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GUNNEFLO BOOK SYMPOSIUM SYMPOSIUM

## Gunneflo Book Symposium: Part 5

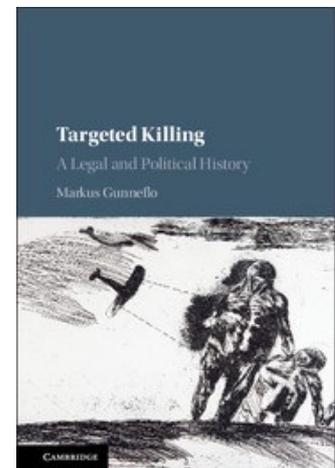
### Jothie Rajah: Targeted Killing and Spectacular War

JOTHIE RAJAH — 7 April, 2017



1.

In October 2015, some four and a half years after the Osama bin Laden killing, the *New York Times* disclosed that weeks before the Abbottabad raid, federal lawyers had engaged in “[s]tretching sparse precedents” to produce “rationales intended to overcome any legal obstacles”. With these disclosures, the apparently extra-legal killing of bin Laden took on a second life as a hyper-legal killing; a killing authorised by precedent and legal rationality. In the *New York Times*, Charlie Savage observed that:



**“legal analysis offered the administration wide flexibility to send ground forces onto Pakistani soil without the country’s consent, to explicitly authorize a lethal mission, to delay telling Congress until**

**afterward, and to bury a wartime enemy at sea. By the end, one official said, the lawyers concluded that there was “clear and ample authority for the use of lethal force under U.S. and international law.”**

While some of us may have found the disjuncture between public official narratives and secretive official practices cynical and manipulative, Markus Gunnflo is unlikely to have been surprised. In his 2016 monograph, his central argument is that “targeted killing is steeped in law from the outset, and ... law, particularly international law, has both *shaped* and *been shaped* by this practice” (1). His timely and important contribution to knowledge – a legal and political history of the concept and practice of targeted killing – finds that targeted killing “emerged through extensive legal work”. This legal work centres “entirely on the ability to distinguish between legal ‘targeted killing’ and extra-legal ‘political assassination’” (1). “[P]roceeding bottom up – by studying interpretations, definitions, concepts and categories as produced by actors in the field” (4), Gunnflo’s lucid analysis focuses on “Israel and the United States – the two states that have pioneered this practice” (1). Israel and the US are also the two states that have generated the legal discourse yoking applications of the law of armed conflict to targeted killing in the context of terrorism (2); in large measure because, “in the liberal constitutional state, the question of sovereign authority is not just a question of decisiveness or of being an effective ruler ... but rather one of law and legal justification” (126). In tandem with a close analysis of texts with obvious legal effects, such as judgments and Executive Orders, Gunnflo excavates memoranda, speeches, national security directives, and policy documents; tracing the emergence and consolidation of targeted killing.

Gunnflo’s forensic analysis of texts and contexts illuminates a crucial relationality informing law, language, concept, and practice: “the creation of a legal basis for the extraterritorial pre-emptive killing of designated terrorists is also the creation of a potentiality for naming such killings ... a new concept is particularly important when competing concepts such as ‘assassination’ and ‘extrajudicial killing’ have a discrediting normative connotation” (163). It is precisely the emergence into the public domain of targeted killing, and the

significance of this publicity, that Karin Loevy recalls in her contribution to this Symposium.

2.

In this brief note, I take the position of a humanities inflected, socio-legal scrutiny of the relationship between law, language and power. From this position, keeping the thread of critical attention to text and context that is such a strength of Gunneflo's book, I bring *Targeted Killing* into conversation with a text that many would not conventionally regard as a text of law: Gavin Hood's critically acclaimed 2016 film on drone warfare, *Eye in the Sky*.

EYE IN THE SKY Official Trailer (2016) Alan Rickman, Helen Mirren, A...



*Eye in the Sky* features a gripping plot, and stellar performances. It also features extensive dialogue on law, alongside technofetishism – the enticements of “cool weaponry” and “the glamorization of gadgetry” (Stahl 2010: 66, 68); Stahl defines technofetishism as “the worship of high-tech weaponry...ascribing weapons an inherent virtue or beauty [and] positioning military hardware at the center of the television war drama” (Stahl 2010: 28). Technofetishism is an attribute of spectacular war. With spectacular war, rather than a political, social, and media environment that “work[s] through appeals, explanations, and justifications to a citizen acknowledged to be in a decision-making position”, a discourse is produced “that dazzles the citizen subject into a submissive, politically disconnected, complacent, and deactivated audience member” (Stahl 2010: 20).

