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SYMPOSIUM ON J. BENTON HEATH, "MAKING SENSE OF SECURITY"

RACE IN SECURITY

*Jaya Ramji-Nogales**

In "Making Sense of Security," J. Benton Heath pushes the reader to tangle with two unresolved foundational questions about the use of security in international law: who decides questions of security, and on what grounds.[1] This essay examines the role of race in both of those questions, identifying structures and mechanisms of racial subordination that must be surfaced to fully make sense of security.[2] In particular, it foregrounds the tension between reformist reforms and abolitionist reforms to which Heath makes reference. By rendering visible the historical and contemporary work performed by white supremacy in security, this essay seeks to elucidate and problematize that dilemma. Rather than retaining the exclusionary security frame, a turn to solidarity offers the possibility of a more inclusive approach to international law that creates connection based on our shared humanity.

Heath helpfully conceptualizes security as a "continuing struggle over epistemic authority" and he elucidates central challenges that arise from this insight.[3] Given the power that security wields to entrench or disrupt, he foregrounds the importance of the epistemic question: "it matters whose knowledge we are privileging, and how."[4] Heath highlights the lack of accessibility, democracy, and responsiveness of security institutions, and underscores the struggle waged by those whose knowledge is undervalued, primarily non-state actors.[5] He describes a pluralist approach to security that might enable a shift away from "emergency power and institutionalized expertise," thereby leaving "the state radically decentered."[6] These are all key contributions to the literature, persuasively presented. This essay considers Heath's fundamental questions—who decides, and on what basis—through the lens of race.

Who Decides?

Heath focuses the "who decides" question on the type of expertise that is "qualified to identify security issues," describing a spectrum from security experts to effected populations.[7] History is instructive in understanding the relationship between these groups; security has long been deployed in international law by the colonizer against the

* *I. Herman Stern Research Professor and Associate Dean for Research, Temple University Beasley School of Law, Philadelphia, Pennsylvania, United States.*

[1] J. Benton Heath, *Making Sense of Security*, 116 AJIL 289 (2022).

[2] Matiangai Sirleaf, *Racing National Security: Introduction to the Just Security Symposium*, Just Security (July 13, 2020).

[3] Heath, *supra* note 1, at 292–93.

[4] *Id.* at 293.

[5] *Id.*

[6] *Id.* at 324.

[7] *Id.* at 299–300; *see also* Aziz Rana, *Who Decides on Security?*, 44 Conn. L. Rev. 1417 (2012).

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colonized, by the "civilized against the non-civilized."[8] In other words, security as a concept has been used to demarcate boundaries between insiders and outsiders, justifying harsh and even unlawful treatment of the "other," a distinction often performed on racial grounds. Colonial and imperial power rely heavily on security rationales to expand the use of force against colonized and subordinated populations while claiming to uphold the law.[9]

Lawmakers have long criticized the U.S. intelligence community for its lack of diversity, a problem exacerbated at the leadership level.[10] These homogeneous security actors work within a system characterized by deeply rooted structural racism against groups on the receiving end of national security measures.[11] These failures with respect to diversity and systemic equality, working in tandem, often result in an approach to security driven by stereotypes rather than a sophisticated understanding of the cultures, languages, and religions of the nations and peoples they paint as security threats.[12] This systemic bias creates a range of problems, from unwise security decisions informed primarily by racism to grievous harms perpetrated against people of color designated as security threats through careless error and ignorance.[13] At the same time, white supremacy works to obscure the very real threats posed by violent white nationalist groups.[14] A lack of voice on the part of affected populations is part of the problem, but the troubling roots of racism in security reach much deeper, and perpetrate denigration and erasure in addition to exclusion.

Structural racism of course operates differently in and across different countries and on the world stage. Yet these diversity deficiencies in U.S. national security personnel and the foundational racism of U.S. national security policies radiate outward in at least three ways. As a global hegemon, the United States is able to pursue, unilaterally, bilaterally, regionally, and through international law and institutions, an international security agenda that is informed by its intelligence community's perspective on security.[15] The U.S. national security perspective is also developed dialogically across powerful states, particularly those in the Global North, undergirded by a shared history of colonialism and imperialism and common security strategies.[16] Finally, there is a "contagion" effect; as

[8] Antony Anghie, Imperialism, Sovereignty and the Making of International Law 288, 318 (2005); John Reynolds, Empire, Emergency and International Law 57 (2017); Henry J. Richardson, III, *U.S. Hegemony, Race, and Oil in Deciding United Nations Security Council Resolution 1441 on Iraq*, 17 Temple Int'l & Comp. L.J. 27, 61 (2003).

