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# 1

## INTRODUCTION: WAR, POLITICS, DEMOCRACY

We live in an era of belligerent democracy, an unhappy sequel to the peaceful democratic transitions that unfolded across Latin America and Eastern Europe at the end of the twentieth century. Democratic aspirations are increasingly voiced across the Mediterranean in the new century—leading more often than not to civil conflict rather than electoral transitions.<sup>1</sup> We live also in an era of democratic wars, when democratic states pursue violent conflict in the name of peaceable ends, ranging from disarmament to democratization to securing access to natural resources.

Despite Churchill's famous quip—"Democracy is the worst form of government, except for all those other forms that have been tried from time to time"<sup>2</sup>—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the "peace amongst democratic nations"—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

The "democratic peace" thesis, which holds that mature democracies rarely fight each other, has been a comforting mainstay of political thought, especially in the United States. As a modern correlation, it has held up

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reasonably well, notwithstanding some important counterexamples, notably the American Civil War.<sup>3</sup> But closer scrutiny has also brought to light further doubts about any broader, happy connection between war and democracy. Indeed, as political scientists Edward Mansfield and Jack Snyder have shown, emerging democracies are more likely than other kinds of states to go to war, often as a means of securing internal support and legitimacy. And mature democracies have shown great willingness to go to war against nondemocracies, whether as part of colonialist and imperialist agendas or for reasons of local or regional self-defense.<sup>4</sup> Democracy and war, it seems, are anything but adversaries. This is not news, especially in the United States. Indeed, the “pro-democracy” or “freedom” agenda of George W. Bush’s neoconservatism came to be identified around the world as an expression of martial imperialism.

Discussions of the democratic peace thesis and the real purposes or effects of American “democracy promotion” are empirical questions. They are vital to politicians and international relations scholars. This book, too, is about the relations between democracy and war. But I ask principally what philosophers call *normative* questions, among them: How should we, as citizens, think about our responsibility for killing done in our name? Do democracies face special constraints in the kinds of weapons or tactics they can use, independently of the conventional law of war? Do democracies have a right or even an obligation to aid other peoples in achieving democratic governance through force rather than example? Does the legal requirement that combatants be uniformed in order to be able to kill in war have any rationale beyond protecting civilians? What responsibilities do democratic revolutionaries have to property holders under the ancien régime?

Still, it has been more than twenty years since the last great wave of pro-democratic revolutions, in Eastern Europe and Latin America—not long in political time, perhaps, but long enough for awareness of the risk that democracy will wilt under the malfunctioning, corruption, and paralysis of so many of the older democracies. In the United States, the Arab Spring coincided with the spectacle of a deadlocked government, seemingly unable to summon the collective forces needed to challenge the worst economic crisis in nearly a century. Europe’s experiment in fiscal union staggers from crisis to crisis, for lack of concerted political will. The contrast between the initial hopes of the crowds of Cairo and Tunis and the cynicism of Europe and America makes clear the gap between the ideal of democracy and its messy reality.

As an ideal, democracy remains unchallenged, even unchallengeable. Twenty years ago, Francis Fukuyama declared “the end of history,” by

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which he meant that a history of grand ideological conflict had ended with the collapse of the Soviet empire, leaving only one governing philosophy in place: democratic liberalism, meaning popular control of political institutions, private property rights, and a market-dominated system of resource allocation.<sup>5</sup> Fukuyama was soon mocked for his declaration: even as the Cold War became a memory, geopolitical conflict continued through decades defined by the resurgent tribalism and postnationalism of the Balkans and Africa, as well as the broader contest between the forces of capitalist globalization and antimarket Islamic fundamentalism. But even if history has not ended, Fukuyama's central claim remains strong: within Western thought, democracy has no extant challenger. On the broader global playing field, its only remaining challengers are fundamentalism and—perhaps—Chinese-style managerial capitalism. The distance kept by revolutionary Arab demonstrators from fundamentalism, especially in Egypt, makes the former an unwise bet; as to the latter, whether or not China can continue to suppress pro-democratic movements internally, its model represents a holding action at best, not a likely export.

