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“Legitimate Violence” in the Prose of Counterinsurgency: An Impossible Necessity?

Christian Olsson

Abstract
Drawing on a critical engagement with the claims made by (and interpretations of) the 2006 US army and marine corps field manual on “Counterinsurgency,” this article engages some of its underlying concerns with the problematic relation between violence, legitimacy, and political order. Since this manual draws heavily on many commonplaces of contemporary political science, the analysis explores their problematic presuppositions and the ways in which they play out in contemporary warfare. The primary conclusion is that while the encounter of legitimacy and violence is claimed by the doctrine to produce and maintain political order, its framing of this encounter is deeply rooted in a specific political order, that of the modern state, which severely constrains the conditions under which this encounter can take place. These constraints cast serious doubts on many of the doctrine’s assertions, especially as they have shaped recent wars in Afghanistan and, until recently, in Iraq.

Keywords
counterinsurgency, warfare, policing, legitimate violence, political order, pacification

Counterinsurgency doctrine, as (claimed to be) applied by Western armed forces in Afghanistan, and until recently Iraq, is said to place “legitimacy in the eyes of the local population” at the heart of military action. References to legitimacy, legitimation, legitimate authority, legitimating narratives, and legitimate force are all over contemporary discourses on “war amongst the population” and, obviously, references to Max Weber are never far away. It will come as no surprise that the relation between violence and legitimacy is severely under-theorized in this context, including (and perhaps especially) by the academics acting as the prince’s counselors in these “savage wars of peace.” Is it its grounding in the decision of an allegedly legitimate authority that is to make force legitimate? Is it the use of force, with the affirmed objective of “protecting local populations,” that creates legitimate authority? And why resort to force if one is

1 Université Libre de Bruxelles, Brussels, Belgium

Corresponding Author:
Christian Olsson, Université Libre de Bruxelles, Brussels, Belgium.
Email: christian.olsson@ulb.ac.be
legitimate and people already consent to one’s decisions? Contradictory answers are given to these questions. Is it that the very act of claiming “local legitimacy” in these wars is imbued with hubris, naivety, or duplicity when considering its real effects in pushing violence toward the extremes of war rather than establishing “civil peace.” With hindsight, a decade of “liberal” counterinsurgency has left a legacy of destruction, death, and resentment.

Beyond the discrepancies between doctrinal statements and the dynamics of warfare, the narratives of counterinsurgency are an important site for extended analysis because they reveal something more profound and more complex. On one hand, they are influential discourses about “legitimate violence,” on what it is, means, and does. On the other, they are narratives aiming at the legitimation of a specific form of violence by recasting the utility of military force in a new light: “civil peace,” it is claimed, can be produced by a subtle mix of “good governance,” military force, and economic measures. This dual character of doctrinal discourse in relation to “legitimate violence” is instructive. Not only does it create a logical loop in which violence, when legitimate, can establish “civil peace,” so that violence can be justified as a means for establishing such peace. It also means that when the only criticism addressed to the doctrine is that its plea for “kindness and compassion” (FM 3–24: 5–38) is a ploy serving a familiar strategy of legitimation, a mere fig leaf dissimulating a brutal war, the message conveyed by the criticism is that the only problem with it is that it has not been followed. The common complaint that the destructiveness of counterinsurgency is much greater than is warranted by the doctrine merely fuels the debate on the relevant mix of security, governance, and economy, and thus on how to do “good counterinsurgency by the book.” As a consequence, the FM’s assumptions about “legitimate violence” appear to be unquestionable, even in many critical discourses. The need to explore what made it possible to link legitimacy, violence, and political order in the first place is then easily ignored.

This article seeks neither to analyze contemporary military doctrine as such nor to add to the literature on the challenges encountered by Western armed forces in Afghanistan and until recently Iraq. Drawing on a critical engagement with the claims made by (and interpretations of) the 2006 FM on Counterinsurgency, the analysis to be developed here seeks to tease out some of the underlying questions posed by the problematic relation between violence, legitimacy, and political order. Since the doctrine expressed in this Manual draws heavily on many commonplaces of political science, I want to take stock of their problematic presuppositions and ascertain how these assumptions play out in contemporary warfare. I will argue that while the encounter of legitimacy and violence is claimed by the doctrine to produce and maintain political order, its framing of this encounter is deeply rooted in claims about the specific political order of the modern state, which severely constrains the conditions under which this encounter can take place. These constraints cast serious doubt on many of the doctrine’s assertions and shed light on some of the illusions shaping war in Afghanistan and, until recently, in Iraq.

Political legitimacy will be understood here as the always unstable congruence between dominant beliefs as to what is politically desirable (what should be), what is not undesirable and/or could not be otherwise, on one hand, and dominant representations of “political reality” (what is) on the other. It is the outcome of constant, intersubjective, and relational processes of legitimation. Accordingly, legitimate physical violence refers here to the “violence that is held to be legitimate” and that is hence endowed with legitimacy by a given group (on a given territory, in the modern account).

This analysis is structured in three parts. Drawing on the few clues offered by work in anthropology, sociology, and political theory, the first part tries to account for the ways in which the aporias of legitimate violence have been settled by and within the modern state, thus, paving the way for the idea of “pacifying force.” The second part will explore why questions about legitimate force are likely to reemerge outside the state, that is, in overseas military operations, and how this challenges any claim to a monopolization of legitimate violence in this context. The third part will examine this
challenge by looking more closely at two narratives about counterinsurgency: the one on protection and security and the one on law, legal order, and the rule of law.

