
In the Shadow of War: The Effects of Conflict on Liberal Democracy

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Abstract Events of and since 11 September 2001 have renewed interest in age-old questions about liberal-democratic governance in the shadow of insecurity, crisis, and war. Academic lawyers in particular have engaged in a vigorous debate about how liberal polities can confront security threats while maintaining their commitment to the rule of law. Yet few empirical political scientists, and even fewer scholars of international relations, have weighed in. The short- and especially long-run effects of international conflict on liberal-democratic institutions and processes remain an underexplored aspect of the second-image-reversed. Prompted by recent research in law, this article finds that prominent arguments often rest on shaky theoretical and empirical foundations. It argues that the two most notable traditions of thought on war and democracy are complementary, not competing; that small wars may also have substantial consequences; and that analysts must distinguish clearly among three distinct causal phenomena—threat, mobilization, and warfare—when considering conflict’s impact on democracy. The article critically reviews the effects of conflict on both participation and contestation; identifies the salient outstanding questions and suggests hypotheses addressing them; and explores the implications for contemporary normative debates over executive authority and emergency powers.

Featured Books

- Cole, David. 2005. *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*. New York: New Press.
- Donohue, Laura K. 2008. *The Cost of Counterterrorism: Power, Politics, and Liberty*. Cambridge: Cambridge University Press.

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Gross, Oren, and Fionnuala Ní Aoláin. 2006. *Law in Times of Crisis: Emergency Powers in Theory and Practice*. Cambridge: Cambridge University Press.

Posner, Eric A., and Adrian Vermeule. 2007. *Terror in the Balance: Security, Liberty, and the Courts*. New York: Oxford University Press.

Stone, Geoffrey R. 2004. *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism*. New York: Norton.

Events of and since 11 September 2001 have renewed interest in hoary questions about democratic governance in the shadow of insecurity. Scholars—especially academic lawyers but also political theorists and historians—have vigorously debated whether, in times of emergency, politics must choose between security and liberty, whether crisis measures become precedents or cautionary tales, and whether emergency powers can be effectively cabined. Beneath the surface of this debate lurks a deep disagreement: whether liberal democracy is an indulgence whose expense can be borne only by those at peace, or whether it thrives during times of adversity. The recent literature, to which few political scientists have contributed, often has been too directly motivated by contemporary concerns and disproportionately focused on the United States, but it has introduced historical perspective into policy debate and suggested hypotheses warranting cross-national evaluation.¹

Scholars of international relations have periodically decried their colleagues' lack of attention to the domestic and international consequences of war. It remains true that, as Stein and Russett wrote three decades ago, "war is a major agent of change but a neglected one."² Nevertheless, fine studies have been conducted of veterans' capacity and will for political action, as well as of war and social memory;³ long-standing debates on defense spending and economic performance have been renewed;⁴ and productive research programs have flowered on war and state-building⁵ and on war and leadership tenure.⁶ Yet the effects of war, particularly in the long run, on liberal-democratic institutions and processes remain poorly understood. Developments across the globe since 2001—from Britain, where the glorification of terrorism has been criminalized, to the Philippines, where a new antiterrorism law threatens to suppress political opposition, to the United States, where formerly obscure legal instruments such as national security letters have

1. In addition to the featured titles, see Baker and Stack 2005; Balzacq and Carrera 2006; Daniels, Macklem, and Roach 2001; and Tushnet 2005b. See also, in a more policy-oriented vein, Ackerman 2006; Heymann and Kayyem 2005; Posner 2006; and Wittes 2008. In addition, numerous books have been published on developments in the United States since 2001.

2. Stein and Russett 1980, 399. See also Thompson 1993. Similarly, regarding U.S. politics, see Mayhew 2005. Regarding comparative politics, see Kasza 1996. An important exception is the work of Tilly and the large state-building literature that it has spawned: see Tilly 1975, 1985, and 1992.

3. The historical and sociological literature on these subjects is voluminous. On the former, see especially MacLean and Elder 2007; and Mettler 2005. On the latter, see especially Fussell 1975; Winter 1995; and Winter and Sivan 2000.

4. See Ruttan 2006; and Sandler and Hartley 1995.

5. In addition to Tilly (note 2 above) and those cited in notes 9–11 below, see Barnett 1992; Desch 1996; Heydemann 2000; Porter 1994; and Rasler and Thompson 1989.

6. See Bueno de Mesquita and Siverson 1995; Chiozza and Goemans 2003; and Goemans 2000.

become matters of public concern—remind one that it makes a great difference to the lives of citizens and to the quality of governance not just whether polities are democratic, but where they lie within the spectrum of liberal democracy.

Prompted by the recent spate of research in law (reflected in the featured books), but engaging also with insights from across the social sciences, this article lays out an agenda for a crucial yet underexplored aspect of the “second-image reversed”⁷: the effects of insecurity and war on liberal-democratic institutions and processes. Treating war as a complex process, it disaggregates this bulky concept into three distinct phenomena—threat, mobilization, and warfare—and probes how these shape two central dimensions of democracy: contestation and participation.⁸ This article reviews the relevant literature, shows how many of its propositions and claims rest on shaky theoretical and empirical foundations, identifies areas for further research, and suggests potentially fruitful hypotheses.

I offer four core conclusions about the existing literature. First, the two traditions that dominate the landscape—depicting war as driving or impeding liberal democracy—are complementary rather than competing. Second, the literature focuses largely on the scale of war as the chief explanatory factor, but big wars do not always yield large consequences, and small wars sometimes do. Third, threat alone, regardless of the level of mobilization or the intensity of combat, is often sufficient to reduce democratic contestation, but there is no consensus regarding the long-run effects. Future research should seek to establish when security-related practices lead to new civil liberties norms and when a rights-protective backlash ensues. Fourth, mobilization and warfare may promote political participation, but promising causal chains, by way of civic engagement and socioeconomic reform, remain theoretically underspecified. In short, much remains to be learned about the short-run and especially the long-run effects of security threats, war mobilization, and warfare on participation and contestation in liberal democracies.

The article proceeds in five sections. First, I introduce the two major schools of thought on war and democracy and unpack both concepts. The next two parts critically review the effects of war on participation and contestation. Next I identify the salient outstanding questions and offer hypotheses addressing these lacunae. I then elucidate the implications for contemporary debates over executive authority and emergency powers.

Two Traditions

Arguments about the effects of war on democracy fall into two camps. One portrays liberal democracy as a luxury afforded only by those living in relatively peace-

7. Gourevitch 1978.

8. For convenience, however, I sometimes use the shorthand—“the effects of war”—to capture all of these.

ful international environments. The more threatened a state, the more powerful is its military and the more absolute is its form of government. Hintze thought it hardly accidental that the early democratizers, Britain and the United States, were surrounded by water and weak neighbors, while Prussia, encircled by powerful enemies, was the epitome of militaristic authoritarianism. Lasswell famously forecast at the start of World War II that modern military technology would soon combine with prevalent insecurity to produce the “garrison state”—a regime in which real power lay with the technocratic managers of violence, notwithstanding formally democratic procedures and structures.⁹

A second tradition, whose chief spokespeople are “bellicist” historical sociologists, portrays war as a democratizing force. Prosecuting large-scale warfare requires soldiers and money, and states are compelled to bargain with their populations for these resources. Thus the mass army in late-nineteenth-century Europe led to the extension of the franchise and the creation of representative assemblies. As Andreski pithily put it, the higher the “military participation ratio”—that is, the proportion of the population under arms—the more democratic the regime.¹⁰ In contrast, the relative absence of resource-intensive interstate war in Africa and Latin America prevented those regions from following in Europe’s footsteps.¹¹

Empirical analysis during the last half-century has not settled the matter. Some have confirmed the garrison-state narrative,¹² while others have found that involvement in militarized interstate disputes, military intervention, or war has no significant effect on democratic transition or survival.¹³ Quantitative findings have not supported the bellicist account, but they have also not been properly specified for the purpose: in bellicist theorizing, the extent and perhaps the rate of state resource extraction, not wars and militarized interstate disputes (MIDs), are the crucial causal factors, and the predicted consequence of even large-scale mobilization is not democratic transition—that is, across some threshold—but movement in a democratic direction. Finally, many students of democratization continue to see war, especially defeat, as a sometimes important (but not necessary) causal piece of the puzzle,¹⁴ and preliminary evidence suggests that electoral democracies that emerge from the crucible of war are more durable, if thinner, than those that materialize in other contexts.¹⁵

This long-standing debate about the effects of war on democratization may be extended to conflict’s impact on *existing* democracies—this article’s central concern. The featured books, which confirm or deny that crisis has substantial effects on executive authority and individual liberty, are in dialogue with the garrison-

9. See Hintze 1975; and Lasswell 1941. See also Downing 1992; and Thompson 1996.

10. Andreski 1954. See also Mann 1993; and Tilly 1992.

11. See Centeno 2002; and Herbst 2000.

12. See, among others, Rasler and Thompson 2004; and Reuveny and Li 2003.

13. See, among others, Mansfield and Snyder forthcoming; and Reiter 2001.

14. See Acemoglu and Robinson 2006, especially 31–32, 65–68. See also Bermeo 2007.

15. Bermeo forthcoming.

state tradition. The existing quantitative literature has not examined this important question, presumably because the most widely used data (Polity, which focuses on democratic structures, and the less-reliable Freedom in the World, which focuses on civil liberties) are not sufficiently fine-grained: since 2001, for instance, no states in Western or Central Europe or North America have seen their ratings fall in either database.