Hegemony is an ugly word, but it well describes the role of democratic ideology within American political theory, if not political practice. Political theorists compete with one another to offer more radical or fundamental forms of democracy for consumption and endorsement.<sup>6</sup> Legitimacy is defined in theoretical terms as the right to rule; the only evident source of that right is democracy, in one or another institutional form. Put another way, the only acceptable answer to the question put by a citizen, “who are you to tell me what to do?” is an answer that says, “We (the rulers) are you—you chose us, or accepted the procedure that gave us this authority. You are responsible for the conditions of your own rule.”<sup>7</sup> We can entertain, as a theoretical possibility, the benevolent dictator who says, “I’m in charge just because I can run your life better than you would yourself,” but we entertain it only as a foil for the clearly correct answer, that the right to rule rests on the will of the governed. In the circumstances of politics—when it is a collective being ruled—the will of the governed is also collective. And this is the essence of democratic legitimacy: rulers rule on the basis of what Jean-Jacques Rousseau called the general will of the community they rule. Anything else is enslavement to the will of another.

The idea of democratic legitimacy, resting on a kernel of collective will, is obviously powerful, though it is pliant enough to serve as both banner and critique of many of the political pathologies we know today, from paralyzed legislatures to populist demagogues. The underlying idea that rule must be legitimated to each person ruled is what separates

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political modernity from feudal and caste systems. But, even apart from its vagueness, it suffers from two problems. The first is that it is too static: the value of democracy, on this understanding, exists when there is a correspondence between the authority claimed by the governors and the content of the will of the governed. When such a correspondence exists, confirmed by electoral institutions, then rules and norms are legitimate, because they express a people governing itself. The problem with this view is that it allows us to fix the label “democratic,” which involves little more than viewing a spectacle of mass politics, on the basis of a moment of annual or quadrennial activity.<sup>8</sup> Whatever the defects of our actual democratic practice, I seek a way of understanding the form of collective self-determination that is at least potentially at play at the margins of democracy. By margins of democracy, I mean periods of revolution and wartime emergency rule, as well as in the forms of civic organization and resistance that contend with organized, institutional forms.

The heart of this book is therefore built around an alternative understanding of democracy, one that is simultaneously more modest and, I believe, more promising. The understanding I propose is one that focuses on our agency when we act together to build, defend, transform, and sometimes tear down the institutions of our common political life. I call this understanding *agentic democracy*. Agentic democracy is, in the view I develop here, much less a matter of formal institutions of democratic choice and representations, such as elections and parliaments, and much more a matter of how we think about and work with one another in establishing democratic political institutions. We act as democratic agents not just when we vote or debate in the public square but also before it is even possible to vote or to debate in public. Eastern European intellectuals, meeting in a café to lay the groundwork for a challenge to communist rule, were acting as democrats: thinking about how they might make mass politics safe for others to join in protest. Soldiers defending their homeland from invasion, not because they were ordered to do so, but because they think of themselves as defending their land, their way of life, can equally be acting as democrats. The crucial component of democracy, on my view, is a matter of our mutual orientation in collective action: how individuals conceive of their actions in relation to each other, and in relation to a broader set of goals involving building or defending open political institutions.

A further advantage of understanding democracy in terms of agency is that it can help to make sense of the particular phenomenon of collective violence, a phenomenon that has been central to the ways in which

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some—though hardly all—democracies understand themselves. Such a self-understanding was famously true of Revolutionary France. It also plays a major role in American self-consciousness.<sup>9</sup> The quintessentially Wilsonian assertion of democratic ideals in global life has been the major thread of world politics since World War I. In that respect, while I speak of a conception of democracy in general terms, it is a conception tailored to the particular contours of American politics. The account I provide is deliberately grounded on the American practice of war, so that we can understand the tangled and intimate connection between the violence of war and the prospect of democratic self-government.

Of course, the connection between a theory of the state and a theory of violence is linked by more than US history. Weber's definition of the state as the body successfully claiming a monopoly on violence presupposes the violence that lies at the origin of the state—if not as a matter of conceptual necessity, then as a matter of undisputed history.<sup>10</sup> Without violence (whether celebrated or shrouded in myths of origin), the circumstances of politics would not exist: a defined territory, a unifying system for resolving disputes between mine and thine, and common allegiance.