Legitimacy, Violence, and the State

The German sociologist Norbert Elias has analyzed the monopolization of violence constitutive of the modern state in terms of a process of “domestic pacification.” Although Elias abandoned Weber’s notion of legitimacy in the description of this process, he did not forsake its underlying idea. On the contrary, he saw this “pacification” as establishing a political order based on the individual self-control and consent of its members and progressively making the state’s “pacifying force” redundant. This being said, claims about legitimate violence raise more questions than answers: they are rife with tensions and therefore unlikely to be successfully monopolized except under very specific conditions, as we shall see. Many of the following analyses are partially contingent upon the conditions prevailing under political modernity. This is not to say that the distinction between legitimate and illegitimate violence is specifically modern, but rather that their (at least in theory) strict and unambiguous distinction on a given territory is.

Legitimate Violence: An Impossible Necessity?

When considering political legitimacy in relation to physical violence, the power to destroy lives and matter, two analytically distinct but sometimes interrelated scenarios are usually rendered by modern accounts of politics. The first concerns the resort by a political authority (usually acting in the name of the state) to coercion in order to quell “illegitimate” forms of violence that could otherwise put its ability to “preserve order” into question. The second concerns the resort to physical violence in the struggle between political actors competing over political legitimacy in the eyes of a same constituency, that is, the violent struggles over legitimacy that might lead, in the worst case, to “civil war.”

The first case raises the issue of policing, one of the rationales of which is to maintain or restore “civil peace” and thus to protect the “body politic,” “life,” “property,” and ultimately “order.” Following this logic, it is often said that effective policing might contribute to the legitimization of political institutions. Conversely, a failure in effective policing might induce delegitimization. In this sense, the preservation of order and security is considered the ultimate legitimation practice of political authority. Legitimate violence here refers to force defined as acts of authority bent on maintaining political order by stopping “violence” and that—by virtue of this very fact—legitimate themselves as well as the political order.

However, this story, sometimes assimilated to a loosely defined “political realism,” is incomplete. Indeed, it does not account for the social conditions of possibility—other than the fiction of a social contract—of such a “force” that pacifies rather than fuelling violence. However, the fiction of a social contract is interesting in this context: it points to the degree to which state violence can only operate in this way provided the agencies resorting to it are endowed with the initial legitimacy—epitomized by the contract—to do so for the purpose of preserving “civil peace and security.” In more sociological terms, it supposes a relative monopoly on what Pierre Bourdieu called symbolical violence or symbolical power, the capacity and entitlement to impose legitimate readings and classifications of the social world in this case of its physical violence. If Weber’s “monopoly of legitimate violence” implies that “the state is seen as the sole source of the ‘right’ to use force,” than the “monopoly on symbolical power” implies that the state is endowed with the “right” to be the source of this “right.” Symbolic power, in this sense, is the socially recognized and sanctioned “right” to define, attribute, or withdraw “rights.” This power, supposedly vested in the state in
matters of legitimate violence, precedes (logically) the monopoly on “legitimate violence,” and
finds the idea of “pacifying force.”

Indeed, the resort to physical force by particular authorities against specific forms of violence
(“criminality,” “terrorism,” etc.) can only be claimed to pacify social relations, provided the lines
between the legitimate categorizations of violence have already been drawn for them or by them.
Indeed, the authorities wielding this force must be able to convincingly designate (or have desig-
nated for them) who is to be considered a “criminal” and who is entitled to fight “criminality,”
while avoiding being themselves criminalized in the process. It is here that the monopoly on sym-
bolical power is a precondition of the monopoly on legitimate violence. In other words, legitimate
violence can never be a manifest characteristic of the violence itself: it has specific conditions of
possibility that are not immanent to it.

Conversely, when there is no monopoly on symbolical power, the boundary between legitimate
and illegitimate violence becomes an object of contention. This is “the question raised by the Tra-
gedies: is not the act of the justice-maker Orestes a crime just as the initial act of the criminal was?
This is a question eliminated by recognition of the legitimacy of the state so that it reappears only in
very specific and extreme situations.”\textsuperscript{18} Conflicting interpretations of legitimate violence character-
ze these “specific and extreme” situations: the resort to force might unleash violence when the
socially recognized difference between the violence upholding “civil peace” and the one threaten-
ingen it crumbles. Contesting or even “fighting back” state violence might then be considered a
socially appropriate option: when all violence is undifferentiated, blood follows blood and violence
spreads like contagion.\textsuperscript{19} This is the second scenario, the one of all-out internal war that is not only a
contest of force but also a contest over the legitimacy to use force. In its modern rendering, “legit-
imate violence” is hence construed as a political necessity, as a condition of political order.

However, while necessary, legitimate violence rapidly appears to be impossible because of the
seemingly unsolvable questions it raises.\textsuperscript{20} Three questions are of particular interest.\textsuperscript{21} First, why
would an actor have to resort to violence if, by virtue of the legitimacy with which it is endowed,
it has the authority to impose its will without violence? As Hannah Arendt has stressed, the defining
feature of (legitimate) authority is indeed that it compels and commands obedience without physical
coercion.\textsuperscript{22} Consequently, the crucial question to ask is “legitimate to whom?”\textsuperscript{23} Indeed, the very
idea of legitimate violence only makes sense to the extent that there is a consensus on the commonly
accepted rules and principles to be enforced throughout the polity. Moreover, the actual use of force
has to be regarded as an exception to such rules and principles. Indeed, legitimate violence draws
attention to the limits of its legitimacy (and hence power) every time it is deployed.\textsuperscript{24} To actually
use violence is to recognize a breach in one’s legitimate authority to do so. Yet, when not used
because of the illegitimacy of violence, attention is drawn to the limits of its forcefulness.\textsuperscript{25} As a
result of this double bind, legitimate violence is an ambiguous fiction, or rather it is never as “real”
as when it remains a non-actualized potentiality.\textsuperscript{26} As a form of political exceptionalism, it “maint-
tains order” only to the extent that it makes itself both unnecessary and yet somehow present.