Although the two traditions are often cast as diametrically opposed, they are complementary in that they normally focus on different regime dimensions. Regimes, Dahl has suggested, might usefully be conceptually situated along two continuums: (1) *contestation*: the extent to which political opposition is sanctioned and protected among those permitted to participate in governance; and (2) *participation*: what proportion of the population can and does meaningfully engage in contestation, whatever its extent.¹⁶ Participation is often associated with the franchise, but that is only its most easily measured manifestation; the political mobilization of populations marks the advance of participation, while public apathy signals its decline. Contestation is captured by the extent of civil liberties protections, specifically those that nurture the formation and expression of opposition, and the scope of unchecked executive authority, which defines the boundaries of effective opposition. The greater the degree of contestation and the broader and deeper participation, the more closely a regime approaches the liberal-democratic ideal. Illiberal democracies allow many to participate superficially but restrict the scope of their involvement, liberal autocracies permit substantial contestation but define the political community narrowly, and despotic regimes rank low along both dimensions. Using Dahl's framework to conceptualize democracy allows one to reconcile the traditions: the garrison-state approach captures security-related limits on or reductions of contestation, while the bellicist approach speaks to expansions of participation. There is no reason to think these move in lockstep, and thus international conflict is often neither entirely inimical nor entirely beneficial to liberal-democracy.

This way of organizing the explanandum also highlights puzzling variation. For instance, contrary to the garrison-state tradition, wars have sometimes enlarged the zone of contestation. The Yom Kippur War, and especially the Lebanon War and the first *intifada*, eroded the Israeli military's privileged position and weakened the national-security rhetorical trump, broadening the range of political debate in Israel: the dominant institutional regime crumbled, actors with marginalized views on national security gained a public hearing, and domestic discontent long swept aside by the priority of security appeared on the agenda.¹⁷ In the United States, the Vietnam War produced a backlash against the "imperial presidency": Congress sought to impose limits on presidential war-making and budgetary power,

16. Dahl 1971.

17. Shafir and Peled 2002, chap. 8.

rein in runaway intelligence agencies, protect citizens' privacy, and generally bolster its capacity to monitor the executive.

Moreover, both schools of thought identify the scale of war as the critical causal variable: the bigger the war, the greater its consequences, negative and positive. As Thompson summarizes the conventional wisdom: "The impacts of war are primarily a positive function of the extent of societal mobilization, population losses, and war duration and a negative function of distance from the battlefield."¹⁸ But to think that large effects are the product only of large causes is a fallacy, as research informed by complexity theory and path dependence has suggested. System-altering wars often have been limited in their intensity and duration, and large-scale wars have sometimes had limited international consequences,¹⁹ and the same may well be true of their domestic impact. It is not obvious that the effects of larger wars are deeper, more pervasive, or longer-lasting along either or both regime dimensions.

Finally, existing scholarship normally identifies "war" as the independent variable, but this bulky label should be disaggregated into three separate phenomena: threat, mobilization, and warfare. Intensifying security threats need not yield corresponding increases in authorities' extraction or control of societal resources, and preparations for war need not culminate in warfare. These distinct processes may have distinct effects on participation and contestation. In the latter half of the 1940s, for example, as the United States was demobilizing its military forces and scaling back government's role in managing the economy, Americans discovered that gathering threats may alone prompt measures striking at individual freedoms. As Stone engagingly recalls in *Perilous Times*, the early Cold War witnessed loyalty tests for federal employees, a national "blacklist" of "subversive" organizations, witch-hunts at all levels of government for "Reds" and "fellow-travelers," and generally efforts to hound left-wing politics out of public life—all in the absence of large-scale mobilization.²⁰ Similarly, few countries have mobilized extensive national resources for the struggle against terrorism since 2001, but many have rethought societal standards regarding expression, detention, and surveillance. Insecurity drives the so-called "global war on terror" and especially its ramifications for individual liberty and executive authority: it has accounted for little mobilization and not much more warfare.

States' hunger for war-making resources—mobilization—may alone compel concessions to the demand for political representation (increased participation) or reductions in the scope of legitimate politics (decreased contestation). While Europe's great powers were dividing the globe after 1870, the continent was at peace. Yet preparations for war—increased taxation, broadened military conscription—intensified, with ramifications for democratic politics. Interstate military competi-

18. Thompson 1993, 126–27.

19. Levy 1990.

20. Stone 2004, chap. 5.

tion had earlier led states to bypass intermediaries in ruling over populations; it now led them to expand the sphere of state intervention and to transform the state into a target of popular claims-making. Especially after 1850, Tilly has argued, “direct rule and mass national politics grew up together, and reinforced each other mightily.”²¹ While participation expanded, however, this was also, not coincidentally, the age of nationalism, promoted by the state partly to serve its military ends.²² The mobilization of popular sentiment around nationalist themes has often had the effect, today as in nineteenth-century Europe, of silencing political opposition and freeing the state from constraints. All this preceded and was independent of the eventual eruption of continental war in 1914.

Warfare may not only accelerate these processes but activate new mechanisms. It often leads to greater state demands on populations and thus more intense bargaining. But battlefield valor has also served as the basis for a powerful argument with which populations seeking first-class citizenship can bludgeon recalcitrant authorities—a rhetoric of sacrifice most easily deployed within the context of war.²³ Warfare may even have effects on participation in states that are not combatants. The outbreak of war in 1914 caused European demand for raw materials to plummet, shook the dominance of South American elites who controlled the export industries, mobilized the working class, and catalyzed mass politics in these narrow democracies. In Argentina, Chile, and Peru elites reluctantly recognized that, as a consequence of the war, “the working and middle classes had to be drawn into . . . a broader political equation.”²⁴ The larger point is that separating these three processes is a necessary move: it is important for both theory and policy to know what is doing what causal work.

Conflict and Contestation

The Short Run: Contestation Suffers

The negative short-run effects of insecurity on contestation are well-rehearsed in the books under review. First, crises contribute to the expansion of arbitrary executive authority. The growth of executive capacity, a corollary of modern state-building, should not be counted as a strike against liberal democracy, but the growth of *autonomous* executive authority runs contrary to the spirit of liberalism. Restraint of executive action hinges on others’ capability to scrutinize its behavior and counter perceived overstepping, but national-security crises weaken these restraints, rendering executive authority increasingly despotic.²⁵ The tradition of “constitutional

21. Tilly 1992, 115, and generally chap. 4.

22. Posen 1993.

23. Krebs 2006.

24. Albert 1988, 286, and generally chap. 6.

25. Finn 1991.

dictatorship” dates to the Roman Republic, and the belief that the need for speedy action in times of crisis requires strengthening the executive at the expense of the legislative branch has a distinguished lineage: unsurprisingly Machiavelli encouraged the prince to foster an atmosphere of crisis so as to loosen conventional restraints, but liberal thinkers, notably Locke, also believed that “necessity” at times demanded the creation of extensive executive authority.²⁶ Yoo’s recent argument for virtually unlimited presidential prerogative in foreign affairs arguably perverted this tradition, but its appeal derived from its times more than its intellectual strengths: periods of perceived threat sustain even extreme arguments in this vein.²⁷

The common presumption that the executive is more capable of acting with dispatch than other branches of government has not gone unchallenged. Some argue that today’s executives are “plural”—immense bureaucracies composed of numerous actors pursuing independent agendas—and therefore cannot act more efficiently than legislatures.²⁸ Moreover, for better or worse, legislatures have been able to swiftly pass security legislation, with little debate. However, these observations miss the mark: the president or prime minister always possesses the potential to exert some hierarchical control over a divided bureaucracy, even if such power is not evenly exercised, while a reasonably divided legislature cannot move quickly. The real problem with the expansion of untrammelled executive authority in times of crisis is that what is gained in the speed of decision making is often exceeded by what is lost in quality. Arbitrary government is bad government: “secret government invariably increases the rate of potentially fatal error . . . A government that is not compelled to give reasons for its actions may soon have no plausible reasons for its actions.”²⁹ Nevertheless, the intensification of security threats both increases the scope of and weakens the checks upon executive authority. High levels of mobilization, and subsequently the urgency of war, may reinforce and extend it.