Still, one might have thought democratic politics to be hostile to violence as a matter of principle. Violence, at least political violence, denies the voice and integrity of others, rejects their standing as equals in a shared dialogue about common causes and meanings—the essence of democratic self-government. And, indeed, democratic states have achieved, over time, an outstanding record of rejecting violence in favor of dialogue, within their domestic spheres. But the global record is less reassuring, whether as a product of colonialism, ideological conflict, or—most recently—a missionary conception of democracy, with the aim of seeding it as widely as possible. Democracies have the same instincts of self-defense as other regimes, as well as the same expansive capacity to understand the interests worth defending through resort to violence. Whether the trigger for war is naked colonialism, more subtle calculations of balances of power, the entanglements of treaties with democratic allies, or a universalist rhetoric of the defense of human rights, democracies use war as a regular instrument of liberal foreign policy.

And yet the criminal law of the modern state is virtually defined by the limits it places on private violence. With the exception of the homeowner's right of self-defense, there rests almost no license to its recourse. The restrictions of private law find their mirror in the law of nations: since the Kellogg-Briand Pact of 1928, and further codified in the United Nations Charter, the right to war as a privilege of princes has been equally

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abrogated, save only in self-defense of territory or material interest.<sup>11</sup> One might well define the project of public international law as achieving for the international system something like the monopoly on violence exercised at the domestic level. Of course, the legal abolition of the right to nondefensive war has entailed nothing like its actual abolition, any more than its domestic abolition. If, in both cases, violence is now exercised in the face of the law, many actors are undeterred by law's sanction. Whether justified by tortured legal argument or simply executed in the teeth of the prohibition, violence, both private and political, persists.

At the international level, the ambivalence of political violence lies in more than the gap between the abolitionist ideal and the reality of its exercise. It lies also in the labored modern history of the doctrine of humanitarian intervention and its broader cousin, the responsibility to protect.<sup>12</sup> The doctrines are expansions of the right of national self- or other-defense, now including defense of persons and not just of the state. Both have been and still are seen as a threat to the absolutism of the UN Charter's Article 2(4), which generally prohibits the use of force in international relations, even if these doctrines also give voice to an ideal of the protection of human dignity in their own form, existing only when exercised by the international community, or some substantial-enough subset to claim legitimacy. It lies in the broad construal, accepted by international lawyers, of the right of military self-defense, extending beyond the right to defend territory to the right to protect one's nationals, wherever they are threatened, and the right to protect all the assets of national security, including electronic systems. And it lies in Additional Protocol II to the Geneva Convention (not universally accepted, to be sure), which grants the privilege of belligerency to insurgents fighting wars "of national liberation."<sup>13</sup> These doctrines and exceptions acknowledge that violence has the power to create and protect.

The ambivalence regarding mass violence is a problem at the heart of democratic theory as well. The ambivalence exists primarily across time, before and after the formation of what counts, in institutional terms, as a democracy. If democratic legitimacy resides, at first approximation, in the exercise of a universal franchise, then no acts preceding the exercise of franchise can claim *democratic* legitimacy. Thus, to justify its own origins, democratic theory must reach back into time to link a group defined by its aspirations to its future status as popular assembly. I adverted above to the need for a conception of democracy at the revolutionary margins of new institutions. The difficulty is that few or no rebellions or liberatory movements can actually define themselves in democratic terms, and hence can



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help themselves to democratic legitimacy only on terms of future credit. Put another way, the justification of the lives they take in revolutionary violence comes in the classical form: by the end it achieves, not the process of its justification.

There are, indeed, distinctions among revolutionary movements: those having wider or narrower popular support, with more or less dialogue-based ways of building that support; those giving greater or less attention to distinguishing noncombatants; and those having greater or less independence from international interests. But it is fair to say, using history as our guide, that few revolutionary movements are likely to be fully respectful of the laws of war, grounded in essentially democratic politics—and triumphant. Historically, the democratic ambitions (both successful and failed) of the American, French, and Russian revolutions were largely dependent on the military mobilization and crowd violence that swept out the *anciens régimes*. At the other extreme stand the Velvet Revolutions of Eastern Europe, particularly in Poland and Czechoslovakia. Those revolutions, it is true, owe a great deal to popular mobilization, democratic rhetoric, and—in Poland—genuine exercises in democratic votes. But even in these cases, success owed as much to the exogenous collapse of Soviet military control in the face of American defense spending as to the internal democratic practice of the revolutionaries. More generally, while contemporary revolutions—especially revolutions capable of winning the critical support of the democratic powers—will voice a democratic rhetoric, and will show their legitimacy through mass protest and mobilization, their eventual legitimation comes after the risks have been run. Thus, if we are inclined to take revolutions as epitomes of popular will, then an interest in historical adequacy entails a conception of democracy adequate to the way in which popular will can manifest itself in violence as well as in its polls. An interest in normative adequacy means that we need to elaborate a set of critical terms, internal to democratic agency, to restrain that violence. Such is my aim here.