Second, the sustained use of violence by an authority risks wearing down the specific legitimacy
claimed by this authority to do so\textsuperscript{27} in spite of an initial monopoly on symbolical power: when killing
or punishing, the perceived justice maker might suddenly appear as cruel and the punished as a
victim to be glorified.\textsuperscript{28} Furthermore, reciprocal violence, in its endless game of vengeance and ven-
detta, of attacks and reprisals, is equalizing and dedifferentiating. In armed conflict, there are no vic-
tims and no butchers, no pure and impure violence; everybody achieves the same status at the same
time. The more the parties think themselves to be just and their foe to be vile, the more they become
twins in monstrosity.\textsuperscript{29} In this sense, war is indeed the “great leveller.” In the context of what is
framed as “domestic politics,” the defining difference of “legitimate violence as pacifying force”
makes it vulnerable to any exchange of blows, reciprocal action, or dialectics of wills.\textsuperscript{30} As Michel
Foucault argued in a discussion of Hobbes, “War is the immediate effect of nondifferences”\textsuperscript{31} and
“Differences lead to peace.”31 The problem here is not as much the actualization of state violence, as in the previous conundrum, as the fact of the differentiated violence becoming part of an undifferentiating interaction. Ultimately, the fact that reciprocal violence produces similarity between its protagonists is both what makes “legitimate violence” necessary and impossible.

Third, does violence become legitimate when it is resorted to by a legitimate authority (defining what violence is legitimate and illegitimate), or is it the capacity to resort to presumably legitimate forms of violence (protection, etc.) that, over the long term, endows an authority with this legitimacy? The obvious answer to this question in the idealized representations of the modern state is that both hypotheses presuppose each other: state violence is legitimate because it derives from a “legitimate authority,” and this authority is legitimate because it is seen as putting force at the service of “civil peace.” However, this representation is likely to give rise to an undecidability: if legitimate authority and legitimate violence presuppose each other, one has either both of them or none of them. In other words, the process of state formation—the process through which legitimate authority and legitimate violence have come to coincide—is obscured.32 This conundrum is usually overcome by postulating a foundational moment of political order that draws a clear difference between, on one hand, the transcendental violence that constituted political order (and that is beyond or above the legitimacy/illegitimacy distinction) and, on the other hand, the immanent violence that is constitutive of it (i.e., presumed legitimate); between the promethean violence that gave a constitution to a people and the legal violence through which this people governs itself. The mythical nature of this moment however highlights the inherent limits of this construct.33

At first glance, “legitimate violence as pacifying force” is one of the classical enigmas of political theory as illustrated by the fact that the latter often “black-boxes” the problem altogether through the theoretical fiction of the social contract. On the practical level, however, the contradictions of legitimate violence have ultimately been settled historically, rather than theoretically, by and within the state.

The “Monopoly” and Its Historical Conditions of Possibility

Once it is established that legitimate violence appears as an impossible necessity, the question that must be asked is how such puzzles have been practically and historically settled, circumvented, or contained. What are the conditions of possibility under which these aporias are overcome, thus setting the stage for the peculiar idea that the use of violence on the part of the state, when remaining “exceptional,” is a socially meaningful tool for maintaining “civil peace and order”? At least, three mechanisms seem to be at play.

First, state violence has to be embedded in a legal order in order to maintain the social fiction that it is the outcome of a symbolically superior order that both legitimates it (by ascribing it impartiality) and constrains it (limiting it, in principle, to “proportional,” “discriminate,” and “minimum” force as “last resort”). This mode of legitimation of state violence, sometimes equated with a liberal rendering of the state, conceals the historical dynamic through which authority, and indeed the legal order itself, has been produced and reproduced through the crystallization of undifferentiating, and thus potentially polarizing, political conflicts. For example, this fiction prevents the police from being perceived as a questionable political competitor since the legal order is simultaneously construed as being beyond and above politics. The self-referential character of the legal order, as depicted by Hans Kelsen’s fiction of a “basic norm” (Grundnorm), hence corresponds to a theoretical and practical necessity:34 it is to dissipulate that “it takes confrontation outside the law to make the law itself.”35 It is only under this condition that it can establish the founding difference without which there can be no “civil peace.”

This leads us to the second mechanism: the genesis amnesia without which institutions cannot found their legitimacy on transcendental illusions.36 If (or when) state violence is seen as legitimate,
it is at least in part because people are oblivious to the historical struggles and past arbitrary compromises from which current political order has emerged. The amnesia of genesis naturalizes and normalizes the present by foreclosing political imaginaries and alternatives. It highlights that the legitimation of state violence requires not so much an active support as a “passive” recognition of the state’s “inevitable” and “natural” character. Ultimately, it means that “might” can indeed become “right.”

However, “normal” political struggles can lead to violent conflict and the subsequent blurring of the line between legitimate and illegitimate violence. In these cases, the legitimation of state coercion through law will most likely fail as the latter might rather appear as an instrument of political domination than as a neutral tool. What factors are there then left in order to avoid a continuous radicalization of violence leading to all-out civil war? It is here that the third mechanism intervenes: the existence of a more or less institutionalized field of political professionals capable of establishing and enforcing political compromises by co-opting political competitors. When such a field does not exist or is not reconstituted, any political compromise putting an end to violent political struggles on a politically unified space is condemned to be nothing more than a temporary truce.

Ultimately, the contradictions of legitimate violence have been settled historically (but by no means theoretically) by and within the modern state, thus paving the way for what Elias called domestic pacification. However, the solutions that have been found are fragile and cannot be taken as given in “domestic” settings. As we shall see, this is even more the case in the context of military interventions. More specifically, the following section will first argue that the way in which counterinsurgency doctrine is framed is deeply indebted to the historically contingent and logically problematic relations between violence and legitimacy identified so far. It will then show why the aporias that had historically been settled by and within the state are likely to reemerge outside of the state, especially in the context of overseas military interventions. On this basis, it will show how counterinsurgency doctrine must be understood in the context of shifting boundaries of political spaces.