A second consequence is the diminution of civil liberties. As one of Britain’s leading civil rights lawyers observed, “it’s always the case that the flame of civil liberties burns less brightly when surrounded by the smoke from bombed buses and tube trains.”³⁰ The defenders of such measures maintain that national security and individual freedom necessarily, or at least often, exist in a precarious and continually readjusted balance. Posner and Vermeule argue, in *Terror in the Balance*, that reducing liberty in response to a security threat is potentially, and presumptively, rational.³¹ Some, among them Donohue in *The Cost of Counterterrorism* (as well as Senator Barack Obama), rightly note that the tradeoff is not uniformly necessary: harsh steps may harm national security by alienating potential allies,

26. See Mansfield, Jr. 1989; and Rossiter 1948.

27. Yoo 2005.

28. Scheuerman 2005.

29. Holmes 2007, 6.

30. Sarah Lyall, “Stricter Antiterror Laws in Britain,” *New York Times* (Internet ed.), 26 July 2005.

31. Posner and Vermeule 2007, 21–30. See also Posner 2006, chap. 2.

and tight restrictions on information may lead to the adoption of policies catastrophic for security; some security measures that violate individual rights, Donohue points out, may preserve freedoms more effectively.³² But even many who accept the tradeoff's conceptual validity believe that typically leaders impose, and populations accept, excessive rights restrictions. Gross and Ní Aoláin maintain in *Law in Times of Crisis* that the reasons are both psychological and political. Especially when people perceive risks to be great and uncontrollable, they rely heavily on cognitive heuristics, overestimate risk, and engage in worst-case reasoning.³³ The perception particularly of territorial threat renders individuals intolerant of minorities and even willing to sacrifice their own civil liberties.³⁴ Moreover, restrictions assuage the public's demand that the state "do something" to protect them, even if the resulting measures are ineffective.³⁵

As Cole shows in *Enemy Aliens*, politically weak groups are particularly common targets of state action in times of crisis and war, since measures at their expense yield at least the illusion of security at relatively low cost.³⁶ Posner and Vermeule are not troubled by these errors because they "will not be systematically skewed in any direction and will not be more likely during emergencies than during normal times, in which governments also make mistakes about quotidian matters of policy." However, these errors are not random but tend toward the detriment of minorities and the weak; crises are relatively rare events, so the errors do not "wash out over many decisions or over time"; and mistakes made during crises may have greater costs and a greater impact on individuals and societies than mistakes made during "normal" times.³⁷

One major problem is that the literature has failed to specify a consensus rational baseline—that is, what rights-restrictive measures are warranted under what conditions. Is the British criminalization of the "glorification of violence" after the July 2005 London bombings an example of an irrational and illiberal measure targeting a vulnerable minority and whose only explanation is the need to pacify an anxious public? Perhaps, for it does not address young Muslims' alienation. But it also has plausible rationales. If this is a form of "hate speech," banning it may serve, not undermine, the cause of liberalism.³⁸ Moreover, radical preachers

32. Donohue 2008, especially 29–32. See also, among others, Roach 2006; and Waldron 2003.

33. Gross and Ní Aoláin 2006, 103–9. See also Sunstein 2003.

34. See especially Davis and Silver 2004; Gibler and Hutchinson 2007; and Huddy et al. 2005. Posner and Vermeule (2007, 61–64) argue that anxiety leads to greater attentiveness and more thoughtful decision making. However, some psychologists maintain the opposite: anxiety makes subjects preoccupied with threatening stimuli and thus leads to the misallocation of cognitive resources. Empirical evidence in the context of national security is either supportive of this contrary hypothesis or suggests that anxiety has no impact, positive or negative. See Huddy et al. 2005; and Huddy, Feldman, and Cassese 2007.

35. Gross and Ní Aoláin 2006, 220–21.

36. Cole 2005. See also Gross and Ní Aoláin 2006, 220–27; Hofnung 1996, 75; and Stone 2004, 531.

37. Posner and Vermeule 2007, 4–5. The last point is one they concede (*ibid.*, 68), but whose implications they do not recognize.

38. Thanks to Laura Donohue for alerting me to this.

gave this alienation violent direction and inspired the 2005 attacks, and silencing them may diminish the violence and create space for reconciliation. Without any baseline, there are no grounds for either presuming the rationality of security measures or alternatively turning to psychological pathology or political perversity to explain them. Since specifying whether measures are substantively rational seems impossible, it might be more productive to ascertain whether the policymaking processes that produced the given measures approached standards of procedural rationality—that is, whether decision makers considered alternatives, weighed their costs and benefits, and otherwise performed due diligence.

This dispute hides the general scholarly agreement on two propositions regarding the short-run effects of crisis. First, the more intense the threat, the more likely are substantial restrictions on civil liberties; second, their costs are not evenly distributed, falling especially on communal minorities and resident aliens, ironically those whose cooperation the state may most need. However, the literature does not take one far enough in accounting for variation. Cole and Gross and Ní Aoláin present a catalog of sins, a legislative and judicial record of unremitting failure to hold back the tides of repression. But Stone's nuanced history, observing that more severe measures were often rejected, complicates the picture. The Seditious Act of 1798 was actually less harsh than other proposals. During World War I, the U.S. Congress mitigated the most extreme provisions of the Espionage Act, to the frustration of the Woodrow Wilson administration.³⁹ Congressional objections, anticipated and voiced, compelled the George W. Bush administration to ratchet back its ambitions for the USA PATRIOT Act.⁴⁰ As the French parliament's record after World War I suggests, sometimes legislatures concede to and sometimes they resist executive demands for delegated authority.⁴¹ Sometimes, as in the United States during the early Cold War, legislatures take the initiative, authorizing restrictions the executive does not want. Such variation remains a puzzle. The same puzzle exists with regard to judicial performance. That judges around the world have tended to defer to the executive in times of crisis, either endorsing or avoiding ruling on its actions, has been often noted.⁴² But judges have also sometimes (eventually) reined in runaway executives and security apparatuses.⁴³

Gross and Ní Aoláin argue persuasively that five “assumptions of separation” underpin popular tolerance for expanded executive authority and diminished liberties: when populations believe restrictive measures are (1) temporary crisis provisions; (2 and 3) geographically confined, to anomalous zones (for example, Northern Ireland, the Israeli Occupied Territories, or the U.S. prison camp at Guan-

39. Stone 2004, 36, 146–53.

40. Rosen 2004, chap. 4.

41. Rossiter 1948, 120–24.

42. A large legal and historical literature makes this point. See, among many others, Dyzenhaus 2006, 20–35; Hatchard 1993; Iyer 2000; and Lahav 1988–1989.

43. For examples from several countries, see Coomaraswamy and Reyes 2004; Donohue 2008; and Shetreet 1991.

tanamo Bay Naval Base) or foreign territories; (4) limited to questions of security; and/or (5) directed at communal “Others.”⁴⁴ This is insightful, but Gross and Ní Aoláin fail to articulate the social and political conditions that make these assumptions seem plausible in some cases and not others. Rights-restrictive measures are not always embraced in times of crisis, and often not to the extent authorities desire or demand. Not all conceivable Others are identified as such: it may seem obvious that classifying Whig opponents of the U.S.-Mexican War as Other would be more challenging than so classifying Issei and Nisei during World War II, but what about Vietnam protesters, who were typically offspring of the middle class but who also associated with an anti-establishment “counterculture” whose members designed a visual presence that clearly distinguished them from the 1950s generation? Why were socialists and pacifists, many of whom were native-born, successfully vilified as “un-American” during World War I?⁴⁵ The “assumptions of separation” might profitably be viewed as rhetorical tropes, deployed in ways that make them seem natural and challenged through claims-making that reveals their arbitrariness. The literature has suggested what follows when these labels stick, but it has not explained when they do.