Thus, I argue that we must maintain our guard against the seductions of a particular understanding of democracy and its romance of collective agency. Democracy celebrates the politics of cooperation: the fusion of individual wills in crafting a common space. Put another way, it is the value of politics as such—the fusion of goals and wills in pursuit of a common system of civil life—that provides the legitimacy of nonstate actors who are on the road to building democratic institutions. In earlier work, I have provided my own analysis of how we fuse our goals and wills to act together—and so to become responsible as individuals for what we

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do together.<sup>14</sup> I would today revise that analysis in some respects and will offer some of that revision in the course of the book. The basic idea of collective action has remained constant, however: acting together, at bottom, involves a mutual orientation around the goals and interests of another. Sometimes this orientation is hierarchical, as when a subordinate follows the commands of a superior (or a superior issues those commands); sometimes it is collateral, as when we resolve together what we will do. The capacity to treat each other as collateral authorities, and so to join our wills together, is if not uniquely human, at least a distinctive feature of our humanity.<sup>15</sup> In politics, therefore, we reveal our humanity.

This is the source of the conceptual threat posed by democracy. The very celebration of collective agency can lead to an overly permissive attitude towards collective violence. Seen no longer as an instrument of the king but instead an expression of popular will, democratic wars can seem to sanctify themselves. They offer a new form of holy war, I argue, one grounded in the comparative virtue of the democratic belligerent. But, I also argue, the temptation of democratic war rests on a misconception of democracy and the value of political agency: it takes democratic agency as something to be maximized rather than respected, as a value transferable from one state to another. Properly understood, democratic values should be seen as constraints on both the forms and ends of collective violence, not as a new source of war's legitimacy. This is the normative program of the book.

Before launching the normative argument, however, it is worth looking quickly over the history of the theory of war. We can tell two general stories of the history of the ethics of war. Around the fifteenth century, with the preceding rise of a system of mutually recognized absolute sovereignty, begins to emerge a de-moralized picture of war as essentially a prerogative of the sovereign, who is not to be judged by any further terrestrial body but only in the forum of victory. This is the traditional subject of the *jus ad bellum*: the question of whether a state has a right (in justice) to engage in war, as self-defense or vindication of its rights. The second strand, known as the *jus in bello*, concerns the question of how to fight a war justly—that is, using means and choosing targets that are legitimate, irrespective of whether the war as a whole is just.<sup>16</sup> This second strain emerges in the medieval chivalric tradition, then gaining force with the professionalized militaries of the eighteenth century, is a professional ethic of the warrior. Both strands crystallize in the eighteenth century, the first in the work of Emer de Vattel, the writer primarily responsible for the idea of “regular war” (*la guerre réglée*), or wars whose legitimacy comes from their form

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rather than the justice of their cause. Vattel's work, which marks the essential break from a philosophical-theological tradition to a less normative "legal science," sets the scene for the theory of war that dominated thought from the Treaty of Utrecht to the end of the Cold War. This is the idea of a regular war, or war in due form: a war waged between two public sovereigns, each asserting a right (to punish, to defend, and so on).<sup>17</sup> When a war is regular, though one may raise questions of justice concerning each side, actual judgment is withheld, and the two parties are permitted to contest until victory separates the righteous from the unrighteous.

The two strands, taken together, amount to a theory of war as a sort of reverse vacuum capsule: a morality of individual conduct is sealed inside, operating within an effective vacuum of international morality from without. Such a morality could barely claim to govern the period of Great Power warfare between sovereigns intent on maintaining geographical parity. And the ostensibly humanitarian rules of conduct did nothing to shield soldiers from trench gas in the First World War, or to shield civilians from area bombing in the Second. The great break in this tradition followed World War II, with the UN Charter and its restriction of war to self-defense, and the concomitant emergence of a conception of international human rights (which intersects in complex ways with international humanitarian law). While this intellectual and legal formation tilted again during the period of decolonization of the 1960s and 1970s, providing (within the Additional Protocols) protection and combatant privileges for nonstate actors, the system of state-centered legitimate violence remained generally intact. And the system, at least conceptually, has one great advantage: it permits a uniform set of humanitarian norms to apply to soldiers and civilians alike, with—in principle—gains in the reduction of suffering. Whatever the metaphysics of justice, the shift away from a view of soldiers and civilians as guilty of war making, and their location, instead, in a moral context seen as fully reciprocal, can offer them protection when they are most vulnerable.

