

societies. No less than with other social actions, this legitimacy will not be acquired from the barrel of a gun, because it is of a fundamentally different type. I therefore want to suggest that those who conduct peacekeeping operations consider with a great deal of skepticism the legitimacy they believe they possess. Peacekeeping forces cannot simply operate on the assumption that their "legitimacy" is not at issue just because the UN Secretary-General and Security Council blessed their operations from "above" and so conferred legitimacy.

The appropriate model for peacekeeping operations is therefore not that of the police, but instead the law of occupation, the point of which is that it does not require that those you attempt to govern believe that you have any legitimacy at all. Indeed, when sniping at peacekeeping forces begins, the fear and disillusionment of those charged with "policing" a population that considers them illegitimate unsurprisingly leads to crimes by what are in fact occupiers. This is in part the lesson of the recent crimes of Canadian peacekeeping forces; the lack of full legitimacy sufficient to act truly as police among a civilian population and not as an army, in combination with the presumption that international organizations bestowed legitimacy, and that the local population thus *betrayed* the forces by not recognizing this legitimacy, led to crimes and brutality and a deep loss of professional norms. But the beginning of their crimes was a sense of betrayal. This idea of loss returns us to the discussion of professional honor and shame with which I began, because honor and shame do not thrive as regulators of conduct under conditions of moral confusion.

Even those who profoundly disagree with my assumptions about what confers legitimacy—top down or bottom up—thus might acknowledge these risks to the "virtuous" international use of force, because we all know that local populations *do* become disaffected from their "liberators" and "protectors." U.S. forces in Somalia are just one recent example among many in history. Those contemplating "virtuous" exercises in the use of force among civilian populations would therefore do well to consider such exercises not in light of their virtue, but in terms of what these exercises would be in the absence of presuming its virtue—keeping in mind that such adventures are *occupation*, governed by the law of occupation.

I suggest that those proposing international operations to restore order in so many places around the world should look, in order to be convinced, as I am convinced, of the need for caution and modesty both about one's ability to act in entangled local situations and about one's virtue in doing so, to literature. It is a potent source of caution about plans gone awry and, above all, the risks of political hubris. The evidence of literature is vital both as cautionary note and as a call to modesty about the aspirations that many international lawyers so deeply but, in my rather sorrowing view, so mistakenly share about the intoxicating possibilities of the "virtuous" use of force in the world. The road to hell, it has accurately been said, is paved with global thinking.

JOAN OF ARC INTERNATIONALE

*by Julie Stone Peters**

Joan of Arc was an illiterate fifteenth-century peasant girl, a mystic, and a cross-dressing warrior whose mission, at the age of seventeen, was the liberation of France from English occupation in the 1420s and the crowning of the Dauphin as the monarch of a united France. Taken prisoner and tried as a heretic by an international tribunal run by

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the Rouen ecclesiastical courts in collusion with the English, she was burned at the stake in 1431. Although officially her crimes were heresy and witchcraft, in reality her offense was a political one—revolt against the English occupation.

The Catholic Church had accidentally created a martyr, so it cleverly decided to make her *its* martyr by officially rehabilitating her in another international tribunal in 1456. Despite this technical rehabilitation, Joan's real rehabilitation took place over the *longue durée* through her mythic incarnations. For the late nineteenth century, she was the champion of nations bound together by "blood and iron," an icon not of resistance to occupation but of racist imperialist expansionism, the paradigm of *France pour les français*. In fact, she was recast as the antithesis of Alfred Dreyfus—the crowds in the streets would cry "Down with the Jews! . . . Long live Joan of Arc!"¹

However, World War I changed Joan into a symbolic heroine of the struggle against tyranny, an exemplar of courage under the dark fires of the trenches. Her formal canonization by the Catholic Church became a way to mark the end of the War to End All Wars and the beginning of the new era. Thus, she officially became Saint Joan in 1920, one year after the League of Nations was founded at the Paris Peace Conference and the same year as the establishment of the Permanent Court of International Justice. In 1920 she could become the symbol of the new international world order—nations within their own boundaries, peaceably leagued together to combat aggression (even while, of course, the Allies were trading pieces of southern Europe). The literature of the time encapsulated this transformation; one book title announced *The Soldier Virgin of France: A Message of World Peace*.² As another writer put it in 1925: "She was a soldier [only] from stern necessity, a soldier 'toute prête à faire paix' [completely ready to make peace]. The soldier was—I say it emphatically . . . —an angel of peace."³ By 1925, Joan was thus proclaiming the world safe for democracy.