Reading Doctrine between the Lines

The Political Ontology of Counterinsurgency

To many critical voices, the problematic nature of contemporary counterinsurgency resides in the fact that its concrete application overestimates the “utility of force” to the detriment of a more multidimensional approach. While this might well be a serious problem given the casualties caused, more is at stake than the translation of translating doctrine into practice. The doctrine itself is deeply flawed. A sketch of some of the main features of the FM, pages 3–24, show how.

There is no generic “Western counterinsurgency doctrine.” What is captured by this term is a multiplicity of more or less formalized accounts of how the combination of military force, social reforms, economic measures, “information operations,” or any other means can “restore political order” at times of insurgency, subversion, rebellion, sedition, or revolution. However, the approach that will become dominant from 2005 to 2006 onward, first in the United States and the United Kingdom, and then fairly rapidly in the other Western countries involved in the wars in Iraq and/or Afghanistan, is rather more precise. Based among others on the writings of military theoreticians active in the 1960s, such as David Galula and Robert Thompson, and contemporary ones such as John Nagl and David Kilcullen, these counterinsurgency doctrines have mainly promoted what could be called a differential approach: while the insurgents are said to thrive in chaos, destruction, and fear, the counterinsurgent must act differently. According to this approach, the counterinsurgent must reinstate “law and order” and “protect the local population:” “Insurgents succeed by sowing chaos and disorder anywhere; the government fails unless it maintains a degree of order everywhere” (FM 3–24: 1–2). The counterinsurgent is to claim the moral high ground over the insurgents.
and hence a monopoly on legitimate violence. This is, at least in theory, different from the undifferentiating approach promoted by Roger Trinquier during the Algerian war of independence. According to Trinquier, the counterinsurgent has to imitate the behavior attributed to the insurgents, including torture, killing, and other cruel or degrading treatments. 39

According to the differential approach, what is at stake is a competition between insurgent and counterinsurgent over political legitimacy in the eyes of the “local population.” 40 By gaining and maintaining “popular support,” the counterinsurgent is to suppress the insurgency. Counterinsurgency is accordingly described as population-centric rather than enemy-centric: it is by “winning the hearts and minds” of the population that pacification is to become a self-sustaining process. As a consequence, counterinsurgency is seen both as warfare and as “counter-warfare.” 41 It is warfare for the exclusive right to wage war and hence, if militarily successful, violence becomes ultimately unnecessary: “In COIN [i.e. counterinsurgency] operations, military forces defeat enemies to establish civil security” (FM 3–24: 7–5). The idea of “clear, hold, build,” in other words “eliminating” insurgent leaders, gaining “local acceptance” and “out-governing the insurgency,” bears testimony to the narrow correlation that is thus established between violence, legitimacy, and political order.

This is of course not to say that extreme levels of violence are not reached in these savage wars of peace. 42 What it means is that death and destruction thrives in counterinsurgency as part of the above-mentioned second scenario, the one of all-out “internal war” (the term civil war has been systematically avoided in the official doctrine) as a contest over legitimacy. Rather than being the mere expression of a military escalation, the utmost use of force here reflects the proclivity of counterinsurgency doctrine to present violence both as a means and as an end. It is both an instrument for suppressing insurgents and the political aim around which the war revolves: to appear as the only source of the “right” to use violence. The counterinsurgent then uses violence not only to achieve the “complete or partial destruction of the enemy” or to “compel the enemy to do ... [its] will,” in the terms of Carl von Clausewitz, 43 but also to prove the credibility and steadfastness of its ordering force, its unwavering authority. Even when extreme, counterinsurgent violence is then apprehended as a “pacifying force” rather than as a limited means for tilting the power-balance to one’s favor. 44 “The moral purpose of combat operations is to secure peace” (FM 3–24: 7–5). Much of what these approaches promote in terms of pacification, ordering, and legitimation is hence reminiscent and indeed largely drawn from the modes of justification of state violence within modern states. It is in this regard not a coincidence that its agenda is tightly linked to the one of “statebuilding” 45 and that frequent parallels are drawn with police tactics, techniques, and procedures: “In counterinsurgencies, warfighting and policing are dynamically linked” (FM 3–24: 7–5).

If indeed the counterinsurgency doctrine promoted in the context of the wars in Iraq and Afghanistan can be thought of in terms of counterwarfare and pacification, then obviously it has been an unambiguous failure, and civilians have bore the brunt of the destruction and suffering caused. This was inscribed in the very program of interventionist counterinsurgency. What has been witnessed, beneath the violent upheavals in the respective countries is indeed, to a certain extent, the unleashing and exacerbation of the founding *aporias* of any claim to legitimate violence.

**The Quandaries of Interventionist Counterinsurgency**

Interventionist counterinsurgency, counterinsurgency following an “intervention,” to the extent that it can be described as counterinsurgency at all, undermines the abovementioned three mechanisms through which the puzzles of legitimate violence have historically and practically been (partially) settled. The doctrine’s consequences, as highlighted by contemporary wars, were predictable.

The first mechanism described the way in which the legal order endows the state, in conjunction with judicial institutions, with the symbolical power to impose the legitimate classifications of
violence on a given territory. Military interventions and regime change are likely to have the opposite effect, of disaggregating the mechanisms of symbolic power. After an externally imposed regime change, as after any power upheaval unsettling established order, there is likely to be a disconnection between objective power structures (that are brutally changed) and the subjectively incorporated representations of the “natural order of things.” Because of this “suspension of the initial adherence to the established order,” any authoritative claim to legitimate violence becomes dubious. Under these conditions, it seems highly unlikely that foreign troops, or the “transitional government” they have brought to power, will be endowed with this initial legitimacy to impose “law and order.” It shall then not come as a surprise that violence becomes “contagious” in the aftermath of such an invasion. It is the tragedy of all armed conflicts: an actor (here the self-proclaimed pacifier) tries to deter or to compel another to do its will (here the potential “spoilers” of pacification), but in doing so it in fact deepens the hostility toward itself, thus triggering a vicious circle of death and destruction.