Of course, any particular constellation of norms, laws, and historical understandings is unstable. It is remarkable that the regular war constellation endured as long as it did, though the seemingly endless and pervasive character of what lawyers and treaties refer to as "non-international armed conflict"—including the conflicts with al-Qaeda and ISIS—have largely put to rest any stable conception of regular war, understood as a conflict essentially involving two uniformed, hierarchically ordered, and politically directed hosts.<sup>18</sup> But the instability now comes from new sources. The first source is the rise, connected intimately with the politics of the

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Middle East, of non-state-based violence, directed at both civilian and military targets. The second is the militarization of human rights norms, under the aegis of humanitarian intervention. The first source has given rise to military conflicts embedded within a transnational conflict of basic values: religion and tradition versus modernity and markets. While the Cold War was, of course, also transnational and ideological, it was fundamentally state based, and so the techniques of diplomacy and mutually advantageous trade could have some purchase over the conflict, as could the basic logic of deterrence. (Neither the USSR nor the US was, in the end, willing to gamble its own existence.) Conflicts between states and stateless (e.g., al-Qaeda) or semi-stateless (e.g., Hamas) forces take place out of the context of reciprocal threat and promise that can sustain a weak modicum of restraint. The end of reciprocity as a condition of war's constraint, as Mark Osiel has put it, entails on its own a need to rethink the foundations of humanitarian law.<sup>19</sup> To take one notorious example, the treatment of captives is a problem of principle as well as practice—one side, lacking a system of jails or justice, treats captives as objects of ransom (in a retreat to an older tradition), while the other finds itself tempted to discard in its entirety a legal regime crafted for a hierarchical and ordered military foe fighting a declared war in which victory or surrender is easily foreseen.<sup>20</sup>

The rise of a muscular conception of human rights norms, backed by the willingness of nations and international organizations to deploy force, has also complicated the context of war. The change can, of course, be exaggerated. While there is a traditional rhetoric of absolute respect for the rights of sovereigns in their internal sphere, the rule is usually immediately qualified with an exception. Hugo Grotius, the Dutch thinker usually considered to be the modern father of public international law, echoing the earlier Spanish writers Francisco Suárez and Francisco de Vitoria, wrote:

Though it is a rule established by the laws of nature and of social order, and a rule confirmed by all the records of history, that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere. Yet where a Busiris, a Phalaris or a Thracian Diomedes provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations.<sup>21</sup>

Even Emer de Vattel, who offers the conceptual high-water mark of the Westphalian system of independent states,<sup>22</sup> allows a qualified right of

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intervention against a flailing prince inflicting injury on his own people: “But, if the prince, by violating the fundamental laws, gives his subjects a legal right to resist him . . . every foreign power has a right to succour an oppressed people who implore their assistance.”<sup>23</sup> The rhetorical tradition has, of course, a mirror in the practice of European states of interference in each other’s affairs, frequently on the grounds of protecting religious minorities.

While the most robust conceptions of Westphalian sovereignty, including Vattel’s, claim more rhetorically than realistically that the essence of nationhood lies in rights of noninterference,<sup>24</sup> it is undeniable that conceptions of state autonomy have weakened through a growing tradition of ostensible, and sometimes actual, humanitarian interventions. It is a tradition with admirable ideals, if not always admirable integrity, encompassing the Great Powers’ interventions between Greece and Turkey in the 1820s and Hitler’s “protection” of the Sudeten Germans of Czechoslovakia, as well as the (so far) better-judged interventions of NATO in Kosovo and Libya<sup>25</sup> and of UN forces in East Timor.<sup>26</sup>