This portrait of Joan, in addition to the prelates' irksome glee at her canonization, provoked George Bernard Shaw and Bertolt Brecht to offer their own versions, critiques, actually, of the sanguine belief that world peace really meant *world peace*—that it meant justice or equity or freedom from terror. Rather than show the exceptional perversion of justice in the law at Joan's trial, they presented the law itself as a perversion of justice.

In his 1923 play, *Saint Joan*, Shaw lifted liberally from the actual trial transcript, staging the real Joan's clever replies to her questioners. For example, when asked whether Michael the Archangel appears to her naked, she responds, "Do you think God cannot afford clothes for him?"⁴ However, the contemporary parallels were more important to Shaw. In his preface to the play, he asks:

Can any of the modern substitutes for the Inquisition, the Special Tribunals and Commissions, the punitive expeditions, the suspensions of Habeas Corpus Act, the proclamation of martial law and of minor states of siege, . . . claim that their victims have as fair a trial, as well considered a body of law to govern their cases, or as conscientious a judge to insist on strict legality of procedure . . . ? From us she would have had no trial and no law except a Defence of The Realm Act suspending all law (pp. 36–37).

International law does nothing to protect modern Joans such as Roger Casement, the Irish revolutionary whom the British hanged for treason in 1916 after he exposed the brutal exploitation of rubber gatherers in the Congo and was found funding the Irish

¹ MARIE-CLAIRE BANCQUART, *LES ECRIVAINS ET L'HISTOIRE* 298 (1966).

² WILLIAM PAUL YANCEY, *THE SOLDIER VIRGIN OF FRANCE: A MESSAGE OF WORLD PEACE* (1926).

³ J. Van Kan, *An Historical Point of View*, in *SAINT JOAN FIFTY YEARS AFTER 1923/24–1973/74*, at 49, 49 (Stanley Weintraub ed., 1973).

⁴ GEORGE BERNARD SHAW, *SAINT JOAN: A CHRONICLE PLAY IN SIX SCENES AND AN EPILOGUE* 130 (1957) (hereafter cited in the text).

resistance, or Edith Cavell, the English nurse whom a German tribunal shot in 1915 for releasing soldiers from a Belgian hospital without asking which side they were on. International law tacitly supports colonial occupations, with their suspension of rights and summary trials. We can hear the voice of the modern British colonial administrator in that of the Chaplain, who explains why Joan must be put to death: "This woman denies to England her legitimate conquests, given her by God because of her peculiar fitness to rule over less civilized races for their own good" (pp. 99–100).

In the name of peace, international law looked the other way at the Denshawai massacre, in which the British hanged four Egyptians and flogged dozens more after they protested the shooting of an Egyptian peasant woman by a British hunting party. In Ireland, according to Shaw, "in 1920 the British Government slaughtered and burnt . . . to persecute the advocates of a constitutional change," a change "which it had presently to effect itself" (p. 36).

Trials, whether national or international, merely serve as window dressing for political expediency, which inevitably determines their outcomes. "The Church cannot take life," says Judge Cauchon piously, handing Joan over to the secular arm of the law, which has the pyre burning in full view (p. 92). The honest Brother Martin, who has been working to have justice done ever since Joan's execution, comments to King Charles after her rehabilitation trial in 1456: "At the trial which sent a saint to the stake as a heretic and a sorceress, the truth was told; the law was upheld; mercy was shewn beyond all custom; no wrong was done but the final and dreadful wrong of the lying sentence and the pitiless fire" (p. 145). Describing the 1456 rehabilitation trial, Brother Martin says: "At this inquiry from which I have just come, there was shameless perjury, courtly corruption, . . . cowardly evasion of the issue, testimony made of idle tales that could not impose on a ploughboy. Yet out of this insult to justice, . . . this orgy of lying and foolishness, the truth is set in the noonday sun on the hilltop . . . and a great wrong is set right before all men" (*Id.*).