[9] Reynolds, *supra* note 8, at 81–83.

[10] Cong. Res. Serv., Intelligence Community Diversity and Equal Opportunity (Dec. 7, 2020); U.S. Government Accountability Office, Report to Congressional Committees: Intelligence Community: Additional Actions Needed to Strengthen Workforce Diversity Planning and Oversight (Dec. 2020).

[11] *See, e.g.*, Amna Akbar & Jeanne Theoharis, *Islam on Trial*, Boston Rev. (Feb. 27, 2017); Wadie E. Said, *Law Enforcement in the American Security State*, 2019 Wisc. L. Rev. 821 (2019).

[12] Asli Bâli, *Defund America's Endless Wars*, Just Security (July 29, 2020) ("Racist cultural stereotyping is . . . passed off as legitimate counterterrorism and intelligence."); Said, *supra* note 11, at 832–37.

[13] Tina G. Patel, *It's Not About Security, It's About Racism: Counter-terror Strategies, Civilizing Processes and the Post-Race Fiction*, 31 Palgrave Comms. 1, 3 (2017); Jaya Ramji-Nogales, *A Global Approach to Secret Evidence: How Human Rights Law Can Reform Our Immigration System*, 39 Colum. Hum. Rts. L. Rev. 287 (2008).

[14] Eileen Sullivan & Katie Benner, *Top Law Enforcement Officials Say the Biggest Domestic Terror Threat Comes from White Supremacists*, N.Y. Times (May 12, 2021).

[15] José E. Alvarez, *Hegemonic International Law Revisited*, 97 AJIL 873, 875–78 (2003); Richardson, *supra* note 8, at 44–45; Natsu Taylor Saito, *Crossing the Border: The Interdependence of Foreign Policy and Racial Justice in the United States*, 1 Yale Hum. Rts. & Dev. L.J. 53, 53–54 (1998).

[16] Reynolds, *supra* note 8, at 81 (Reynolds describes this phenomenon as "cross-pollination.").

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political leaders, particularly autocrats, in other countries understand that terrorism is a label that can be used to justify mistreatment of minorities, they deploy it for their own political advantage.[17]

On What Basis

Heath's second key question concerns whose knowledge security privileges and prioritizes, focusing on both the identification of issues and the logic used to resolve them. He critiques the hierarchical operation of security to prioritize certain fields, actors, and states over others.[18] Here we see the limits of the liberal international order: there is no epistemological democracy in international law. These are important questions, and Heath offers thoughtful solutions. This essay adds the insight that logics of whiteness play a key role in determining security questions.

In her seminal work on the operation of racial logics, *Whiteness as Property*, Cheryl Harris describes whiteness as the "right to determine meaning."[19] In the security realm, we see, in the words of Antony Anghie, the "enduring presence" and reproduction, though modified, of ideas about the "foreign" or "uncivilized."[20] These deeply embedded racist tropes can be put to work to identify the object of security as a person of color. Once that identification has been made, security can also be used to prioritize a racialized set of understandings of causal factors, through what Anghie describes as the "dynamic of difference."[21] These racial logics are enduring and continue to operate to racialize security and to securitize race in the present day. James Gathii reminds us that the same "colonial-era arguments that justified repression of legitimate anti-colonial and anti-racist protests are being recycled to repress similar movements and protests today."[22] The reasoning used to determine who and what is a security threat erases the perspective of those on the receiving end of security actions. As Hank Richardson explains, in response to a protracted invasion, an interpretation of security grounded in white supremacy might focus on the political fallout, rather than the harms of combat and casualties on populations of color, measured in economic and human dignity terms.[23] The operation of race in security is ignored at our peril. As John Reynolds warns, the failure to surface race "may itself obscure the very uneven ways that the violence of law tends to operate."[24]

Heath describes aptly the key power moves that are made by security, moves that amplify its dangers. Security is at its heart an assertion of sovereignty, the prioritizing of the nation state over the international.[25] Race and sovereignty are of course mutually constituted; the exercise of sovereignty serves to entrench racial hierarchies through cultural subordination and economic exploitation.[26] The security frame can be leveraged to shift an issue outside of ordinary politics, transforming it into an extraordinary measure to which normal international legal constraints do not apply.[27] In the hands of the sovereign, security becomes a particularly effective tool to control disfavored minority groups.