That said, the postmillennial politics of humanitarian intervention, under the rubric of the “responsibility to protect,” or R2P, has caused a fundamental shift in post-WWII international conflicts. While the doctrine of R2P is, on its terms, limited to the prevention of civilian massacres—and while the practice remains extremely selective in its targets—the framework of international intervention has shifted now to encompass the question of the prospects for reform in the targeted state. The effect is a gradual moralization of international politics, a breaking of a fragile consensus around limiting the use of force to circumstances of strict self-defense. Many democratic idealists have been heartened by this shift, replacing the political realists’ self-interested assessments of the costs and benefits of international interventions with a richer cosmopolitan and moral framework—even as they strive to separate their position from the neoconservative emphasis on exporting democracy. The experience of Iraq has chastened neoconservative ambitions to remake the Middle East; and the politics of the Arab Spring, the rise of ISIS, and the continuing humanitarian disaster of Syria have further complicated the region. As a result, the conceptions of sovereignty and the triggers for intervention seem to have changed decisively within democratic thought.

These are the traditional issues of the *jus ad bellum* of Just War Theory. My focus will be largely, if not relentlessly, critical. I will take it as a given that war and other forms of political violence can be justified, if rarely—that, for example, de Gaulle and Churchill were right while Pétain and

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Halifax were wrong in their decision to accept war. And whether or not the American, French, Chinese, South African, and Russian revolutions each took the best path to improving the well-being of the citizens concerned, I will take it that in at least some of these cases, violent resistance was an appropriate response to colonial, feudal, or racist domination. I also accept that lethal force is justified sometimes, under special conditions, in law enforcement domestically and in counterterrorism internationally. But I will leave my endorsements here. States are perfectly well equipped to develop their own defenses of the resort to war; they need no contemporary philosophical handmaidens for the task. While the just war tradition has attempted, by and large, to wrestle state violence into principled lines, it is fair to say that in its modern tradition, since Alberico Gentili and Grotius at least, it has been accepting of violence as an ordinary and permissible way of settling interstate disputes, whether flowing from an essentially theological conception of sovereign privileges or from a political perspective. The comfort of the just war tradition with war (if not all wars) is easily documented.<sup>27</sup> Indeed, the tradition's Grotian conception of war as just punishment for injury done by another state has been an enormously pernicious force, in licensing a degree of violence that goes beyond the real justificatory core of any appeal to violence: self-defense. For the justifications of self-defense end far short of the frontiers of actual wars, whose end points satisfy a range of concerns not linked directly to state survival.

Taking up a critical stance, then, entails two distinct but related tasks. The first is making sense of a political community's claim to be able to deploy violence in its name and for its ends, while restricting private violence among its members. This distinction between public and private violence (or between war and crime, in modern discussions) is fundamental to the nature of the state, sovereignty, and the conception of violence in human affairs. If a permission to use violence is seen to depend now on democratic credentials, then the link between democracy and force must be made clear. The second task will occupy much of the book's discussion: defining the limits of violence, not just in relation to the generic justification of self-defense, but also in relation to the justifications presented by democracy itself. Indeed, this is the operating conceit of the book as a whole: the respect for our personhood that animates democracy demands a humility in the face of conflict, rather than the imperial assertiveness that has characterized so much democratic rhetoric, from the French Revolution to the Second Iraq War. Here, I argue, is the pacific promise of agentic democracy: recognizing the value of our own collective activity entails respecting the agency of others.

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More concretely, our capacity for collateral authority and hence for collective action enables everything from shared harvests and hunts to shared musical expression and ritual to shared deliberation and the construction of social institutions. Such a capacity need not be exercised in accordance with democratic norms, but it nonetheless lies at the root of democracy. Before the general will is bent towards democracy, it is still general, still collective, registering in an active demos, an agentic community. Active community is built on a foundation of shared, intersecting, and competing loyalties. It defines not a people, not a state, and not a full community (in any communitarian sense), but it does reflect a body of people doing politics—in success or failure. The neo-Roman republican tradition resuscitated by Quentin Skinner and Phillip Pettit reflects a model of the ideal, in both its individual and collective form. What is appealing about neo-republicanism is the way in which a thin ideal of nondomination can be thickened into a quite comprehensive guide for the development of political institutions.