Shaw stresses the internationalism of the church and the feudal authorities and their collaboration with the English precisely in order to highlight the collaboration of international law with state brutality, whatever its claims to curb the rule of force among nations. "Joan's trial was not," he writes in the preface to *Saint Joan*, "a national political trial" but took place in an "international court" (p. 27). Nationalism may be problematic, but the international legal system here does not act as a check on the dangers of nationalism. Instead, it checks the liberating potential of nationalism, which is trying desperately to free the people from the murderous Church International, in league with Feudalism International.

Shaw's suggestions about the international order in *Saint Joan* appear still more explicit elsewhere. In his farce, *Geneva* (1938), the League of Nations is a doddering body run by a maniacal British minister, an Anglican bishop from another era, a corrupt Soviet delegate, and an American who thinks the world arena is the "Wild West." International legal instruments, such as the conventions on civilian populations in war, are hopelessly inadequate to deal with the "New World" disorder: "Men are what they were; but war has become many times more destructive. . . . The British and American armies . . . 'liberating' [European] cities . . . were destroying them exactly as they were destroying German cities, and having to house and feed their surviving inhabitants after wrecking their water mains, electric power stations and railway communications."⁵

In the 1945 preface to *Geneva*, Shaw declares that after the "Utopians carried the day triumphantly," establishing the League of Nations and the Permanent Court of

⁵ GEORGE BERNARD SHAW, *Geneva*, in *PLAYS POLITICAL: THE APPLE CART, ON THE ROCKS* 316 (1986).

International Justice, “the New World proved the same as the old one.”⁶ We may thus hope for evolution, and “it is conceivable even that the next great invention may create an overwhelming interest in pacific civilization and wipe out war. You never can tell. [But] meanwhile here we are, with our incompetence armed with atomic bombs.”⁷

If the utopians have merely made the international legal order into a buffoonish facade for the power game, Shaw nonetheless had an idea of what world order ought to be. To this end, he ceaselessly lectured the government in an outpouring of pamphlets that were highly annoying to the British ministry. “Even now,” he wrote in a 1919 pamphlet, *Peace Conference Hints*,

the professional soldier, the pseudo-evolutionary biologist, and the war profiteer, quietly encouraged [by those of] the opinion that an insurgent proletariat can always be diverted by giving them “a little war to amuse them,” have still a good word to say for war. But the rest, having had enough of it for one generation, are urging on the Peace Conference as its first and last duty the replacement of violence by law between nations.⁸

However, Shaw’s more cynical moments demonstrate his frustration both with international law’s weak enforcement powers and with its tacit toleration of terror, a frustration that led to a flirtation with totalitarianism that had disturbing ramifications. He praised Stalin unequivocally and, until 1941, insisted that Hitler was a socialist, declaring in a letter to fellow Fabian Socialist Beatrice Webb, “We are National Socialists!”⁹ Having sanctioned the illegal German violation of Belgian neutrality in World War I, he now praised Hitler’s withdrawal from the League of Nations in 1933. He termed it “a masterstroke,” and, along with the Anschluss, the logical consequence of the “criminal conditions” of the Versailles Treaty.¹⁰

Through his Darwinian lenses, this cynical Shaw sees the legal order as serving only the survival of the fittest. After Joan’s rehabilitation trial, which finds Judge Cauchon guilty of perversion of justice, Cauchon cries, “I arraign the justice of Man. It is not the justice of God.” Joan is not surprised, retorting, “Still dreaming of justice, Peter? See what justice came to with me!” (p. 149). Upon Joan’s reappearance in Shaw’s epilogue, mightily pleased at the news of her canonization in 1920 and asking to be unburned so that she can carry on with her work, those who rehabilitated her are horrified at the thought. The English Chaplain lamely cries out, no, no, “Peace in our time!” (p. 158) in an odd premonition of British prime minister Neville Chamberlain’s famous claim on his return from Munich in the fall of 1938 that, in negotiating with Hitler, he had brought “peace [in] our time.”¹¹ The Chaplain’s plea that Joan stay properly dead suggests that “peace in our time” simply means that the law will—and in fact has no choice but to—continue to underwrite the rule of force and sacrifice the great spirits of liberation.

