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## Chapter 1

# From Small Wars to Atrocity in Empires

A shopkeeper named Bremner in the region now known as the Eastern Cape of South Africa informed British troops in April 1847 that Xhosa men had stolen four of his horses. The lieutenant colonel of the local British regiment credited rumors that the raiders had taken the horses to a nearby *kraal*, a settlement and livestock enclosure controlled by a Xhosa group friendly to the British. Thirty cavalry and thirty infantrymen descended on the *kraal* in an unruly raid. The soldiers seized 155 cattle, killed a Xhosa man who refused to come out of his hut, and carried away two other Xhosa men as prisoners. The troops also captured four horses. They were not Bremner's horses.<sup>1</sup>

The small raid was part of a conflict that the British labeled the War of the Axe, so called because its immediate catalyst was an attack on soldiers escorting a Xhosa man to Grahamstown to be put on trial for stealing an axe. On the surface, there was little to distinguish this short war from the previous six frontier wars, or for that matter from the interlude of peace that immediately preceded it. Small-scale violence in the form of disjointed campaigns of marauding, cattle theft, and crop destruction had been business as usual in the region since at least 1779, when Xhosa outrage erupted over settler cattle stealing. In the decade before the War of the Axe, Xhosa chiefs decried settlers' systematic campaign to strip them of power and take away their land, while Dutch-descended and British settlers complained of Xhosa "outrages, so

incessant and atrocious in their details as to surpass belief.” The violent peace transitioned into a war of many fronts, and at times no front at all. Unstable alliances strained under mutual accusations of betrayal. When the War of the Axe officially ended, violence lingered, and soon two more frontier wars acquired the name, preparing the way for another series of wars, the Anglo-Zulu wars that began in 1878.<sup>2</sup>

These discretely labeled wars were part of a single, long-lasting conflict over territory, labor, and authority in the shatter zone of nineteenth-century southern Africa. The serial wars summed to violent dispossession of Africans, who regrouped again and again to resist settler incursions and strike back. This long phase of violence—more than a century of chronic warfare—resembled other arenas of frontier violence in which settler land grabs resolved into colonial state making. Yet we should resist the temptation to view the conflicts as a process trending toward nation-state formation or to suppose that the violence unfolded beyond the reach of law.<sup>3</sup>

There is more to the multiplicity of imperial small wars than first meets the eye. As they assembled repeating patterns of violence and peacemaking spanning polities and regions, small wars connected European justifications for imperial violence to wider—indeed global—projects aimed at defining limited war and allowing it to flourish. Repeatedly, the course of imperial small wars showed how grinding conflicts in the shadow of empires could suddenly, seamlessly, produce the worst kinds of unfettered violence. The repetition of these patterns inserted the logic of chronic violence into the heart of the global order.

Hannah Arendt described warfare as “from time immemorial the final merciless arbiter in international disputes.”<sup>4</sup> Her words reflect a familiar story about humanity’s long, gradual project to condemn and contain interstate violence. Eventually, according to that story, efforts to produce perpetual peace prefaced a twentieth-century diplomatic push to outlaw war by treaty and authorize international institutions to act to prevent it. Analyzed as residual violence seeping around barriers to war, serial small and “endless” wars of the late-twentieth and twenty-first centuries appear to result directly from nations’ attempts to evade or change the contours of international regulation. From this perspective, the small wars that

continue to plague the world seem to represent a return to the unfettered, extrajudicial violence of the age of empires.<sup>5</sup>

This book tells a different story. I show that serial small wars were endemic to the early modern world and I trace their evolution. The first of three interconnected arguments is that patterns of imperial violence composed truly global regimes. Despite variations in the way societies justified and regulated violence in different regions, imperial small wars followed similar rhythms and routines. Small-scale, chronic violence not only ticked along inside orderly mechanisms of an increasingly intercommunicating world. It also served to structure relations across religious, cultural, and political divides.

Second, I track how imperial small wars produced conditions for outbreaks of atrocity. For centuries, massacres and slaving were classed as lawful and just treatment of enemies who refused to submit. Aggressors represented their victims as peacebreakers or rebels, whether or not those designations matched reality. Widely shared practices of plunder were foundational to conquest and to empires' waxing power. Increasingly, as empires responded to proliferating calls to protect subjects and interests around the world, they authorized agents far from home to make decisions about when to engage in local violence, and in what measure. In the long nineteenth century, armed intervention was defined as a European right. Imperial sponsors and agents repurposed old arguments about preemptive defense and just reprisal to legitimize brutal campaigns of dispossession and extermination.<sup>6</sup>

Third, I show that Indigenous communities were integral to the regulation of violence. Conversant in arguments about the justice of war, they maneuvered to establish their right to go to war. And because the logic of violence was legible to all, Europeans and Indigenous people in empires deployed similar strategies. They alternated between representing violence as internal, akin to repression or policing, and external, a matter of war. At times parties claimed political autonomy and the capacity to fight as enemies, and at times they affirmed their status as subjects bargaining for protection. They manipulated markers of political belonging, in other words, and cultivated ambiguity about whether conflicts were wars or something else. Like their European

interlocutors, Indigenous communities found reason to position violence at the threshold of war and peace.