The Long Run: Pessimists, Optimists, and Skeptics

The scholarly consensus that threats, mobilization, and perhaps warfare reduce contestation in the short run stands in marked contrast to the lack of agreement about their long-run effects. Whether such measures have enduring consequences has been the subject of a vigorous debate, and the stakes are substantial: if contestation-reducing measures had no lasting effects, one might conclude that this was, from society’s perspective, a tempest in a teapot—albeit one costly for individuals. Two camps have emerged. Optimists, drawing particularly on the U.S. experience with political expression, argue that there is a silver lining to wartime restrictions, as progressive postwar social learning has led jurists and decision makers to view the most oppressive measures as object lessons, not exemplars. After every crisis and war, writes Stone, “the nation came after the fact to regret its actions and to understand them, in part, as excessive responses to war fever and/or government manipulation . . . [and] the nation’s commitment to free speech rebounded, usually rather quickly, sometimes more robustly than before.”⁴⁶ Thanks to revulsion at excesses, claim optimists, government, although often eager to suppress criticism, has during each successive crisis found its hands more tied.⁴⁷

Pessimists claim that war in particular and crisis in general cast a long shadow. They maintain that the exception has not proved exceptional: temporary states of

44. See Gross 2003; and Gross and Ní Aoláin 2006, chap. 4.

45. These questions play off examples in Graber 2005; and Stone 2004.

46. Stone 2004, 529. Stone, 530–31, is careful to note that this is only the U.S. historical experience, but he provides no explanation for why the United States should be unique.

47. See also Goldsmith and Sunstein 2002; Rehnquist 1998; and Tushnet 2005a.

emergency become permanent, emergency measures are incorporated into ordinary law, authorities employ emergency powers in everyday situations, and populations' civil liberties baselines adjust to new realities. "In any future crisis," caution Gross and Ní Aoláin, "government will take as its starting point the experience of extraordinary powers and authority granted and exercised during previous emergencies."⁴⁸ Cole similarly concludes that the "assumptions of separation" are but a comforting myth: the supposedly high walls between "them" and "us" break down, so that there is a "virtually ineluctable tendency of measures [directed against aliens] to extend across the citizen-noncitizen divide."⁴⁹ Donohue carefully tracks the permeability of domains over time: for instance, the British government's powers to seize property and the shifting of the burden of proof migrated from the antidrug campaign to counterterrorism and back.⁵⁰ In short, optimists observe and forecast processes of negative feedback, and pessimists perceive and expect processes of positive feedback.

Framed as invariant generalizations, both accounts seem problematic. The optimists can point to instances in which crisis measures provoked a backlash, but they fail to engage with the pessimists' evidence. Moreover, the causal mechanism by which a postwar consensus emerges that is critical of wartime policy and protective of violated rights is never spelled out. Some, true believers in the judicial faith, imply that it is largely the product of judges calmly reflecting upon history in their chambers. Yet so apolitical a process ignores the competition waged in the public sphere to impart meaning to events, and it overlooks the role an outraged civil society plays in forging social memory. A more political perspective, exploring what promotes or inhibits mobilization against wartime practices, suggests potentially productive directions of inquiry. Finally, optimists display a mysterious attitude toward judicial precedent. They imply that precedent is not inherently powerful: pointing to such decisions as *Korematsu* (1944), they suggest that deferential wartime rulings have no long-term effect on jurisprudence. Yet their argument is predicated on normatively desirable postwar precedent proving so powerful that it later constrains decision makers.⁵¹

The pessimists, however, also seem to overstate their case. If they were right, one would have expected a steady race toward the civil liberties bottom and the evisceration of constitutional government over the course of the twentieth century. But individual freedoms are more highly valued throughout the world today than they were a hundred years ago: consider that extensive protection of free expression in the United States only began to take shape in the 1920s and did not attain its present form until the 1960s. Given increasing regulatory and welfare-

48. Gross and Ní Aoláin 2006, 228. See also Finn 1991; and Scheppelle 2006. For case studies of "normalization," see Donohue 2001 (Britain); Hofnung 1996 (Israel); and Coomaraswamy and Reyes 2004 (Sri Lanka).

49. Cole 2005, 85.

50. Donohue 2008, chap. 3.

51. See Cole 2004; and Stone 2004, 542–49.

state responsibilities, elected executives everywhere have grown more powerful, but only the most radical critics would perceive no difference between today's liberal and authoritarian regimes. Liberal democracy has proven more resilient than pessimists allow.⁵²

Further, pessimists would expect "bleeding" across boundaries and domains to be regular and comprehensive, not episodic and delimited. Cole argues that the 1798 Enemy Alien Act made possible, and was extended to cover, the internment of citizens of Japanese descent during World War II. Not only does he present no direct evidence of this connection or address the plausible counterfactual that Japanese Americans would have been interned even in the absence of the precedent against aliens, but more importantly he ignores the many opportunities to extend the logic of preventive detention to citizens that were foregone in the intervening 150 years. Similarly, the first Red Scare, Cole maintains, served as a model for the Cold War version that targeted citizens as well, but he cannot explain why the backlash against the Palmer Raids did not become the relevant precedent, inhibiting government's inclination to repression.⁵³ Rossiter attributes the repeated broad delegation of legislative power in France after World War I to the perceived efficacy of wartime enabling acts, but in fact Parliament denied many postwar requests for executive decree powers, and delegation was more common in the latter half of the 1920s than immediately after the war.⁵⁴ An adequate theory would account for the selectivity of such "bleeding," situating it within the politics of precedent-taking.

Neither the optimists nor the pessimists present a well-specified theory—that is, a set of generalizable statements that can explain, and identify the causal mechanisms responsible for, the observed variation. What is arguably the critical question regarding the long-term effects of threat, mobilization, and warfare on contestation remains unanswered: when does normalization follow, and when does a rights-protective backlash ensue? Figure 1 summarizes the literature's findings.

There is, however, a third camp, represented by Posner and Vermeule. They conclude, after critically reviewing the pessimists and optimists' claims, that there are "no systematic trends in the history of civil liberties, no important ratchet-like mechanisms that cause repeated wars or emergencies to push civil liberties in one direction or another in any sustained fashion." They suggest that "emergencies produce a cyclical pattern, in which civil liberties are restricted during an emergency and then reinstated when the emergency passes." If this were correct, the net effect of international conflict on contestation would be nil. But, aside from the fact that these skeptics do not substantiate their empirical claim, they oddly shy away from the more defensible inference that the scope conditions for the optimistic and pessimistic accounts have not yet been established. Their correct

52. Starr 2007, chap. 5.

53. Cole 2005, 91–100, 129–30.

54. Rossiter 1948, 120–24.

		Regime dimensions	
		Participation	Contestation
Conflict dimensions	Threat	Ø Reform Ø Civil society Ø Franchise	↓ Short-run ? Long-run
	Mobilization	? Reform ? Civil society ↑ Franchise	↓ Short-run ? Long-run
	Warfare	? Reform ? Civil society ↑ Franchise	Ø

Ø = No impact
 ? = Unknown impact
 ↑ = Positive impact
 ↓ = Negative impact

FIGURE 1. *The state of knowledge: The effects of conflict on democratic regimes*

observation that these approaches lack well-specified mechanisms should serve as an invitation to theory-building, not a rejection of the enterprise. Their conclusion—that “our present choices will [not] have systematic and irreversible effects on the choices made by future generations in unforeseeable future emergencies”—is not justified.⁵⁵

Conflict and Participation

The featured books generally take little note of war’s effects on participation.⁵⁶ This is understandable, given the legal literature’s concerns. But social scientists cannot evaluate the implications of threat, mobilization, and warfare for democracy while ignoring half the ledger.

Bellicists argue that the demands of large-scale military mobilization have helped open political systems to excluded groups. Yet this account, while persuasive regarding the European lower classes, is less satisfactory regarding groups whose periph-

55. Posner and Vermeule 2007, 149–50.

56. See, however, the brief discussion in Posner and Vermeule 2007, 108–9, 113–14. See also Graber 2005.

eral status has been maintained through gendered, ethnic, or racial discourses: sitting on the polity's margins, they have instead sought, during times of stress, to demonstrate their loyalty.⁵⁷ Consequently, even large groups have often made headway after, not during, war—that is, when their contributions were no longer required and their material bargaining power had receded. The operative mechanism in these cases revolves more around the politics of postwar gratitude and the interaction between the frame of claims-making and the dominant citizenship discourse than mobilization-induced bargaining.⁵⁸ Battlefield sacrifice, even in limited wars, may then provide crucial evidence of the population's worthiness for first-class citizenship. Both mobilization and warfare have not only sparked demands for inclusion but have provided the resources for effective claims-making.