If active community and the capacity for collective action define the basis for democracy, its structure is given by law. Law is the skeleton of complex social institutions, the framework that makes possible the coordination over great spaces and times of plans for self-organization.<sup>28</sup> Since the egalitarian balance of voice in a democracy is such an idealization, so distant from the messy imbalances of real power and privilege, democracies rest uniquely on law to maintain their character. This is the law not only of elections but of governmental structure and the balance of institutional power. But, in a striking parallel to the role of violence, the role of law in democracies is equally Janus-faced. If law makes democracy possible, democracy can seem to make law unnecessary by offering a separate claim to legitimacy hostile to the proceduralism inherent in democracies. Democracy, we might say, poses most strongly the question of the relation of legality and legitimacy to each other. Clearly they are not identical; legitimacy depends on, but exceeds, legality. This is the insight of legal philosophers H.L.A. Hart and—quite differently—Carl Schmitt.<sup>29</sup> Legitimacy is instantiated, operationalized, and preserved through legality. Legality provides the “what” of legitimacy—the structure of the subject. But obviously legal forms can be abused, honored in name but not in principle, and so subvert legitimacy. More tendentiously, refusing to treat legal principles as (sometimes) evolving standards and instead insisting on their rigidity can undermine legitimacy by divorcing the form of government from its function (protecting public welfare). This is the point of those who insist on emergency delegations. But there are, of course,



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particular aspects of public life that depend on having sharp lines drawn (in a liberal democratic state, they include a commitment to democratic processes; basic human rights, including the right against torture and the right against undocumented detention; and free speech).

The more basic point is that the basis of the legitimacy of a state arises from the beliefs of its occupants—it is those beliefs, acceptances, and willingness to cooperate that give law its normativity and authority. That legitimacy, in both its normative and sociological sense, comes from community—from the consolidation of a group of people, living together, around a common set of norms. Community, in turn, is a product of collective agency, of individuals orienting their values and actions around one another, taking emotional and behavioral cues from the groups as a whole as well as from leaders within that group.

Let me also be clear that this is a conception of war and democracy worked out in real time, as I tried to think through the issues presented by American foreign policy and the events of the world. I have generally tried to preserve the real-time quality of the meditations and arguments that follow, rather than attempt to smooth it into an illusion of a timeless synoptic view. I do so because philosophical reflection cannot detach itself from the political and moral contexts in which it is birthed. Thus, for example, the discussion of secret law does not cover many of the most recent revelations of the work of the Foreign Intelligence Surveillance Court, accounts of whose efficacy (or lack thereof) are emerging with the revelations of Edward Snowden. Similarly, my critique of drone warfare focuses on a policy that waxes and wanes in relation to the internal politics of Yemen, Pakistan, and Afghanistan. Nonetheless, the insights I offer provide, I hope, a guide to future thought on remote warfare, including that those forms will surely be conducted by fully autonomous war systems.

I turn now to outline how agentic democracy can guide us toward understanding the ethics of collective violence.

I begin, in chapter 2, “Democratic Security,” with an account of the ideas of legitimacy and security, and the way in which perceiving them as too tightly linked with the specific values of democracy can impoverish all three concepts. Democracy is one route to legitimacy (for a particular institution), and an especially important one for comprehensive governing institutions, but its value is one in the constellation of political values necessary for a decent state. An overfocus on democracy, moreover, destabilizes competing notions of security and stability. The chapter also introduces the foil of the agentic conception: a *telic* conception (drawing



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on the idea of democracy as a goal, or *telos*). The telic conception of democracy is one that focuses on the ambition of establishing democratic institutions, rather than respecting democratic agency. I argue that if we take up a broader conception of legitimacy, and see democracy as a form of action rather than the only argument for legitimacy, the temptations to export democracy will be tempered.

Chapter 3, “Citizens and Soldiers,” deepens the understanding of the relation among sovereignty, citizen, and state. Here I take up the role of state authority and the privilege of violence. Traditionally, to be a soldier is to bear the king’s uniform, to share in an essentially collective identity. That identity has normative consequences: it makes one vulnerable to attack and gives one the privilege to kill. Once, we could see that identity as founded in the king’s stamp. Now, in the wake of the democratic revolution, the identity is grounded in a conception of democratic will. A consequence of the democratic conception is that uniforms should be less privileged—or at least their significance is instrumental to the aim of protecting civilians and must be weighed against the other values at stake.