As a text of popular culture expressing the dynamics of spectacular war, how does *Eye in the Sky* script legitimacy and lawful authority for targeted killing?

To perceive *Eye in the Sky* through the lens of Gunnflo's book is to begin to grapple with the conditions of possibility for a film portraying and justifying targeted killing. This is so partly because Gunnflo upends the popular perception that, for the US, targeted killing has been freshly minted as a response to 9/11. Instead, in addition to tracing similarities and differences between Israeli and US justifications for targeted killing, Gunnflo offers a genealogy of US efforts "to find lawful measures through which the neutralisation of terrorist organisations and terrorist leaders could be achieved" (83). Uncovering, from 1984, the "rather unknown National Security Decision Directive 138" (83), Gunnflo highlights "[s]erious efforts of high-ranking lawyers within the administration to create the necessary domestic as well as international legal justifications to [neutralise terrorist organisations and terrorist leaders]" (83). Disturbing re-articulations of state practices and policies dating back some forty years or more are thus discernible in the 2015 *New York Times* report that I opened this blog with; a report revealing that federal lawyers engaged in stretching sparse precedents to supply the veneer of legality for the bin Laden killing.

### 3.

Drawing on "[t]wo incisive critics of the liberal rule of law, Walter Benjamin and Carl Schmitt" Gunnflo's compelling history illuminates "the problematic relationship between sovereign authority and lawful violence underpinning the modern state system" (2). Gunnflo focuses on the category 'protection' as a way of cutting through the confusions and contradictions of the contemporary law/sovereignty/violence relationship. Taking us through extensive literatures, Gunnflo offers an incisive and compelling interrogation of protection.

Building on Gunnflo's attention to the centrality of protection in legal and political theory, history, and practice, my argument is that *Eye in the Sky* dazzles us with first, technology, and second, an apparently acute questioning of law and legal systems, to distract us from a

troubling corollary of drone warfare: a re-making of the relationship between law, violence, and authority through a dramatization of the controversial international law concept, responsibility to protect. In the process, by rendering visible a particular set of actors, narratives, and questions, while concealing and erasing others, *Eye* legitimises targeted killing and valorises its actors, institutions, practices, and technologies. But before getting into the detail of my argument, some description of the film's narrative is useful for context.

*Eye in the Sky* opens on a scene of familial warmth and domestic togetherness. Words on the bottom left corner of the screen inform us of place and time: Kenya, 7 am. We are introduced to a little girl, Alia, and her parents. The parents have calm loving demeanours and use endearments when speaking to the child. Alia stands next to her father who is putting the finishing touches to a hoop that she receives with excitement. "Go play", her father instructs her. Alia spins and twirls inside the hoop with an entrancing, lyrical grace. Then the camera moves up and away to show us a jarring contrast: on the other side of the wall, men in camouflage uniforms stand in a jeep with a machine gun, patrolling the neighbourhood.

Mirroring the act of surveillance but discarding its brute militarism, and surpassing the limits of the human eye, the camera moves further up to show us an eye in the sky – a drone. Crosshairs, which "endow the spectatorial eye with the symbolic function of a weapon" (Stam 1992: 104), appear on the screen. As viewers, we understand this aiming, framing visual device as a signifier of the drone's seeing: precise, calibrating, *factual* because mechanical.

The film's opening lays the ground for the viewing appeal of technofetishism alongside a compelling narrative tension: Alia, so archetypally innocent, is likely to be "collateral damage"<sup>[1]</sup> if a missile is launched at a room occupied by terrorists loading two suicide vests with explosives. But if Alia is not risked (sacrificed?) and the terrorists subjected to a targeted killing, a minimum of 80 civilian deaths is the probable result.