Concerning the second mechanisms, the argument is even more straightforward. The amnesia of genesis “normally” ensuring the acceptance of the inevitability of a particular political order is not likely to operate when, because of the immediacy of the intervention its contingent character is in plain sight. Concerning the last mechanism, and the ability of the field of politics to establish the compromises likely to defuse violent struggles, we can note that the suspension of the “ordinary” political order caused by the military intervention usually triggers struggles to reshape it according to divergent interests. The nonviolent regulation of these struggles through co-optation into the field of politics is impossible when there is no such field capable of establishing and institutionalizing compromises. This logic is in fact inscribed in the doctrine since the counterinsurgent has to “exploit opportunities to co-opt segments of the enemy” (FM 3–24: A8), but that at the same time “(m)easured combat operations are always required to address insurgents who cannot be co-opted into operating inside the rule of law” (FM 3–24: 5–12).

These three mechanisms being thwarted, it is difficult to see how the puzzle of “legitimate violence” can be solved or settled in interventionist counterinsurgency. Revealingly, the application of counterinsurgency doctrine has been beset by controversies over “how much” force can be used. Formulations vary: “robust operations,” “appropriate force,” “minimum necessary force,” and “minimum force.” Some come very close to justifying massacre and mass repression, but what is important is that these debates seem to be spurred by the realization that, on one hand, any use of force might appear as excessive and radicalizing since often “( . . . ) the more force is used, the less effective it is” (FM 3–24: 1–27); on the other hand, no violence seems “overwhelming” enough to make resistance futile. Counterinsurgency might then become synonymous with outright eradication of the enemy as highlighted by some phases of the Iraq war: “(w)ith respect to the hard-core extremists, who would never give up, the task was more straightforward: their complete and utter destruction” (FM 3–24: 4–7). In sum, since the logical impasses inherent in the belief that “violence” can further “peace” and “civil security” have been settled historically by and within the state, they arise outside of it, when “expeditionary forces” claim to use “pacifying violence” abroad.

In fact, the “domestic” affinity of the idea of “pacifying force” is recognized by the doctrine since insurgency is foremost defined as an uprising against “its” government rather than against a foreign force. Conversely, counterinsurgency is described as being most of the times part of an “internal war” in which a legal government undertakes actions to defeat the domestic insurgency that contests its legitimacy. The doctrine even pushes the reasoning to the point of claiming that counterinsurgency by an occupying force is bound to fail: “(e)ventually all foreign armies are seen as interlopers or occupiers (FM 3–24: 1–26).” Is it thus highlighting its self-perceived inapplicability in Afghanistan and Iraq? In fact, this is not the case. The crux of the doctrine is that the legitimacy of the use of force on the part of foreign forces is at least partially derived from the local government,
the sovereignty of which these foreign forces must support and consolidate. The classical Weberian definition of the state is not incompatible with such a delegation since it affirms that the “right to use physical violence” can be “attributed to any and other associations or individuals . . . to the extent that the state ( . . . ) permits this to happen.”

However, in the context of interventionist counterinsurgency, the “right” to confer “rights” has itself been conferred to the “newly” established regime by the initial intervention. The argument of delegated/derived rights is hence inherently ambiguous and indefinite in the aftermath of an externally imposed regime change.

In fact, these predicaments can be said to be those of “counterinsurgency” doctrine in general, not only of “interventionist counterinsurgency.” Indeed, historically and genealogically, Western counterinsurgency doctrines have been developed in many colonial settings as highlighted by the fact that all of the major references in the current literature are directly, and often exclusively, linked to colonial/imperial history. In other words, the doctrine has always been linked to imperialist endeavors in which the borders of authority and the locus of sovereignty were contested, shifting, and contentious. “Interventionist counterinsurgency” might make it more visible, but previous contexts were homologous. Ultimately, the obsessive focus on “legitimate government” in “COIN-doctrine” dissimulates the extent to which it is linked to the contested legitimacy of political borders, to the spatial limits of sovereignty and the problematic nature of the “right to attribute rights” in matters of force, especially at the “international” level. This doctrine focusing so much on what Kal Holsti has called vertical legitimacy (the legitimacy of authority) is in fact deeply embedded in a history beset by controversies over “horizontal legitimacy” (the legitimacy of the territorial borders within which authority is exercised). This doctrine is an outcome and expression of violent ambiguities as to the space of legitimate authority, rather than being an answer to the problem of vertical legitimacy.

The very idea of using force to pacify populations, in the sense of governing rather than killing and subjugating them, has been historically contingent upon a set of specific conditions that have been outlined in the first part of this analysis and that are linked to the realm prevailing within states. It is dependent upon the existence of an authority endowed with the legitimacy to resort to force for this purpose, an authority that historically has been congruent with the modern state on its territory. When this idea is applied to interventionist practices, many of its structural conditions of possibility are in fact thwarted. The resulting tensions play out in two distinct narratives of counterinsurgency, one on protection and one on law.

Political Theories of Pacification

At least two loosely defined clusters of ideas, already touched upon here, are usually claimed to have historically served to legitimate state violence within its borders. In line with influential theories of international relations and political science, these can be designated, respectively, as the traditions of “political realism” and “liberalism.” The aim is here not to discuss whether this distinction is pertinent, if these traditions might be compatible or to what extent this terminology captures the contours of contemporary politics. Rather I will try to show that contemporary counterinsurgency doctrine expresses these narratives, without necessarily distinguishing them, while simultaneously taking them out of the historical context that granted them meaning.

Security and Protection: The Aporias of “Political Realism”

The highly coercive forms of military operations witnessed in Afghanistan and until 2011 in Iraq have in part been justified by the claim that the use of force, provided it is well targeted, might allow establish civil security for the “local populations.” This discourse legitimates the use force in the
name of security and protection. Simultaneously, it claims that the use of force will be deemed legitimate by “local populations” when used for this purpose. The implicit argument is that “populations” consent to protection or even to protection rackets, if not for any other reason because their unconditional preoccupation with survival leads them to submit to whoever could safeguard or jeopardize the latter. Of course, one cannot draw conclusions on practices from doctrinal discourses alone. The latter are however important to analyze because the meaning of “protection” never is contained within the coercive practices themselves, it is defined and unfolds in the “relational field” of discursive and practical claims of protection.

