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Mary L. Dudziak, *War Time: An Idea, Its History, Its Consequences*. New York: Oxford Univ. Press, 2012. Pp. 221. ISBN 978-0-19-977523-1.

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Mary L. Dudziak (Emory Univ. School of Law) researches the influence of war on American democracy and the relationship between international affairs and American legal history, among other subjects.<sup>1</sup> The epigraph to her new book is a quotation of Thomas Hobbes: “WAR consisteth not in battle only, or the act of fighting; but in a tract of time, wherein the will to contend by battle is sufficiently known; and therefore the notion of *time*, is to be considered in the nature of war” (*Leviathan* 13.8). While Hobbes does not mention law here, much of Dudziak’s book concerns the legal implications of that “tract of time, wherein the will to contend by battle is sufficiently known.”<sup>2</sup>

Time is intangible, but most of us think we understand the difference between peacetime and wartime. We may even consider the “war on terror” an expedient misnomer framed hurriedly by a fearful, belligerent government. No, says Dudziak: to a lawyer these terms really matter because, in time of war, the law is silent.<sup>3</sup> She explains why this is so in considerable detail, drawing on significant US court cases—*Lee v. Madigan* (33)<sup>4</sup> and *Woods v. Cloyd Miller* (38).<sup>5</sup> Indeed, she rarely strays outside American evidence except for a short foray into the Weimer Republic (115).

This isolationist approach makes Dudziak’s book relevant in the United States, but some consideration of other modern democracies’ legal systems would have afforded a broader appreciation of the issues. For example, before America’s 9/11, Britain had experienced three decades of horrific urban terrorism centered on Northern Ireland, without loss of civil liberties in the rest of the United Kingdom. Modern Israel, too, offers food for thought: in parts of the West Bank, peacetime Israeli law governs Israelis, while wartime “martial law” governs Palestinians.<sup>6</sup>

Dudziak’s principal thesis is that—after World War II—periods of peace and war ceased to be clearly defined. Thus, the Korean War, which began in 1950, has never really ended (85); and it is nearly impossible to date the Vietnam War (26). Furthermore, the Cold War and the succeeding War on Terror defy precise, legally acceptable dating. This thought spirals like a corkscrew through the book, as Dudziak examines time itself (chap. 1), World War II (chap. 2), the Cold War (chap. 3), and, finally, the War on Terror (chap. 4). This strong emphasis is not necessarily a bad thing, because peacetime vs. wartime legal ambiguities yield many—usually bad—consequences: habitually belligerent governments, grievous loss of civil liberties, and official authorization of torture.

Unsurprisingly, Dudziak’s fixation on the imprecise discrimination of wartime from peacetime leads to occasional esoteric over-analysis. For example, she touches on the—perhaps legally irrelevant—use of daily War Time in a sunshine-related context: “Standard time itself was a human concept, but for many Americans it seemed natural or God-given, and they objected to giving it up. The Oklahoma State Senate passed

1. She is the author of *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton U Pr, 2000) and *Exporting American Dreams: Thurgood Marshall’s African Journey* (NY: Oxford U Pr, 2008).

2. One might reflect on the US view of Iran in the “tract of time” from 1979 to the present.

3. Dudziak cites Cicero’s maxim “inter arma silent leges” (*Pro Milone* 4.11) three times.

4. Lee and other *soldiers* in military custody killed Taylor in California; they were successfully convicted by *court-martial* in 1949, because the United States-Japan peace treaty was not effective until 28 April 1952.

5. A rent-rise case in 1947 pitted the “long-term economic impact of war” against the “direct and immediate relationship between housing crisis and war.” The latter prevailed: Supreme Court Justice William O. Douglas noted that the war power “does not necessarily end with the cessation of hostilities.”

6. West Bank “martial law” is effectively an expedient “pick and mix” of various legal systems—Ottoman, British Colonial, and Israeli; see “Children in Military Custody” – [www.miwsr.com/rd/1212.htm](http://www.miwsr.com/rd/1212.htm).

an anti-Daylight Saving Time resolution, insisting ‘that it is the sun and not the laws of man that determines daylight and darkness.’ Farmers opposed daylight saving, and their tensions over War Time stemmed from the way clock time has come to be experienced as an essential element of culture” (13).

Despite such detours, the author skillfully leads us through many of the legal minefields of modern society. Some intractable problems—like the Guantanamo Bay terrorist holding facility—are deliberate government creations. Others—like the court cases mentioned above—represent welcome manna for legal defense teams. Dudziak explores, too, the awarding of military campaign medals, which is related more or less directly to the notion of wartime (28) and shaped by cultural influences:

The name for small wars in the British experience is the wars of empire. Americans are less comfortable with the idea that their nation has an imperial history, but the use of military might to, in essence, govern vast stretches of the globe has been a feature of all global powers in the last century. The laws of war traditionally focused only on wars between states. The wars of empire fell outside the law; they were instead matters of imperial governance. The experience of battling indigenous groups over territory and sovereignty has also been part of American history. Military action against American Indians was included among the first wars for which American soldiers could be awarded campaign service medals .... (31)

The 136-page main text of *War Time* usefully addresses many interesting and relevant issues,<sup>7</sup> most of which are likely to be unfamiliar to readers who are not lawyers. But the book is very much an American introspective, lacking (or eschewing) any wider international perspective on the legal and temporal complexities of war and peace in modern life.

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7. Notably absent, however, is any exploration of the use of unmanned drones, often in foreign lands at peace with the United States, to carry out extra-judicial assassinations.