[17] Joost van Spanje, *Contagious Parties: Anti-immigration Parties and Their Impact on Other Parties' Immigration Stances in Contemporary Western Europe*, 16 Party Pol. 563 (2010).

[18] Heath, *supra* note 1, *at* 10, 33.

[19] Cheryl Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1710, 1762. (1993).

[20] Anghie, *supra* note 8, at 288. Anghie also critiques the "imperial structure of ideas." *Id.* at 316.

[21] *Id.* at 306, 309.

[22] James Gathii, *Beyond Color-Blind National Security Law*, Just Security (Aug. 3, 2020).

[23] Richardson, *supra* note 8, at 42.

[24] Reynolds, *supra* note 8, at 57.

[25] Heath, *supra* note 1, at 296–98.

[26] Anghie, *supra* note 8; Reynolds, *supra* note 8, at 57.

[27] Heath, *supra* note 1, at 295–98, 321.

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Whither Reformist Reforms

The deep risks of security alongside its robust power situate the concept in a classic dilemma between reformist reforms and abolitionist reforms. Heath's compelling vision of pluralist security would elevate the views of non-state actors, including "overpoliced communities, indigenous groups, small-scale food producers, or communities living near the sites of extractive industry" and reduce in importance expert perspectives.[28] A deeper examination of the role of race in security raises several questions about a reformist reform that cabins but retains the concept of security. An approach informed by race might designate security as a suspect justification to be minimized and constrained, and subject to rigorous legal standards before it can be deployed by legal institutions.

The first question is whether security can be separated from whiteness, and specifically white supremacy. Security not only presupposes but *requires and creates* insiders and outsiders. This "conceptual nucleus of a right to exclude" presents substantial obstacles to an anti-racist or inclusive vision of security.[29] Security justifies racism, and racism justifies security. This is a thorny space from which to move forward. The words of James Baldwin are apt in this context; in order to extricate race from security, we must first determine why and how people of color have been transformed into security threats.[30] Efforts to salvage security without taking that step risk reproducing exclusion and racial subordination.[31]

A related concern is whether, given the power of security as a concept, it is possible to cabin security experts and the intelligence bureaucracy. It may be possible to move toward a more pluralist understanding and practice of security, which Heath describes as "far more mixed with respect to the types of knowledge deployed to define security, and potentially strategic in its orientation to exceptionalism."[32] Even if some progress can be made in that direction, racially exclusionary security is deeply rooted in U.S. law enforcement institutions, which will not easily be reconfigured into pluralist entities. As Shirin Sinnar explains, there is "ample historical support" for concerns that security activities "target people in communities of color and others who challenge existing racial and socioeconomic power structures."[33] While it would surely be preferable for knowledge about security threats to derive from these communities, those who work within and benefit from these security frameworks are not likely to step aside to incorporate more pluralist forms of knowledge. As Asli Bâli pithily explains, "[c]ounterterrorism serves as a kind of racist gravy train," enabling law enforcement communities to identify people of color and political dissidents as threats, thereby commanding more law enforcement dollars.[34] Racially exclusionary security is a powerful force that Congress and the federal courts have failed to rein in despite continued efforts at reform.[35] Security officials and the intelligence bureaucracy have been consistently opposed to the incorporation of the perspectives of minority groups into their decision making and are likely to battle ferociously to retain their power to decide through the exclusionary security logics on which they have long relied.[36] As Heath explains, security is also generative, meaning that it can be used to justify the construction of new institutions as well as the expansion of

[28] Heath, *supra* note 1, at 293.

[29] Harris, *supra* note 19, at 1714.

[30] Mallory Yu, *"I Am Not Your Negro" Gives James Baldwin's Words New Relevance*, NPR (Feb. 3, 2017).

[31] ANGHIE, *supra* note 8, at 279–85, 289; Harris, *supra* note 19, at 1768.

[32] Heath, *supra* note 1, at 327.

[33] Shirin Sinnar, *Invoking "Terrorism" Against Police Protestors*, JUST SECURITY (June 3, 2020).

[34] Bâli, *supra* note 12.

[35] Rana, *supra* note 7, at 1421.

[36] *Id.* at 1426 ("The problem of the contemporary moment is the dominance of a security concept that systematically challenges those sociological and normative assumptions required to sustain popular involvement in matters of threat and safety.")