⁶ *Id.* at 323.

⁷ *Id.* at 339.

⁸ GEORGE BERNARD SHAW, *PEACE CONFERENCE HINTS* (1919).

⁹ Glenn R. Cuomo, *Saint Joan before the Cannibals: George Bernard Shaw in the Third Reich*, 16 *GERMAN STUD. REV.* 435, 453 (1993).

¹⁰ *Id.* at 439, 440.

¹¹ MATTHEW MELKO, *PEACE IN OUR TIME 1* (1990) points out that what Chamberlain actually said was “I believe it is peace for our time,” but the phrase is always quoted as “peace in our time.” Shaw may have been thinking of Benjamin Disraeli’s claim in 1878, after the Congress of Berlin, that he had brought “peace, I hope, with honor” and, in a letter to Queen Victoria after the Congress, that the settlement would “secure the peace of Europe for a long time.” *Id.* at 1.

In Bertolt Brecht's first Joan of Arc play, the 1930 *Saint Joan of the Stockyards*, he places "Joan Dark" in the Chicago meatpacking plants. She works there for an outfit reminiscent of the Salvation Army, the Black Straw Hats, doling out the pablum of religion and weak soup to the half-starved workers. Life in the plants is gruesome; every once in a while a worker is sucked into the machinery and ends up in the tins of bacon and lard. The workers' destinies are ruled by the owners, in fierce competition with one another, by the wild fluctuations of the stock market, and by invisible forces in New York that mysteriously control international trade treaties. When the workers try to strike, the sentimental meat king Pierpont Mauler, despite his weeping over the plight of the mooing cows on their way to the slaughter, and swearing to give up his murderous occupation, calls in the army. Bringing in its tanks and machine guns, the army fires into the crowd, just as Brecht had seen the German police do at a communist rally in Berlin the year he wrote *Saint Joan*.

The law of international trade and the army are thus allied with the international "laws of the market" (Brecht's recurrent phrase throughout the play).¹² This is a war, more a world war than a civil war, in which the Chicago stockyards are only one theater of battle. The lesson Joan must learn is the inverse of the lesson that conventional twentieth-century portraits attributed to her: Pacifism is not enough in a world armed to the teeth for the purpose of keeping the poor poor. The soup she serves is, like religion, an opiate of the people.

Throughout the play, then, Brecht faces one of the central problems of law, whether national or international: When does the individual or the individual's freedom have to be sacrificed for the greater good, and are there any absolute limits on that sacrifice? Joan torments herself about the problem of violence, the issue that Brecht himself faced, not only as a committed pacifist who wrote a poem called "The Legend of the Dead Soldier" (which earned him a rank of No. 5 on the Nazi blacklist)¹³ but also as a committed Marxist who recognized violence as necessary to the revolution to come. As Joan comes to realize, her pacifism "did injury to the injured [and] was useful to the injurers" (p. 119). Having thus learned her Leninist lesson, she reluctantly leaves the "army of peace" and joins the war. But at this point it is too late. The factories have renewed production with two-thirds of the workers at two-thirds of the pay. Intending to hold forth their "Saint Joan of the Stockyards," doler of soup, as "proof that we hold humaneness in high regard" (p. 118), the plant owners canonize the pacifist Joan. Finally, Brecht emphasizes that the makers of humanitarian law in Geneva have no response to the fact that a third of the workers will die in the streets or the shelters.

In the early 1930s, the role of positive law as a mere agent of violence must have seemed painfully obvious. Anyone watching the Third Reich entrench its power through what it claimed was a legal revolution, first using emergency powers, then consolidating this power in the Enabling Act of March 1933 and instituting the Nuremberg Laws in 1935, could hardly conclude otherwise. In both the 1935 *Trial of Joan of Arc at Rouen* and the 1942 *Visions of Simone Machard*, Brecht revised the Joan of Arc story in light of the Nazi revolution, addressing simultaneously the questionable socialism of "National Socialism" and the questionable legality of the Third Reich.