In this regard, the archetypical counterinsurgency discourse on protection, as highlighted by the FM, is that “Progress in building support for the Host Nation government requires protecting the local populace. People who do not believe they are secure from insurgent intimidation, coercion, and reprisals will not risk overtly supporting counterinsurgent efforts . . . To secure the populace, security forces should continuously conduct patrols and use measured force against insurgent targets of opportunity” (FM 3–24: 3–21 & 3–22). This vision supposes to assign a need for protection to “the populace” (they are intimidated, coerced, subjected to reprisals); to define the threats they want to be protected from (the insurgents); and the identity of the actor they ask to be protected by (“security forces” here referring to United States and US trained forces); and more explicitly the means to be used (measured force and patrols). Moreover, it contains a logical uncertainty: no population will support a force that cannot protect it, but will it support a force only because it has the capacity to do so? This vision hence construes the “protector” as the spokesperson of the “protected.”

It presupposes a symbolic power on the part of the “security forces” to define all of the above for the population. It takes for granted what is in fact contingent upon a set of cumulative preconditions. Thus, the security forces’ presumed legitimate violence can be said to precede and create legitimate authority rather than the reverse.

In a recent article published by the American military journal Parameters, Lieutenant Colonel Raymond A. Millen reveals even more clearly the substrate of “political realism” that lays hidden in many counterinsurgency narratives: the foundation of legitimate authority rests in the preference on the part of “populations” for a protection conditioned on obeisance rather than a freedom at the price of fear. Millen starts out highlighting that claims to protection fuel insecurity when they are not accompanied by the effective control of the population by one sole protector. Indeed, the claim to use violence for the sake of protection, once it becomes a competitive field, is precisely what drives the conflict and causes harm to civilians: “The individual is ( . . . ) caught in the middle, thrust into the state of war, and embroiled in the worst of all situations.” The predicament of the “population” can then only be addressed, provided competition is stamped out and effective control and military superiority is established: “gaining control over the population is the centrepiece of both the insurgency and the counterinsurgency. Hobbes suggests that the primary bond which holds society together is the promise of security . . . The struggle between the insurgency and counterinsurgency thus revolves around which side can provide uncontested security.” As we see, “the control over the population” here naturally glides into security “of” and “for” the population as well as into “support from” this population. Protection is allegedly contained within the military control that at some point is imposed by force. Protection, tutelage, and control are hence tightly linked in the implicit logic of this discourse. It is the same reasoning that Carl Schmitt developed when he asked “why do people consent to power? . . . (T)hey always need protection and look for it by the powerful . . . The one who does not have the power to protect has not either the right to demand obedience. Inversely, the one who seeks and gets protection has not the right to refuse obedience.”

This stance raises many political and ethical problems and is based on the rather bold presupposition that considerations of survival supersede all other human motivations. Moreover, from the point of view of the present analysis, it is fraught with tensions of its own: if the population’s plight is caused by the very confrontation between rival claims of control/protection rather than by the behavior of the
competitors taken separately, why would the bid for control on the part of the counterinsurgent create support rather than fear? If the security of the “population” can only be guaranteed at the price of control and the “population” accepts this price out of fear, does security paradoxically not presuppose insecurity to be somehow maintained or even fuelled? Does it not imply logically that “populations” can only be secured and protected, provided they continue to feel insecure?

These questions seem to indicate that the counterinsurgent can establish a relation based on “protection” only to the extent that the rivalry between the contenders instills fear among the “population:” fear from insurgent retaliation should the “population” not be controlled by the counterinsurgent; fear of being caught in the crossfire should it not take sides; fear of being stricken by the counterinsurgent should it support or join the insurgency. In none of the cases can one see why legitimacy would, in this narrative’s own logic, be bestowed upon the counterinsurgent (or upon the insurgent for that matter). Indeed, as Charles Tilly suggests, “someone who produces both the danger and, at a price, the shield against it is a racketeer,” and the “support” that he garners is based on constraint (in the best cases a non-intentional or structural constraint) rather than on legitimacy.

In fact, the circle is squared in Millen’s account by postulating that the counterinsurgent is fighting to resuscitate the covenant, the social contract that founded its lost authority, while the insurgency plays a negative role, as a challenger, of deterring the “population” from lending support to the counterinsurgent. If there is comparatively more grief toward the counterinsurgents than toward the insurgents, it is because the former have failed on their promise, while the latter never made such a promise or were not believed when they did: the covenant that founds authority is all the more conspicuous as its absence is deeply resented by “the population.” Purportedly, it remains attached to the counterinsurgent and can be restored to it. In fact, once again this schema presupposes what it wants to explain: legitimate authority. The insurgency/counterinsurgency vocabulary itself presupposes, to a certain extent, that the question of the locus of authority, presumably lying at the heart of the conflict, has already been settled: to “counter insurgency” is to “maintain or restore order” and hence to reestablish authority. When put in the context of contemporary military interventions, such reasoning seems out of touch with reality: an intervening force, or even a “legitimate government” put into power by means of “external regime change,” can by definition not fall back unto the fiction of such a “lost covenant.”