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existing institutions.[37] Efforts to pluralize security in one arena may simply serve to shift the institutional locus of security elsewhere.

The tenacity of an approach to security that privileges bureaucratic expertise is of course a problem separate from race, but the deep-rooted connections with racism complicate efforts to shift toward a more inclusive approach to security. Security actors understand their work through a racial subordination frame that relies on stereotypes to determine who is to be excluded and deploy racial logics in justifying that exclusion and corollary violence. In other words, race legitimizes the security frame and is legitimated by it. Race is so deeply embedded in security that, even with substantial anti-racist reforms, it may not be possible to redeem security as an operational concept in international law.

A final concern with pluralizing security is the impact a security frame can have on the orientation of a field of law in which it becomes enmeshed. The process of securitizing a legal field may involve a carceral turn, the adoption of a law enforcement approach, and potential militarization.[38] Securitization alters an area of law in ways that are difficult to reverse and that continue to expand over time. In international migration law, for example, the securitization of facilitation of irregular cross-border movement through the 2000 UN Convention Against Transnational Organized Crime and its protocols on human trafficking and smuggling has had broad-reaching impacts.[39] The extortion and violence perpetrated by powerful transnational criminal organizations against migrants is a serious problem, but these human rights abuses were already violations of international law. Using racial logics, the security frame has leveraged that real problem to identify a broad swathe of actors as security threats and criminals, including individuals from the Global South who seek to facilitate the movement of their family and friends, and humanitarian actors who seek to protect strangers from the myriad harms of undocumented transit.[40] This shift to securitization is unlikely to be dismantled with the master's tools, namely more security.[41]

Toward Solidarity

Given its history and contemporary use as a mechanism of racial subordination as well as its inherent orientation toward exclusion, it may not be possible to salvage security. The security institutions that have for many years perpetrated and justified the exclusion of people of color should be exposed and upended rather than infiltrated.[42] Security as a justification for legal decisions should be treated with deep skepticism and constrained through carefully crafted legal standards. Rather than fighting security with security, which risks legitimizing "its militaristic and carceral approach," those seeking the emancipation of people of color through international law might turn to

[37] Heath, *supra* note 1, at 295.

[38] Rosa Brooks, How Everything Became War and the Military Became Everything (2016); Karen Engle, *Anti-impunity and the Turn to Criminal Law in Human Rights*, 100 Cornell L. Rev. 1070 (2015).

[39] United Nations Convention Against Transnational Organized Crime & the Protocols Thereto, Dec. 15, 2000, 2225 UNTS 209 (including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 UNTS 319 and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Jan. 28, 2004, 2241 UNTS 507).

[40] Shalini Bhargava Ray, *Saving Lives*, 58 Boston C. L. Rev. 1226 (2017); Gabriella Sanchez, *Critical Perspectives on Clandestine Migration Facilitation: An Overview of Migrant Smuggling Research*, 5 J. Migration & Hum. Security 9 (2017).

[41] Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, *in* This Bridge Called My Back: Writings by Radical Women of Color 98 (Cherríe Moraga & Gloria Anzaldúa eds., 1981).

[42] Diane Otto, *Women, Peace, and Security: A Critical Analysis of the Security Council's Vision*, *in* The Oxford Handbook of Gender and Conflict 5 (Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes & Nahla Valji eds., 2018).

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solidarity as a means to forge connection, support, and understanding.[43] Solidarity as a framework can be used to build connection through a shared sense of purpose—a common humanity—and to critique rather than commandeer state violence.[44] Instead of justifying blanket criminalization of all actors who facilitate migration, a solidarity-based approach might question the legal institutions that exclude many migrants of color from lawful migration routes, and highlight the human costs of border externalization. Making sense of security through a race lens clarifies that the path toward decolonization and anti-racism must step away from security and toward solidarity.[45]

[43] Otto, *supra* note 42, at 2, 10.

[44] Report of the Independent Expert on Human Rights and International Solidarity: Human Rights and International Solidarity, UN Doc. No. A/73/206 (July 20, 2018); Jaya Ramji-Nogales, *Forging Solidarity*, *in* THE RESEARCH HANDBOOK ON INTERNATIONAL LAW AND SOLIDARITY (Cecilia Marcela Bailliet ed., forthcoming 2023).

[45] Noura Erakat, *Extrajudicial Executions from the United States to Palestine*, JUST SECURITY (Aug. 7, 2020).

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