Unlike threat or mobilization alone, large-scale warfare can lead to privation among combatant populations. It aggravates popular grievances and might conceivably trigger mobilization. However, war's hardships can also depress participation. When privation is most intense, the lower classes are vulnerable: survival takes precedence over political engagement, and alienation, not mobilization, follows. The effect may be sequential, with little protest in war's early stages and then increased confrontation as economies recover. This pattern held among the major combatants in World War I, and even among South American states—noncombatants heavily dependent on trade; it emerged despite wide variation in government strategies for coping with mass protest, ranging from conciliation to repression.⁵⁹ Populations that suffer only modestly from war are more likely to mobilize from the start. Distant from the field of battle, and with a huge internal market to cushion it from wartime disruption, the United States saw substantial increases in labor activity from the beginning of World War II.⁶⁰

But the short-run effects of mobilization and warfare on participation may be less important than the long-term effects. Five causal pathways warrant examination.

Franchise

When mobilization and warfare lead to the expansion of the franchise, this consequence is self-reinforcing and persistent. It is easier to refuse political rights to the weak than to divest the recently empowered of those same rights. Populations, when they vote as a bloc, can combat subsequent efforts at disenfranchisement. Moreover, while liberal discourse can justify denying voting rights to delimited groups, one cannot, within its terms, legitimate stripping large classes of rights of which they had previously been deemed worthy. Effective participation in politics, however, hinges also on the distribution of income and wealth, and the pos-

57. On women, see Higgonet et al. 1987. On ethnic and racial groups, see Enloe 1980.

58. Krebs 2006.

59. Albert 1988, especially chaps. 2 and 6.

60. Stein 1980, chap. 5.

session of the franchise alone does not guarantee any increase in socioeconomic equality.

Socioeconomic Reform

Reform potentially levels not only the economic but the political playing field, augmenting populations' capacity and will to participate in politics.⁶¹ In Europe expectations of and preparations for war played a key role in the growth of the welfare state. The motivations came from above as well as from below. In the era of the mass army, officials discovered that better educated and healthier citizens were better soldiers, and thus they created public education systems, improved public health, and provided basic welfare services. Mobilization for war also imparted leverage to the lower and middle classes, who demanded increased regulation of the economy and a stronger social safety net in exchange.⁶² Through the path of reform, the prospect of war, preparations for conflict, and the rigors of wartime had important ramifications for participation.

Yet the theoretical logic is not sound. Retrenchment is common after war, but this is puzzling if the top-down mechanism is operative. If pressure from below wrests wartime promises from authorities, it is not clear why these would be fulfilled once wartime leverage had evaporated. Moreover, high levels of mobilization may crowd out resources for reform. During World War II, President Franklin D. Roosevelt brought reform to a halt, announcing that "Dr. Win the War" had replaced "Dr. New Deal." The guns-versus-butter tradeoff becomes even more intense when states seek to fight wars without mobilizing national resources. Thus President Lyndon Johnson's Great Society died in the jungles of Vietnam. This example also suggests that the scale of mobilization is not a true "independent" variable: Johnson avoided mobilizing the American public precisely because he believed it would ensure his domestic program's demise.

Ascertaining when mobilization and warfare promote or impede reform is a crucial unanswered question.⁶³ Scale is part of the explanation, but it is not sufficient. Promising avenues of inquiry explore how the experience of mobilization and warfare reshape the power, preferences, and strategies of key actors and thus the likelihood of reform. How the state mobilizes national resources may be especially important, and future research might examine both the factors that shape the state's mobilization strategy and the consequences of that strategy for postwar politics.⁶⁴

61. See Hacker et al. 2005, 32–57; and Schlozman et al. 2005.

62. See Mann 1993; Marwick 1974; Tilly 1992, 114–21; and Titmuss 1969.

63. Large-scale military mobilization might also promote socioeconomic equality if disadvantaged veterans earned more than nonveterans and privileged veterans. However, one cannot generalize easily about the effects of military service on individuals' income. See MacLean and Elder 2007, esp. 184–87.

64. Directly on war and reform, see Kier forthcoming. See, relatedly, Sparrow 1996.

Civic Engagement

Whether a vibrant civil society is necessary for, or even contributes to, political participation and strong democratic institutions has long been debated.⁶⁵ Among scholars who believe civic engagement to be a measure of democracy's health, war has featured as an important causal force. Drawing on original data regarding associational life in the United States, Skocpol and her collaborators have argued that, during victorious large-scale wars, civil society becomes more vital and associational memberships rise—effects that persist beyond the war's end. However, the civic associations of defeated societies and of groups allied with the defeated adversary stagnate or decline.⁶⁶ These findings are based only on the United States, however, and cross-national study suggests that large-scale wars are a boon to associational life regardless of outcome, though this conclusion is based on less reliable data.⁶⁷

Why large-scale wars should bolster or depress associational life is not clear, however. The most common explanations are individualistic. Skocpol and her collaborators invoke an intuitive psychology of victory and defeat, in which the defeated downplay their unsuccessfully realized identity and the victors revel in theirs, while others hypothesize that, as a collective enterprise, war compels individuals to develop skills in cooperation that carry through their lives. If such explanations were compelling, one would expect these effects to be most pronounced among veterans, yet anecdotal evidence suggests that veterans of even large-scale, victorious wars are as likely to emerge politically inert or alienated as they are to be inspired to political action.⁶⁸ War's effects on civic and political engagement may be rooted less in individual psychology or competence than in social interaction. Large-scale mobilization and warfare have the potential to reshape existing networks, displacing individuals and thrusting them into new environments. Moreover, the current literature focuses on the quantity of civic engagement, but the quality of postwar civic engagement seems to matter even more. If the growth of civil society reinforces, rather than breaks down, social cleavages to the benefit of illiberal actors—as in Germany and Italy after World War I—democracy may be war's victim, not its beneficiary.⁶⁹ If mobilization produces political polarization, then the social foundations for democracy are weakened.⁷⁰ As with socioeconomic reform, how states choose to organize their economies and mobilize their societies for war would seem to be a crucial, but not yet explored, intervening variable.

65. The seminal work is Putnam 1993. For recent critical reflections, see Theiss-Morse and Hibbing 2005.

66. See Skocpol, Ganz, and Munson 2000; and Skocpol, Munson, Karch, and Camp 2002.

67. Kage 2005.

68. Krebs 2004, 116–19.

69. Berman 1997. See also Theiss-Morse and Hibbing 2005, 232–35, 239–42.

70. This may be particularly common in civil wars. See Wood 2008.

It is often implied that small-scale, or limited, wars should have correspondingly little impact on civic and political engagement, but Sparrow has suggested that these wars may in fact have substantial consequences, producing alienation. He maintains that wars in Korea and Vietnam estranged Americans from government: to prosecute these wars without mobilizing national resources, officials employed methods that undermined government's legitimacy, eroded trust in authority, and depressed participation.⁷¹ This is a provocative claim. There are empirical issues: it is not clear whether mass alienation was the product of the wars' limited nature or of their outcome (perceived military failure), and the argument potentially suffers from problems of endogeneity. Moreover, even Vietnam had important cross-cutting effects: the war prompted new voices to enter the political arena, mobilized millions of citizens, and extended the vote to eighteen-year-olds. Finally, it is unclear whether the hypothesis has cross-national purchase. The frustrations of limited war in Algeria did delegitimize France's Fourth Republic, but the war ultimately gave rise to the Fifth Republic, which enjoyed popular legitimacy and which has proved enduring. Israel's limited wars in Lebanon and the Occupied Territories helped mobilize actors who had traditionally fallen outside the mainstream; political alienation in Israel has been more the product of government's failure to address abiding policy challenges than of duplicitous methods in waging limited war. Even if limited wars do not uniformly give rise to alienation, however, Sparrow's essay is important in suggesting that limited wars may have large effects.

Mobilization and warfare seem to shape postwar civic engagement, but much variation remains unexplained. Future research would not only profit from rigorous cross-national study, but also from examination of the quality of civil society as much as its quantity. Scholars need to pay more attention to what goes on *within* war, to mobilization and war as processes, not events.