In *Simone Machard*, Simone is a young French girl who, dreaming that she is Joan of Arc, begins working for the Resistance by stealing food for the starving refugees and, when the Germans arrive, burning a storehouse of gasoline to prevent them from using it.

¹² BERTOLT BRECHT, *SAINT JOAN OF THE STOCKYARDS* 58, 85, 97 (Frank Jones trans., 1969) (hereafter cited in the text).

¹³ KEITH A. DICKSON, *TOWARDS UTOPIA: A STUDY OF BRECHT* 162 (1978).

At the end of the play, Simone (Joan) undergoes a “trial” at the hands of the owner of a hostelry who has welcomed the Germans with open arms as his new clientele. He asks her a few questions, declares that the law punishes those who disrupt the new order, and pronounces her sentence: life in a nearby insane asylum.

The illegal invasion and the new legal system that sustains it depend on the French capitalists who, as the elderly Père Gustave says, are “selling France the same as they sell their wine and hors d’oeuvres!”¹⁴ Brecht’s hatred of war as a pacifist paled in comparison to his hatred of war as an unholy alliance of states with capitalism. For Brecht, international law buttressed international capitalism through, for instance, the *laissez-faire* commercial bills of rights created in the many commercial treaties of the period or the League of Nations sponsorship of freedom of commerce. However, international law also tacitly sanctioned wars between states, despite claims to the contrary, by reinforcing the will of the victors through treaties, thus implicitly sanctioning the capitalist war machine whose purpose was to trade human lives for economic success. Although international law legitimized war, it refused to recognize the one unequivocal international right, the “right to revolution,” as Friedrich Engels put it. Never seen as rising to the level of war and thus becoming justified violence, the revolt of the masses remained mere crime, outside the purview of international law and hence subject to the unmitigated violence of the state.

Both *The Trial* and *Simone Machard* draw a parallel between fascist violation of the law of nations and the more ordinary capitalist violation of the law of justice. When, in *The Trial*, a “Well-Dressed Gentleman” observes that Joan claims to be acting for “her country,” a bystander responds, with characteristic Brechtian antinationalism: “Country! . . . What difference does it make to the country who gobbles up its wheat and its wine, its venison and fruit, its taxes and tithes? The Lord of Beauvais or the Duke of Gloucester?”¹⁵

The collaborators in *Simone Machard* use the rhetoric of peace, law and order as a shield against the threat of popular resistance. In the last scene of the play, the hostelry owners, who welcomed the Germans, lecture Simone: “We’re quite capable of telling you when war is necessary, and we can also tell you when peace is better. . . . We’re at peace now!” (pp. 59–61).

Ultimately, Brecht and Shaw sought to tell the pacifist, harmonious and conciliatory Joan that all was not right with the new international world order. For Shaw, this meant resignation to the extremes of coercion and intolerance which, when translated into real-world terms, had consequences for which the word *tragedy* is insufficient. For Brecht, this meant an impossibly utopian vision to be brought about by violence that might never achieve its aim, an ideology that has had consequences at least as horrific for the twentieth century.

Although the great human rights treaties of the postwar period were created largely in response to the horrors of World War II, they were also created by those who realized, like Shaw and Brecht, that the law of nations, with nations as its only subjects, was insufficient. In the decades that followed, international treaties and the development of customary international law tried to deal with some of the problems that Shaw, Brecht and similar critics raised: establishing norms for fundamental economic rights in addition to political and civil rights; establishing genuine protections for workers, if not for the

¹⁴ BERTOLT BRECHT, *The Visions of Simone Machard*, in 7 COLLECTED PLAYS 1, 41 (Ralph Manheim trans., 1975)

¹⁵ BERTOLT BRECHT, *The Trial of Joan of Arc at Rouen, 1431*, in 9 COLLECTED PLAYS 147, 153 (Ralph Manheim & Wolfgang Sauerlander trans., 1972).