In the thoughtful essay that launched this Symposium, Itamar Mann offers *Eye* as an example of the pervasive understanding of targeted

killing – a form of state violence “carried out through legal process ... culturally imagined as a gut-wrenching ethical choice”. As Mann notes, *Eye* represents contemporary drone warfare as a highly regulated legal system structured around an ethical valuing of innocent life. The ambivalences of vulnerability characterizing the Azaria case, in which Azaria shot a man who was lying down, wounded after having stabbed an Israeli soldier, are absent from *Eye*. Instead, in *Eye*, through the figure of the young girl, Alia, we encounter an unambiguous innocence.

With Alia’s life at stake (the film’s affective terrain discounts the value of the al-Shabaab terrorists’ lives), we watch American and British state actors – military personnel, cabinet ministers, the British Attorney General, the Senior Legal Advisor to the US National Security Council – as the decision is made to conduct the targeted killing. In the process, these various lawyers, politicians, and military personnel express competing values and understandings of law and reality. In other words, against the urgency of a ticking bomb scenario, the affect and logics of responsibility to protect animate this film.

#### 4.

Summarising his legal and political history of targeted killing in the US, Gunneflo writes,

**“[t]he emergence of targeted killing in the United States...tells the story of the advent of a displaced transnational terrorist threat, in relation to which similarly displaced means for protection are devised, to the point at which targeted killing is deployed in an American homeland which is the planet.” (82)**

In *Eye*, the territory in which the targeted killing will take place is, technically, Kenya. But the film vividly portrays a failure of Kenyan territorial sovereignty: Alia’s family lives in a neighbourhood controlled by al-Shabaab extremists in which all the inhabitants we see appear to be Somali refugees and al-Shabaab militants. In this space, Kenyan law is absent. Instead, al-Shabaab’s law rules; a law, we are shown, that takes the form of extra-legal executions, and a repressive policing of

the bodies and activities of women and girls.

With responsibility to protect, “the lawfulness of authority – both local and international – flows from the factual capacity and willingness to guarantee protection to the inhabitants of a territory” (Orford 2012: 29). By establishing the failure of the Kenyan state to protect first, its own population from suicide bombings, and second, girls and women from the misogyny of al-Shabaab, the stage is set for the (Western, imperial) rescuing mission of responsibility to protect. Accordingly, a British-led operation, in collaboration with the US, in which Kenyan armed forces receive and act upon orders, becomes lawful; a desirable expression of responsibility-to-protect’s moral internationalism.

In *Eye in the Sky*’s post-9/11 expression of the responsibility to protect, sovereignty, law, and jurisdiction are understood to have been reconfigured by the counterterror project. *Eye* dramatizes planetary jurisdiction in (at least) two ways. First, events and people are connected across four continents – Africa, Europe, North America, and Asia. And second, drones operated by US personnel are placed at the centre of the action. As a corollary of planetary jurisdiction, just as the military officers, politicians, and lawyers in the film invest trust in images on screens relayed from multiple places, our (spectator-consumer) sense of the total picture comes from watching. The single screen that we watch repeatedly multiplies into the film’s many screens. *Eye in the Sky* mirrors our act of watching such that the familiar tropes of liberal legality – hierarchies of authority, rules of procedure, adversarial argument – become entwined with the institutions, actors, and technologies of targeted killing.

If spectacular war “dazzles the citizen subject into a submissive ...deactivated audience member” (Stahl 2010: 20), then the spectatorship and virtualisation of watching *Eye* is like looking into a befuddling set of many reflecting mirrors: we engage in spectatorship and virtualisation; the film shows us others engaging in spectatorship and virtualisation; and the film convinces us that a transnational technological network of spectatorship and virtualisation is central to the functioning of a secretive form of warfare imperative to ‘our’ safety. Part of what dazzles us into submissive acceptance is the message that the technological apparatus and nation-state alliances of the ‘war on

terror' are too complex for any single, civilian, non-expert individual to comprehend. The expansive secrecy of the counterterror state (Masco 2014) contextualises the dynamics of spectatorship and virtualisation; dynamics which are such striking features of mainstream visual culture relating to the 'war on terror' (Kennedy 2012).