Gender

The entry of women into the political system represented the greatest expansion of democratic participation in the twentieth century in consolidated democracies. But mobilization and warfare have generally reproduced gender roles, not liberated women (or, for that matter, men) from them. War has, for much of human history, been the province of men, sustaining a divide between masculine warriors and female "beautiful souls."⁷² Where the discourse of citizenship was dominated by militarized republicanism, war reinforced women's peripheral political status: their claims were denied on the grounds that they had not made equivalent contributions to the common good. While wartime service helped women achieve the franchise, women's postwar experiences were disappointing. Their sacrifices were

71. Sparrow 2002.

72. There have been exceptions among both sexes, but they have been discursively marginalized. See Elshtain 1987, 163–225; Goldstein 2001, 59–127.

treated as emergency measures, aberrations from the normatively desirable path, and women were discursively again confined to the private sphere, handcuffed to maternal and nurturing roles. Women's attainment of formal rights was not accompanied by the socioeconomic change that would sustain effective participation. In short, war has buttressed existing gender norms that shape the distribution of public rights and responsibilities.⁷³ It is not clear whether this is necessary or contingent, and thus some hold out hope that these processes might still have transformative (and progressive) effects. But the historical record does not yield much reason for optimism.

Economic Growth

If there were a systematic relationship between defense spending and economic growth, it might have implications for participation, insofar as the relatively wealthy and educated participate more regularly and intensively in politics than do the poor and uneducated and insofar as defense may become a net economic drag and crowd out social investment. However, while the effects of defense spending on economic growth are still much debated, it is generally agreed that, whether positive or negative, they are modest.⁷⁴ Moreover, the implications for participation are limited: the distribution of wealth as well as policy choices under conditions of scarcity, not overall economic performance, shape participation.

In summation, threat, mobilization, and warfare seem to have little impact on participation through their effects on either gender roles or economic growth. Whereas threat alone, even in the absence of mobilization and warfare, can have substantial effects on contestation, that does not appear to be the case with participation. That mobilization and warfare can affect reform projects seems clear, but better-specified theories are needed. The effects of mobilization and war on civil society are similarly poorly specified. While the existing literature pays some attention to war's scale and outcome, it would profit from greater attention to war as a process—to how states mobilize resources (not just how extensively they mobilize them) and to how mobilization reshapes the power, preferences, and strategies of domestic political actors.

A Research Agenda

More cross-national empirical research is needed exploring the long-run consequences of conflict. Quantitative study would be facilitated by the development of measures of contestation more fine-grained than those found in the widely used Freedom House and Polity data sets. Well-specified theoretical accounts are also

73. See Higgonet et al. 1987; and Ritter 2006.

74. See Payne and Sahu 1993, 14; and Sandler and Hartley 1995, 220. See also, however, Ruttan 2006.

lacking. Figure 1 summarizes the current state of knowledge. The most striking unanswered questions include: the long-run effects of international conflict on socio-economic reform and civic engagement, and on civil liberties and executive authority. Future research probing how insecurity, mobilization, and warfare shape democratic participation and contestation should be directed primarily at filling these lacunae. This section presents hypotheses organized around three factors—conflict type, regime type, and mobilization strategy—that I believe represent the most promising ways to begin addressing these gaps.

Type of Conflict

Recognizing that not all wars are the same, the literature has productively explored one dimension of variation: scale. But the conventional wisdom—that the more intense the threat, the more extensive the mobilization, and the greater the war's stakes and costs, the larger the impact—captures short-run dynamics better than long-run effects. Scale alone cannot resolve the dispute among contestation optimists, pessimists, and skeptics. Introducing another dimension of variation—how wars are legitimated—leads to unexpected conclusions.

“Total” wars are cast explicitly as deviations from the norm, requiring exceptional levels of societal cohesion and sacrifice and unusual executive authority. As a result, I hypothesize that they cannot produce a “new normal”: even if deemed appropriate responses to the circumstances, wartime measures reducing contestation are rolled back upon the war's conclusion. This accords with Rossiter's account of the British and French experiences in the world wars, and the skeptics' narrative is compelling with regard to America's total wars, the Civil War and World War II.⁷⁵ Contrary to the conventional wisdom, total wars seem to result in little long-run net change in levels of contestation.

Framed in less exceptional terms, limited wars blur the line between wartime and peacetime, and they potentially pave the way for the conversion of wartime standards into peacetime practices. Normalization is not inevitable, however, for such wars vary in their stated ambitions. Some are “transformative” enterprises that promise to change the fundamental nature of either the international system or the adversary: Woodrow Wilson assured Americans that their sacrifices in World War I would remake the global order, and classic liberal imperial ventures sought to educate and morally uplift benighted native populations (or, in more recent variants, export liberal-democratic and capitalist institutions). Others are “restorative” missions that more modestly aim to preserve or return to the status quo: the Gulf War was fought to reinstate the al-Sabah family and contain Iraqi aggression, not to install democracy in Kuwait and depose Iraqi President Saddam Hussein. How

75. Rossiter 1948, 97–102, 165–72, 196–204.

leaders frame national-security projects shapes public expectations, contributing crucially to whether the outcome brings satisfaction or disappointment.⁷⁶

Transformative wars are openly and unusually bold, and consequently they are likely to result in unrealized ambitions and in a perceived gap between the sacrifices war entails and the gains it brings. When that disjuncture materializes, so does a backlash against existing structures of authority, even those that predate the war—in line with optimists' expectations. After Woodrow Wilson's grand plans foundered at Versailles, Progressives rediscovered civil liberties: disillusioned with liberal crusades abroad, they found the postwar Red Scare a hysterical overreaction, and moral campaigns at home, such as Comstockery, were discredited. Lyndon Johnson and his aides portrayed Vietnam as a nation-building project, a testing ground for the Great Society. As in other imperial wars, local resistance contradicted the war's legitimating discourse and challenged the metropole's claim to superiority. As the war dragged on, executive initiatives to suppress domestic opposition came to light, and they seemed like overreach: Congress took steps to improve its monitoring capacity and rein in the imperial presidency. Israel's invasion of Lebanon, which initially aimed only at evicting the Palestine Liberation Organization but expanded to include remaking and stabilizing that war-torn nation, marked a turning point in Israel's slow march to liberalism.

Success is not guaranteed in a restorative war, but the bar is set more reasonably. I suggest that the achievement of such wars' more modest goals confirms the wisdom of wartime measures, facilitating the normalization of which pessimists warn. The mobilization of the Cold War was, by the mid-1950s, publicly depicted in nontransformative terms: it sought to contain global communism, and, although visions of rolling back Soviet influence informed covert operations, aggressive rhetoric calling for the liberation of Soviet satellites was rare. Judged by the standards of containment, the Western effort was a success, albeit an uneasy one that depended on constant vigilance. This atmosphere reshaped norms regarding fundamental liberties and sustained approval of presidential dominance, and only Vietnam proved their undoing. French president Charles de Gaulle's rhetorical prowess transformed the festering liberal imperial project in Algeria into a restorative war from which France had to extricate itself to preserve domestic tranquility, avoid civil war, and return to great power status. An unwinnable imperial war thereby became a winnable peace, and the result was general acceptance of the unparalleled power of the president in the Fifth Republic, even after de Gaulle exited the political scene.⁷⁷

These hypotheses foreground the social meaning of war. Scholars have previously noted that how adversaries and wars are represented can explain wartime patterns, specifically why certain freedoms are restricted and others preserved.⁷⁸

76. See, relatedly, Johnson and Tierney 2006.

77. For more on these hypotheses, see Krebs forthcoming.

78. See Graber 2005, 103–9; and Scheppele 2003.

This perspective also provides a framework for bridging the differences among optimists, pessimists, and skeptics regarding the relationship between international conflict and domestic contestation. This approach also brings war itself, which has been peripheral to the contestation debate, into the center of the conversation. Perhaps the Bush administration's transformative muscular Wilsonianism will spark a backlash against the corresponding surveillance state and imperial executive. But, even after most U.S. forces have departed Iraq, that reaction is not likely to arise as long as the "war on terror" continues to dominate the U.S. security imaginary.