Hence, we are thrown back to this permanent contradiction of Western counterinsurgency doctrines: the scenarios they envision in the abstract are set within the spatiotemporal coordinates of the state, while being systematically deployed outside of it. Of course, this “outside of the state” is another state (Afghanistan, Iraq), but it remains “outside of the state” in the sense that “legitimate violence” is disconnected from the territorial limits within which it has been defined in modern political thinking. Counterinsurgency wars are always seen as wars between a generic “government” and a generic “insurgency” fighting for the allegiance of a same “population,” yet effectively they are never to be fought “at home” by the government, and when they are it is not “counterinsurgency” any longer: at the peak of the “troubles” in Northern Ireland/Ulster, the ultimate taboo in the United Kingdom was to describe it as insurgency/counterinsurgency, because that would entail recognizing it as an expeditionary or colonial mission, an overseas military deployment, a war. If it is “counterinsurgency,” the government can only be a “host government,” a government hosting foreign forces to carry out a policy that has been decided elsewhere. Revealingly, in US military doctrinal terms, most “counterinsurgency” missions fall under “Foreign Internal Defense” (FID; assistance to the “internal defense” of a “host government” by training its security forces), a term that illustrates the ambiguity of the spatial reference of these military interventions (foreign/internal) and the double-edged nature of their purported aim (domestic policing/defense).

While drawing on traditions of “political realism,” contemporary Western counterinsurgency doctrines, and the contexts in which they are said to be applied, highlight the inherent limits of this thinking (with regard to the right to confer rights, i.e., symbolic power), and even more so of their
application in these particular contexts. The implicit (and sometimes explicit) postulates underpinning the argumentation of these doctrines are subverted by their very function: to legitimate the use of the armed forces in military operations abroad.

**The Impasses of the “Liberal Reading” in Terms of Rule of Law**

The second narrative that is ever present in the doctrine is the one framed in “liberal” terms and according to which violence would be legitimate when (and could consequently be legitimated by claiming it to be) deriving from and being limited by “the rule of law.” In fact, the “liberal” narrative on legitimate violence has its roots in a long tradition of political–juridical thought that ascribes pacifying virtues to the law by constituting it as universal, absolute, and anchored in Truth. Being seen simultaneously as constitutive of political community and above it, legal violence is grounded in a symbolically superior order rendering it incontestable. In legal violence, physical violence and symbolic violence becomes one. In its distinctly liberal and modern form, this narrative focuses on the “rule of law” as a means of limiting power through impartial rational–legal procedures. In the US doctrine of 2006, this mode of thinking is clearly present: “The presence of the rule of law is a major factor in assuring voluntary acceptance of a government’s authority and therefore its legitimacy. A government’s respect for preexisting and impersonal legal rules can provide the key to gaining it widespread, enduring societal support . . . As such, it is a powerful potential tool for counterinsurgents” (FM 3–24: 1–22).

As it pertains to the use of force in the context of counterinsurgency operations, the generally held view is consequently that, in the words of the US Army 2004–2006 interim doctrine on “Counterinsurgency Operations,” “Those who conduct counterinsurgency operations while intentionally or negligently breaking the law defeat their own purpose and lose the confidence and respect of the community in which they operate.” This is indeed consistent with what we termed the differential approach, the idea that pacification supposes the establishment of a founding difference. In this liberal narrative, this is done through the rule of law. This view, held by some “classical” counterinsurgency theoreticians such as Robert Thompson but contradicted by many others as well as by many military practices in Afghanistan and Iraq, was never formulated in the 2006 joint doctrine with the same wording as in the 2004–2006 interim document. The reason for this might be that the 2004–2006 quote too clearly postulates a congruence between the space of “community,” the space of “law,” and the space on which legitimacy (“confidence” and “respect”) is bestowed on the counterinsurgent, a congruence that is precisely undermined by military interventionism.

The 2006 FM is slightly more cryptic in this regard: “( . . . ) using force precisely and discriminately strengthens the rule of law that needs to be established. . . . the key for counterinsurgents is knowing when more force is needed—and when it might be counterproductive” (FM 3–24: 1–27). The doctrine here bestows legitimacy upon the use of force, not on the basis of the formal procedures that authorize or command the use of force, but on the basis of the inherent characteristics of the violence itself. The presumed legal character of violence lies here not in its procedural attributes, the formal procedures, and vetting mechanisms that both lead up to and constrains the use of force. It is claimed to lie in the material characteristic of the violence itself. Such logic both uses and reverses the liberal rationale: the rule of law does not act as an external constraint upon the use of armed force; it is the self-proclaimed use of discriminate force that establishes the rule of law. If discriminate force precedes the rule of law, the question it inevitably raises is who is to set the legitimate standards of discrimination and on what basis. This type of reasoning is patently illustrative of our overall argument: it reifies “legitimate violence” by doing away with its distinct conditions of possibility, or rather while reversing the logic in order to legitimate interventionist counterinsurgency.

The mantra of the rule of law, in the context of counterinsurgency doctrine, also contains an ambiguity concerning the law that is referred to. What law is applicable to external military forces
claiming to uphold law and order in a foreign country the legal order of which has been sus-

pend? Legal theorists such as Luigi Ferrajoli have advanced the idea that in order for “inter-
national police operations” to pacify, they have to refer to a symbolically superior global order that only the international legal framework can incarnate. 67 Under this condition, “cosmopolitan law-
enforcement” 68 could promote peace it said. The fundamental problem with this reasoning is that the police metaphor supposes there to exist one sole effective source of the right to use force for the purpose of enforcing particular laws and, as a last resort, of preserving the legal order itself from the violence that founds (alternative) legal orders. 69 Furthermore, to the extent that the force of law lies in its “mystical foundations,” that is, its link with the founding of political orders, 70 the metaphor supposes international law to be enforced within a politically unified “international public order.” 71 The latter is however patently nonexistent since boundaries, in spite or perhaps because of their inherent complexity, still delimit political possibilities in international relations and beyond. 72 Accordingly, should interventionist counterinsurgency comply with “universal” principles of jus ad bellum and jus in bellum, its self-proclaimed legitimacy would still sound hollow in the absence of a congruence of legal order, political space and the “right” to “rightful” force. 73

**Conclusion**

The FM 3–24 on “Counterinsurgency” claims that “Insurgent leaders often seek to adopt attractive and persuasive causes to mobilize support. These causes often stem from the unresolved contradic-
tions existing within any society or culture” (FM 3–24: 1–10). Turning ourselves from “society and culture” to international relations, we have tried to unveil and tackle the three “unresolved contra-
dictions” contained within the FM itself.

