have said in the clearest and most powerful way that the partiality of established powers is really a usurpation of their own, more fundamental, power and legitimacy--a power, they have, which is really the ability to take care of human and worldly affairs. They have emerged, presented themselves, in order to say that they do not need to be re-presented. The arrogance of the established powers, their fear mixed with contempt, reacts by unleashing a series of violent and repressive measures in the name of those very ideals it seeks at the same time to destroy: peace, democracy, justice, and freedom. Yet the struggle to end the logic and time of total war is not over. Perhaps a few names will be added to the historical list which already contains those of Charles I and Louis XVI. Perhaps the conditions for the reappearing of vectors of power, partial justice, and death will be completely eliminated. Perhaps the conditions for the possibility of war will be destroyed. Then, Isaiah's vision will again make sense: "nation shall not lift up sword against nation, neither shall they learn war any more" (Isaiah, 2, 4). But until then, we have to realize that war is the fabric of the world's societies, and think peace as war. This means that war is not limited to the phase of combat, not limited to a declared or not declared but actual war. But, above all, this means that the real and permanent war is that being waged by institutional and constituted power against the universal light of reason and truth, against intelligence and spiritual wealth--all reduced to poverty and ashes. Yet that is precisely where the site of subversion lies. There begins, with Zarathustra, the going under which is at the same time a return and an overcoming.

I would like to conclude with the following lines by Gerard Manley Hopkins: "When, when, Peace, will you Peace? I'll not play hypocrite / To own my heart: I yield you do come sometimes; but / That piecemeal peace is poor peace. What pure peace allows / Alarms of wars, the daunting wars, the death of it?"

Notes

1 "The court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of

the immunity." This is paragraph 1 of Article 98; paragraph 2 fundamentally reiterates the same point.

2 "War Crimes Tribunal Picks Head Prosecutor," by The Associated Press. *The New York Times*, April 21, 2003.

3 <http://www.oas.org/XXXIIIIGA/english/docs/agdoc4238_03.pdf>.

4 Of course, war is never, properly speaking, "moral," and justice does not belong to its concept, something which, Carl Schmitt notes, "has generally been recognized since Grotius" (Schmitt, 1996, 49). Although attempts at justifying war on grounds of morality and justice are never lacking, war is always the clearest and most extreme expression of a political antagonism--the antagonism between friend and enemy. The justification of war relies on such concepts as "humanity," but, Schmitt says, "Humanity is not a political concept" (55): "Humanity as such cannot wage war because it has no enemy" (54). And yet, the fact that "wars are waged in the name of humanity is not a contradiction of this simple truth; quite the contrary, it has an especially intensive political meaning" (*ibid.*). This meaning is of course what everybody experiences in the form of persuasion or hypocrisy in the rhetoric of established political powers: "When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein *a particular state seeks to usurp a universal concept* against its military opponent. At the expense of its opponent, it tries to identify itself with humanity in the same way as one can misuse peace, justice, progress, and civilization in order to claim these as one's own and to deny the same to the enemy" (*ibid.*; emphasis added). In laying the groundwork for "the war against war" (36), the antiwar movement is then amply justified (that is, *politically* justified) in seeking to recover those universal concepts which have been appropriated and usurped by the established powers, to call attention to the needs and aspirations of humanity, and to deny that these concepts also belong to and describe the enemy.

5 The following discussion of the first three days of *The New York Times* is drawn from an unpublished graduate paper I wrote in 1991. This discussion is important because it shows how the general positions and modus operandi of the *Times* are still the same; it is also important because it throws some light on the real reasons for American opposition to Cuba even today.

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