Type of Democracy

A large literature in comparative politics has elucidated the implications of different democratic structures for policymaking, and it can be exploited to develop hypotheses on when wartime measures are most likely to endure. Some argue that the degree of constitutional authority granted to democratic executives varies so widely that "some [presidential] systems . . . are effectively parliamentary."⁷⁹ Similarly, theorizing regimes in terms of "veto points" subsumes any fundamental differences among systems.⁸⁰ Others, however, still find the distinction between democratic regimes in which origin and survival are separated (presidential) or fused (parliamentary) useful: in the former, the executive and the legislative majority are marked by greater "separation of purpose" where executives are more independent of party control, and coalitions are less stable and costlier to maintain.⁸¹ There remains a tradeoff between executive and party strength, and presidential democracies, with stronger executives, have weaker and less unified parties and exhibit more "individualistic representation."⁸²

Lowi once suggested that the weakness of parties and the difficulty of forging stable coalitions in separation-of-powers systems make these democracies prone to exaggerating national-security threats and to overselling proposed remedies.⁸³ Politicians in regimes with many veto points engage in rhetorical overkill to eliminate nodes of opposition and overcome the system's potential for gridlock. This has two implications. First, presidential democracies are particularly likely to declare crises and to embrace and perpetuate emergency measures limiting contestation.⁸⁴ Second, leaders in presidential democracies are particularly likely to adopt a transformative framing of the ends of foreign and military policy. The overselling of the threat leads to unnecessary crisis measures, but, if the earlier hypothesis has merit, the overselling of the solution lays the foundation for a postwar backlash.

79. Shugart and Carey 1992, 1–2. I am indebted to David Samuels for guiding me through these debates.

80. Tsebelis 2002.

81. See Carey 2005, especially 98–100; Huber and Shipan 2002, 28; and Samuels 2007.

82. See Carey 2009; and Shugart 1998.

83. Lowi 1969, 174–88.

84. Scheuerman 2008, 264–66.

Moreover, while legislators in presidential democracies do not have strong institutional reasons to resist creeping executive authority, they may sometimes have good partisan reasons for so doing, especially when another party occupies the executive.⁸⁵ The legislature's institutional independence then bequeaths an independent base of power from which to rollback executive authority or protect individual freedoms. Backlash may be more rare, and normalization more common, in parliamentary systems: legislators have less need of recourse to emergency measures outside the normal political process, and less reason, will, and capacity to overturn assaults on contestation.⁸⁶

Scholars have also hypothesized that, in parliamentary democracies, bureaucracy enjoys greater independence from oversight, and policymaking is less transparent and more closed. Because, in presidential systems, agencies report to the president, legislatures have few opportunities to influence policy implementation; therefore, they impose cumbersome procedural controls and establish elaborate monitoring mechanisms. The separation of powers also multiplies sites of decision making and provides more points of access to outside actors.⁸⁷ This suggests that crisis measures adopted in parliamentary democracies may be particularly resistant to reversal. Neither transparency nor access alone guarantees that burdensome or unnecessary measures will be abolished, but they are prerequisites for policy change. If bureaucracies in parliamentary systems are relatively autonomous, they may even be insulated from the will of new parliamentary majorities; in those areas that fall within bureaucratic purview, the conventional wisdom that parliamentary regimes are "irresolute"—because new majorities can undo what their predecessors did—has less purchase.⁸⁸

Strategy of Mobilization

Scholars exploring the effects of international conflict on socioeconomic reform and civic engagement have ascribed much to war's scale and outcome. But whether a state wins or loses may matter less than how it mobilizes its population. Drawing on sociological and organizational theory, Kier has usefully distinguished among three strategies: coercion gains compliance through punishment, or the threat thereof; remuneration secures compliance through rewards, or the promise thereof; and normative appeals, backed by the perception of procedural justice, obtain consent by promoting identification with the political community. Exploring Italian and British experiences during and after World War I, Kier persuasively argues

85. For an incisive synthetic analysis, see Levinson and Pildes 2006.

86. See, relatedly, Ferejohn and Pasquino 2004, 237.

87. Eaton 2000, 363–65, 370–71; Huber and Shipan 2002, 68–72; and Moe and Caldwell 1994.

88. Recent research has established that legislatures in presidential systems engage in substantial delegation and that statutes produced by parliaments are not consistently vague, but it has not directly compared bureaucratic autonomy across systems. See Epstein and O'Halloran 1999; and Huber and Shipan 2002.

that coercive mobilization radicalizes labor, and labor's subsequent assertiveness sparks a counterrevolution that rolls back concessions and even prewar reforms; that normative wartime mobilization encourages labor to pursue a reformist agenda whose achievements have a greater chance of surviving postwar upheaval; and that remunerative wartime mobilization, while entailing concessions during war, does not much alter labor's political orientation or power, leaving wartime reform vulnerable to reversal.⁸⁹ The scale of mobilization remains relevant in her account: where societal and economic mobilization is nonexistent or limited, war has little impact on the likelihood or direction of socioeconomic change.

This logic might be extended to develop hypotheses on the effects of war, mediated by mobilization strategy, on civic and political engagement. Coercive mobilization severs the population's identification with the polity, erodes the trust that sustains social interaction, and leads citizens to shrink their social networks. It, therefore, promotes both political alienation, especially if a postwar counterrevolution brings repression, and civic disengagement. Normative mobilization strengthens the affective ties that bind populations to authorities and citizens to each other. It, therefore, promotes civic engagement and political participation. Remunerative mobilization does not alter the coloration of citizens' relationship to authority, thus leaving vertical networks untouched. But, in wringing concessions from authorities, citizens gain new appreciation of their collective efficacy, bolstering horizontal networks of association.

This line of inquiry is promising. However, demonstrating that mobilization strategy is a proper independent variable, not the product of state resources or labor's preferences and power, is difficult yet essential. The fact that states often pursue more than one strategy simultaneously also offers a challenge for an approach that places the explanatory burden on a dominant mode of mobilization.

Implications for Policy

The policy debates of recent years have often been shrill. Some perceive the demise of liberalism in the "war on terror," while others accuse civil libertarians of endangering the nation. These readings of the present and predictions of the future are rooted in narratives of the past and in theories of crisis' consequences, yet these narratives and theories, I have suggested, leave something to be desired. If further research demonstrates that the above hypotheses have explanatory leverage, one's reaction to crisis measures should be tempered by the discursive and institutional context. Those adopted during large-scale mobilization and total wars would be of less concern; those undertaken during more limited ventures, especially those I have labeled restorative, would call forth great scrutiny; those imposed during transformative missions might be tolerated in the short run. Citizens in parliamentary

89. Kier forthcoming.

democracies would be particularly watchful since their crisis measures would be more limited but also more enduring. This does not imply, however, that citizens even in presidential democracies during transformative or total wars should be anything less than vigilant. There is nothing automatic in these processes.

History must be our guide, but recent countervailing forces may somewhat inhibit crisis measures reducing contestation. First, the spread of powerful regional institutions may help counter national institutions' inclination to acquiescence. As Donohue relates, Britain's development of statutory frameworks for surveillance and data protection emerged only in response to pressure from the European Commission and the European Court of Human Rights; European jurisprudence also empowered the Law Lords to reject those 2001 statutory provisions allowing the indefinite detention of foreign terrorist suspects.⁹⁰ Second, increasing sensitivity to international legal standards, even in decisions of national courts, may also inspire judges to less deference in times of crisis and promote greater substantive protection of individual liberties. Third, transnational activist networks, within and across regions, may embolden domestic dissenters, publicize assaults on freedom, and exert pressure on national governments. Particularly when the legitimating rhetoric of conflict revolves around the defense of liberal ideals, governments are vulnerable to charges of hypocrisy. Concern for their international reputation constrained both Britain and the United States when it came to civil liberties during World War II, and those constraints now bind more tightly thanks to the rise of transnational civil society. That said, events since 2001 should caution against any optimistic prognostications that the Schmittian state of exception no longer holds appeal for leaders and populations alike.

For good reason, the recent legal literature has therefore engaged core questions of constitutional design, and this article's more political perspective bears on that debate regarding how executives can be provided with the flexibility they need to address threats to national security, while the polity maintains its commitment to the rule of law. The works under review address two matters: what is the proper relationship between law and emergency authority, and what are the roles of judiciaries and legislatures in times of crisis? Academic lawyers have dominated these conversations about how, to borrow a phrase from civil-military relations, to guard the guardians, but they have often been insufficiently sensitive to the politics of crisis.