The first contradiction concerns the relation between the text and the subtext: the manual reifies “legitimate violence;” thus abstracting it from the specific (spatial and temporal) conditions of possi-

bility through which it is framed. After all, how else can violence be claimed to derive from the rule of law when the legal order has been suspended? How else, if not through reification, can “order” be said to be upheld legitimately when the question of the nature of this order is precisely what fuels the conflict? The second contradiction concerns the relation between the text and its con-
text of use: the manual is cast in the mould of a statist thinking attributing “legitimate violence” to the “sovereign government” within its territorial confines; yet, the doctrine is systematically (and even “by definition”) applied in violation of this thinking, in contexts in which territorial borders and claims to legitimate violence are forcefully disconnected. The third contradiction is between the claim that on one hand “Commanders and staffs must continually diagnose what they understand legitimacy to mean to the HN population. The population’s expectations will influence all ensuing operations (FM 3–24: 1–118);” on the other hand, the fact that the FM defines legitimacy before-
hand in essentialist terms as referring to rule of law, security, economic development, essential ser-

vices, and adopting a very liberal interpretation (in the double sense) of these categories.

Ultimately, the gist of my argument is that the idea of using public force to pacify is under mod-

ernity contingent upon the conditions through which the unsolvable questions of legitimate violence have historically been settled, that is, within the state. These undecidabilities inevitably reemerge outside of the state. As a consequence, when military doctrine claims that political order can be brought about by the concomitance of legitimacy and violence, be it through the argument of “secu-

rity/protection” or of “the rule of law,” it is invoking principles that, in its contexts of application in overseas military operations, are inevitably being violated. Any analysis of the violent dynamics induced by the post-9/11 foreign occupations should start with these contradictions.

The analysis developed here has intentionally eschewed rerunning the liberal critique of western counterinsurgency practice focusing on the fact that it is incredibly more lethal and derogatory to
human rights than is warranted by the doctrine’s own liberal assumptions. This line of argumentation obfuscates the underlying issues and wrongfully reduces them to a problem of “matching deeds to words.” While some human rights activist and scholars have portrayed the FM as “compatible with human rights,” only regretting that it has not been followed more strictly, I have tried to show that to counterpose liberal doctrine and illiberal practice is highly misleading. One cannot understand the one, without understanding the other. Nondiscursive practices are always in excess of (and different from) discourses, but they are not incommensurable one to another. Drawing on the US Army/Marine Corps Joint FM 3–24, I have tried to show that the discrepancy between doctrine and operations was in fact programmed in the doctrine itself.

By way of epilogue, I can only stress the astonishing ease with which the FM successively proclaims and ignores the structuring role of the boundaries between the “domestic” and the “international” with regard to the impossible necessity of “legitimate violence.” This is never as well illustrated as by the argument that multinational coalitions are deemed legitimate locally (ex post facto) since they have been invited by a host government of their own creation. Given the proclivity of this doctrine to blur the domestic/international boundaries of legitimate violence, it is not surprising that its practical application has transposed a thinking of the modern international within political communities. In Iraq, the insurgents were termed Anti-Iraqi Forces or foreign terrorists by the US forces claiming themselves to uphold “host-government” sovereignty; the relations between Sunni and Shia were settled through an uneasy “balance of power;” ultimately, a wedge was driven between the “good nationalist” insurgents and the “dangerous internationalist djihadis.” The approaching end of the war in Afghanistan does not seem to show that our main conclusions will be demonstrated to be wrong in this regard.

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Notes


16. For Bourdieu, it is a violence/power that operates only inasmuch as those who undergo it have incorporated the “lines of vision and division” of the social world upon which those who wield it base their legitimacy and through which their power is naturalized. See, for example, Pierre Bourdieu, Propos sur le champ politique (Lyon, France: Presses Universitaires de Lyon, 2000); and Practical Reason: On the Theory of Action (Stanford: Stanford University Press, 1998).


21. In order to ease the style, I will here use “conundrum,” “aporia,” “logical impasse,” and “contradiction” as approximate synonyms, which they may not be in other accounts.


25. See, for example, Timothy Wallace Crawford, “Legitimacy and Deterrence: Hard Choices in the Strategy of Peace Enforcement,” Peace Forum XIII, no. 24 (1996): 19–34. In this sense, state violence, when exemplary and ostentatious, can also be a legitimation ritual to the glory of the sovereign, a ritual inducing fear and admiration.


30. This is why the legitimacy of the state to proclaim war against another state, in classical *jus gentium*, has a very different meaning. It means that legitimacy is not what is at stake in international relations precisely because it is not a differentiating concept. Accordingly, the realist claim that legitimacy has no place in interstate relations and the equally realist claim that the defining criterion of international relations is the legitimacy of violence mean in fact the same thing.
44. Mark Neocleous, “The Police of Civilization.”
52. Foucault, *Discipline and Punish*.
56. Ibid., 10.
57. Ibid., 13.
62. Foucault, Society Must Be Defended.
64. Thompson, Defeating Communist Insurgency.
65. Trinquier, La guerre moderne.
69. Derrida, “Force of Law.”
70. Ibid.
76. Olsson, “De la pacification colonial aux opérations extérieures.”

Author Biography

Christian Olsson is a lecturer in IR at Université Libre de Bruxelles (ULB), affiliated to its REPI research unit (http://dev.ulb.ac.be/sciencespo/en/membres_olson-christian.html). He is an associate editor of Cultures & Conflicts and a member of ESRC-funded International Collaboration on Critical Methodologies in Security Studies (ICCM). His current research approaches the colonial genealogies of contemporary military doctrine as well as the historical sociology of security practices.