Drawing on Orford and Esposito, Gunneflo reminds us that it is Hobbes' *Leviathan* that "inaugurates a tradition that makes protection the defining characteristic of sovereignty" and lawful political authority, and presupposes the threat that makes sovereignty's violence necessary (6). Gunneflo refines his reading of Hobbes through Esposito, noting that the "continual fear and danger of violent death" of being in community is not eradicated by and handing over "the right to self-defence through delegation to a sovereign that henceforth exercises it for the [individual] subject" (6). Instead, through Esposito's lens of 'immunisation', the state of nature "resurfaces again in the same figure of the sovereign, because it is the only one to have preserved natural right in a context in which all the others have given it up" (6, quoting Esposito 2008).

The importance of Gunneflo's attention to Hobbes, Esposito, and the centrality of protection in contemporary statecraft is addressed by Nahed Samour's potent encapsulation, in her [blog-post](#), of the entrapments, insecurities, and inequities that come from being subject to law without being able to claim law's protection. Samour's call to disobedience, a call to reject the violence and injustice of a cynical, power-serving legality, is coherent with Gunneflo's grave conclusion on the disturbing effects of the US's self-scripted assertion of planetary jurisdiction. He writes:

**"The fatal implications of thinking about global co-existence in terms of diseases and immunitary responses is the same in these difference conceptions of foreign internal defense: it suggests that the existence of political community is entirely dependent on the death of a certain human being with whom it co-exists or, in other words, that death is a precondition for sustaining life." (192)**

*Eye in the Sky* perpetuates the conviction “that death is a precondition for sustaining life” (192) by inscribing planetary jurisdiction as a necessity. The film legitimises planetary jurisdiction and the operations of targeted killing through the affect and narrative of an ostensibly fictional cultural text. Lending ballast to its legitimising strategies, this film reinscribes the ‘war on terror’ trope that terrorists are “evil, barbaric, and inhuman while America and its coalition partners are ... heroic, decent, and peaceful – the defenders of freedom” (Jackson 2005: 59).<sup>[2]</sup> In *Eye in the Sky* none of the US or UK state actors is portrayed as fuelled by racism, righteous nationalist rage, or in the way of the Iraq War, by a heavy metal soundtrack (Pieslak 2009). Instead, with self-serving politicians, and responsibility-avoiding lawyers as foils, the film portrays military and counterterrorism personnel as the most ethical, selfless, and heroic among the dramatis personae. Dismantling the notion that drone warfare engages a distancing, de-humanising optic, the two young US air force officers in their Nevada ground station are shown to be intimately invested in protecting and saving Alia. Colonel Powell, and her superior, General Benson, make the decision to conduct the strike, despite the risk to Alia, because of the greater number of innocent lives at stake should they not pre-empt the suicide bombings. We are shown that making these decisions, and operating the technologies that surveil and kill, thoughtful, likeable individuals are burdened and distressed. By the end of the film, the mission is accomplished, but there is no celebration.

As I noted earlier, *Eye in the Sky* is a film in which a considerable portion of dialogue is given over to questioning law. In his concluding chapter, Gunnflo writes, “critical engagement ...appears to me to be not only useful but a matter of some urgency for the present. For, *legal* texts, laying down a specifically *legal* rationality, have played an enormously important role in the emergence of targeted killing” (233). Bringing Gunnflo’s important book into conversation with the cultural text of a film alerts us to the tentacular disseminations of a particularly troubling understanding of law and legitimacy in our era of perpetual war. Through the histories, politics, and accounts of law Gunnflo presents, I am prompted to ask: do cultural texts like *Eye in Sky* become proxies for legal contestation that does not occur in our public domains? Have we, as spectator-consumer-subjects, become seduced

by the bedazzlements of spectacular war?

Gunneflo's *Targeted Killing* offers a much needed corrective for the political disconnections of our mediatised, technofetishising contemporary moment.

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[1] In delving into the dehumanizing, "actuarial" (2012: 273) logics of the language of 'collateral damage', Liam Kennedy argues that collateral damage is "a form of violence that is supplementary and incidental to the sensational violence of shock and awe", and that "[a]cross US

mainstream visual culture, shock and awe and collateral damage are dominant frames in visualizations of the war on terror. They ideologically parse death and suffering by delineating those who count as fully human and those who do not ” (2012: 265).

[2] *Eye in the Sky* features in musician and artist David Byrne’s installation on implicit bias. In National Public Radio’s report on Byrne’s installation, the role of race, religion, and dress in assumptions about terrorism are brought to the fore: <http://www.npr.org/programs/morning-edition/>

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