Chapter 4, “A Modest Case for Symmetry,” addresses a consequence of the democratic conception of the combatant’s privilege: such an argument undermines the case for moral symmetry—the status of a combatant depends on the nature of the end for which he fights, and this requires a substantive evaluation, albeit a limited one (we need a meta-ethics of violence). But there are subordinate, instrumental, and epistemic grounds for thinking that a symmetric approach is preferable. This again means emphasizing the limits of democracy in explicating the *jus in bello*, and showing why we must preserve the force of traditional, nondemocratic concerns of reprisal and reciprocity lest the entire restrictive regime collapse.

In chapter 5, “Leaders and the Gambles of War,” I look to a pathology affecting political leaders in general, and democratic leaders in particular. Many leaders make the most serious decisions at issue, those of war and peace, with a conception of “political luck”—the idea that good outcomes can retrospectively justify the decisions (this is not the same as “the end justifies the means”). Democratic leaders, buoyed by a conception of the arc of history bending in their favor, have been especially prone to such gambles. But this conception of retrospective justification is incoherent in its own terms, and it leads to irrational decision making; it is also inconsistent with the values of democracy.

Chapters 6 and 7 then shift focus from the constraints and impulses behind the decision to go to war, to questions about how democracies should manage the wars they fight. Both chapters are products of reflection,

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stimulated by revulsion, at the turn taken by the United States in the Second Iraq War and the continuing conflict with al-Qaeda, and now with ISIS. Chapter 6, “War, Democracy, and Publicity,” looks to the revelations during the George W. Bush administration of its system of secret legal guidance, through confidential memorandums providing interpretations of statutory and constitutional restrictions that had the effect of eviscerating their limitations. The purpose was to provide internal justification for what was later revealed to be a system of interrogatory torture, warrantless surveillance, and now remote killing. I argue that it is in law’s nature to be public, as part of the link between law and legitimacy and, more broadly, as the way a democratic people must be able to understand its own character. The inclination towards secrecy is a hallmark of tyranny, of the delegitimized state.

Chapter 7, “Must a Democracy Be Ruthless?” concerns how one must think about principles in times of crisis and in emergencies—as having a natural limit. The connection between torture and constitutional dictatorship has to do with the relation of principle to necessity. There is a particular issue about how to conceive these trade-offs in a system rooted in democratic values. The anti-trade-off principle is, in part, about the nature of certain architectonic principles and their relation to teleological (institutionally molded) values.

Next, chapter 8, “Humanitarian Intervention and the New Democratic Holy Wars,” and chapter 9, “Democratic States in Victory,” look to further consequences of the telic conception of democracy for the theory of war: a tendency to lower the threshold of external sovereignty to justify humanitarian intervention, and a permission for more extensive post-victory reconstruction efforts following even defensive wars. Once, victorious nations enjoyed broad rights to transform the conquered. Now, the rights of victors are minimized. What can now justify the victor’s rights? Has the ideal of pro-democratic humanitarian intervention led to too great an interest in the power of the conquering state? I argue that restoring the agentic conception of democracy can properly chastise democratic states contemplating military intervention.

I set out the current and next stage of the democratic conception of war in chapters 10, “Drones, Democracy, and the Future of War” and 11, “Democracy and the Death of Norms.” Do democracies operate under different constraints than other states? The *jus in bello* is defined independently and legitimated in terms of harm prevention most naturally, but perhaps the nature of a democratic state, its commitment to process (and, underlying that, a principle of individuality), requires a stronger

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commitment to a more robust set of restrictions on killing in war. The forms of justification available to a democratic community are limited by the procedural norms a democracy imposes on itself, namely a commitment to make use of forms addressing the interests of each. Targeted killing, in some respects, best fits a democratic demand. One of the most striking features of the turn towards targeted and remote killing is its apparent contradiction, the simultaneous depersonalization of killing and the personalization of the killed. For all the talk of the illegality of extrajudicial killing, it receives (according to public documents) relatively more legalistic scrutiny than other kinds of warfare.

The book concludes with chapter 12, “Looking Backward,” which examines the claims of democratic citizens after violent change, whether caused by revolution or defeat in war. What principles govern political transitions in which property is taken? How do we compare the claims of property holders against the claims of those who need food, justice, and an egalitarian distribution of resources? My answer: property holders take a lower priority and should receive symbolic rather than actual repayment. This is a consequence of taking seriously a collective conception of community, one extending as much over time as over territory, with a proper weighting of the interests of the living over the dead.

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