For executive enthusiasts, represented here by Posner and Vermeule, restraining the executive is either unnecessary (because other institutions are not capable of striking a better balance between liberty and security), dangerous (because constraints prevent the executive from protecting the nation), or both. But while executive enthusiasts are right to highlight the potential costs of judicial review and legislative deliberation, they point to little persuasive evidence that, when used, the usual processes have imposed substantial costs. They also fail to do justice to

90. Donohue 2008, 58–59, 190–95, 206–12.

the countervailing, and very real, prospect of executive abuse with regard to the willful declaration of crisis, the unwarranted perpetuation of emergency, and the exploitation of emergency powers for other ends.⁹¹ Finally, enthusiasts presume that consensus on the existence of crisis emerges naturally, but this is an awfully apolitical view.⁹²

		Checks on executive	
		Legal	Political
Basis of emergency authority	In law	Common lawyers	Legal formalists
	Outside law	X	Extra-legalists

Note: If the basis of emergency authority is outside the law, checks on the executive cannot originate in the legal realm. Hence the lower left cell is empty.

FIGURE 2. *Approaches to emergency power*

Three other approaches engage these questions more seriously. They might be distinguished, as in Figure 2, according to whether they conceive of emergency authority as lying outside the law or resting on the law, and whether they see checks on the executive as originating in the realms of law or politics. Those who advocate what Gross and Ní Aoláin call the “business as usual model”—represented here by Cole and Stone—see no reason to compromise the rule of law during times of crisis. They claim that the best way to prevent the executive abuse of emergency powers is not to grant such powers in the first place, to resist the logic of the exception and instead embed executive power in law. They understandably then place their faith in judges, calling on them to uphold the law in crisis largely as in ordinary times.⁹³ Imploring judges to defend the rule of law, however, does not address the historical reality of judicial deference to the executive on matters of national security—especially if one believes such deference regrettable.⁹⁴ Nor

91. See also Posner 2006; and Yoo 2005.

92. Posner and Vermeule 2007, 42–45. On the politics of crisis, even in consensus, see Krebs and Lobasz 2007.

93. See Cole 2004; and Stone 2004, 542–50. See also Dyzenhaus 2006; and Tribe and Guthridge 2004.

94. In praise of judicial deference, see Posner and Vermeule 2007; and Posner 2006.

does it empower actors outside the executive branch to intervene at a key earlier moment, in the very declaration of emergency or crisis. Finally, even ardent champions of the rule of law have difficulty closing the space of exception. Dyzenhaus urges “governments which have the luxury of time to craft a response to emergency situations . . . [to] do so in a way that complies with the rule of law,” and when time is really of the essence, he concludes, leaders must act illegally, invoke necessity, and throw themselves on the mercy of the courts and the public—a position that sounds virtually identical to the model below.⁹⁵

Others, represented here by Gross, recommend that officials assume emergency powers when necessary, but that their actions be treated as extralegal, operating outside the confines of the constitutional order. The model demands that officials, when they violate the law, do so openly, so that their actions can be subject to public judgment after the fact that will instill caution and inhibit aggrandizement before the fact. The constraints are, as in the “business as usual” model, *ex post*, but they are primarily political, not judicial. This extralegal approach has the virtue of leaving everyday law intact, limiting the bleeding across boundaries that pessimists fear.⁹⁶ However, because, as argued above, bleeding across domains is selective, the model overestimates the costs of statutory emergency provisions. It also underestimates the drawbacks to legitimizing extralegal action by relying on *ex post* mechanisms to impose a meaningful check: it naively presumes that empowered executives will allow questionable acts to be scrutinized and will not alter the rules of the political game so that they can evade punishment.⁹⁷

A final school, which Scheuerman labels that of the “legal formalists,”⁹⁸ insists on the explicit investiture of the executive with emergency powers. Ackerman’s proposal for an “emergency constitution” is the most elaborate product of this approach. Formal statutory provisions permit the executive to request from the legislature special emergency powers. It is expected that the legislature will often initially acquiesce, but the state of emergency is of limited duration, and it can, according to law, be renewed only by increasing supermajorities. Ackerman thereby grants the executive flexibility and draws bright lines between emergency and normal law, while also resting emergency authority on legal foundations and offering meaningful political constraints.⁹⁹

Explicit emergency provisions require executives publicly to make the case for their extraordinary requests, and they give opponents an institutional space and a process around which to coalesce, increasing their capacity to counter executive overreach. A formal oversight process does not guarantee that the legislature will be something other than a rubber stamp, but it can serve as the springboard for resistance. The “emergency constitution” recognizes that the average legislator will

95. Dyzenhaus 2006, 213–14.

96. See Gross 2003; and Gross and Ní Aoláin 2006, chap. 3. See also Tushnet 2005a.

97. See, similarly, Scheuerman 2008, 268–73.

98. Scheuerman 2006.

99. Ackerman 2006. See also Ferejohn and Pasquino 2004.

not act to defend institutional prerogatives or individual liberties in times of crisis and that “sunset provisions” have provided little safeguard.¹⁰⁰ the “supermajoritarian escalator” would be unnecessary if legislatures came to their own defense. Finally, the role of judges is realistically limited to enforcing the procedural dimensions of this emergency law, not defending substantive rights.

One might of course quibble with specific provisions, and the “emergency constitution” is not foolproof. A fearful legislature might sweep aside this statutory constraint; these protections might, in line with moral hazard, encourage legislatures to approve measures that are even more abusive; and insistent executives might recast ordinary law, rather than rely on emergency authority.¹⁰¹ The perfect, however, cannot be allowed to become the enemy of the good. Only legal formalists take the problem of emergency executive authority sufficiently seriously. Only they recognize that the need for expansive executive authority does arise, appreciate that political process is the only, if always flawed, guarantor of constitutionalism, and grasp that only *ex ante* interventions in the politics of emergency can prevent or at least limit abuse.

Yet maybe the legal formalists put too much faith in state institutions. When civil society mobilizes to defend individual liberties and to oppose increased executive authority, it can inspire legislatures and even judges to resistance, but more directly it can also at least give elected executives pause and perhaps force them to scale back their ambitions. The distinguished federal judge Learned Hand rightly warned that “liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.”¹⁰² But the “spirit of liberty” is not enough: it requires favorable institutional conditions so it can be brought to bear. Political institutions should be designed to nurture a vibrant civil society, make policy in relatively transparent forums, and maintain multiple points of access to nonstate actors. Systems that separate powers may therefore enjoy an inherent advantage over those that fuse powers, but open decision-making processes require statutory grounding as well. That said, there are no guarantees. Well-meaning institutional reforms to increase transparency have often driven policymaking deeper underground. And, as Ackerman admits, “no constitutional framework will suffice to compel the President to be a statesman if he is determined to play the part of demagogue.”¹⁰³

Conclusion

The relationship between democracy and war has been much studied in international relations. Yet, while the democratic peace continues to be refined and

100. Expressing faith in sunset provisions are Posner and Vermeule 2007, 138–41; and Stone 2004, 540. On their flaws in practice, see Donohue 2008, 338–40; and Gross and Ní Aoláin 2006, 176–80.

101. As noted by Posner and Vermeule 2007, 167–68.

102. Hand 1977, 190.

103. Ackerman 2004, 1902.

revised, the reverse—the effects of war on democracy—has received less systematic attention. Students of international political economy have devoted substantial attention to the “second-image reversed,” but they have had fewer counterparts in international security. The most plausible explanation for this relative neglect is that international relations emerged in the shadow of mass industrialized warfare and the prospect of nuclear war, and the field’s overriding concern was how to prevent a catastrophe in which millions would perish. This understandable focus on the causes of war came at the expense of research into its consequences. Moreover, assumptions about both the nature of war (an event) and the purpose of social science (to explain regularities) combined to make the study of war’s consequences seem fruitless.¹⁰⁴

But war, this article has suggested, is a process, embedded in and potentially transforming social life. War is more than warfare: it entails the emergence and perception of threat as well as the mobilization of societal resources, and these are distinct political phenomena with distinct ramifications for democratic politics. International conflict, especially when unpacked in this fashion, is a recurring feature of global politics, not an outlier. Large-scale warfare may be obsolete among developed nations, but conflict, mobilization, and the use of force are not.

Understanding war’s consequences for democratic politics is important for its own sake, but it will also lead to better-specified models of war initiation and termination. Further research may, by clarifying the costs of crisis and wartime measures, help civilize an often-strident public debate. Hand observed that the “spirit of liberty” may determine the survival of democracy. But, during rough times, the fate of regimes may rest precisely on the margins. It is there that the difference may lie between a democracy that limps along, compromised yet intact, and one that abandons its heritage.

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104. See Kasza 1996; and Thompson 1993, 126.

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