These arguments run against some common ways of characterizing imperial violence. One familiar approach is to highlight the violent effects of deep, systemic clashes—of religious communities, civilizations, ideological orders, and economic systems. Another presents European empires as overpowering other peoples from the moment of first encounter and then quickly perfecting dominance. Meanwhile, a great deal of ink has been spilled on major wars and famous battles, and on changes in battlefield tactics, the rise of professional armies, the development of weaponry, and the relation of warfare to grand strategy. Some pitched battles did settle disputes or turn the tide of longer conflicts, and there is no doubt that religious difference and technological capacity influenced the progress and outcomes of war. Yet there is value in turning our attention to other varieties of warfare and to the framework that sustained small, chronic, and repeating violence.<sup>7</sup>

The reorientation should not keep us from seeing that imperial small wars produced lopsided suffering and consequential shifts in power. We know that some small wars—King Philip’s War in colonial New England is one example—marked turning points in longer campaigns of conquest and colonization. We know, too, that the vast system of enslavement of millions in the Atlantic world was predicated on something very much like a permanent state of war between enslaved men and women and their enslavers. And we know that the imperatives of maintaining order—the “king’s peace,” as it was called in the British Empire—reverberated through colonies and served to justify violent oppression. As imperial small wars multiplied, they gave rise to new institutional gambits and experiments in revolution, reform, and repression.<sup>8</sup>

Far from arguing against these positions, I am building on them to point to the still broader effects of serial small wars. Many of the effects carry into the present. Together, the continuities belie the usefulness of familiar watchwords of international politics now and in the past century, from “asymmetric war” to “endless war” to “humanitarian intervention.” From campaigns of targeted killing in the “war on terror” to proxy wars or cross-border interventions and invasions, echoes of the

age of empires are everywhere. The threat of minor wars with cataclysmic possibilities has formed the background to domestic politics in nation-states while also hanging like the sword of Damocles over international affairs.<sup>9</sup> The imperial roots of the phenomenon come into sharp relief as we trace the global history of small wars in the five centuries between 1400 and 1900. Warriors and their sponsors, as well as political thinkers and anti-imperial advocates, grappled with a shared puzzle: how to define and structure violence at the threshold of war and peace.

## On Small Wars

It is difficult to write about war of any kind without starting with Carl von Clausewitz, the Prussian general and military analyst best known for his widely translated and read book, *On War*.<sup>10</sup> Clausewitz focused mainly on major, formally declared conflicts and warfare in Europe. To the extent that he examined small wars, Clausewitz defined them as involving small detachments of irregular troops and regarded them as ancillary to, or integral parts of, larger conflicts.<sup>11</sup> Followers of Clausewitz emphasized tactics rather than strategy or deeper structural characteristics of small wars. They also studied small wars to provide advice to states and armies about how to respond effectively to insurrections and guerrilla campaigns.<sup>12</sup> Under the rubric of “asymmetric warfare,” analysis of small wars in this vein continues to the present.<sup>13</sup>

In making distinctions between the orderliness of conventional wars and the relative looseness and improvisation of small wars, Clausewitz advanced a view of minor conflicts as chaotic, unpredictable, and exceptional. He imagined at least one kind of small war, popular uprisings, as emanating from political forces or entities other than the state. In doing so, he associated small wars with, as he put it, “the breaching of old artificial barriers.”<sup>14</sup> For Clausewitz, fighting small wars in opposition to the state tracked a tendency among non-state actors to embrace primordial violence.<sup>15</sup> A corollary of this perspective was the view that small wars and conduct in them operated beyond the purview of the laws of war—in something like a separate realm in which conventional attitudes and routines did not hold.

That position intersected with another: the idea that the extra-European world occupied its own juridical space. Clausewitz referenced the distinction when he identified Spanish guerrillas resisting Napoleon's invasion in 1808 as the paradigmatic example of a small war. Extolling the fierceness of Spanish irregulars taking on the better-equipped French army was a subtle way for Clausewitz to critique Prussians' less dogged opposition to Napoleon's forces. But the position carried other significance. To call Spanish resistance the "first" guerrilla war was to adopt a studied ignorance of warfare beyond Europe. It meant writing out of history the armed opposition of local fighters to European imperial forces before the nineteenth century.

Writing about small wars in 1906, the British military officer-turned-writer C. E. Callwell seemed to solve this problem by associating the same definition of small wars—conflicts involving regular armies fighting irregular forces—with violence in the British Empire. For Callwell, campaigns of conquest and annexation, suppression of insurrections, acts of retaliation, and interventions in non-European polities to unseat dangerous enemies—these and other colonial conflicts qualified as small wars.<sup>16</sup> Callwell's account also pitted an empire rooted in morality against an external realm of supposedly lawless actors.<sup>17</sup> It repeated the old story of European force on the side of law and resistance as the origin of chaos.

In the twentieth century, the story of a sharp separation of European and extra-European warfare received endorsement from the German jurist Carl Schmitt. Writing as a member of the Nazi Party during World War II, Schmitt made the distinction a key organizing principle of global spatial order. According to Schmitt, the first global spatial order lasted for four centuries and divided the world into the "pacified order" of Europe and the "quarrelsome disorder" of extra-European space.<sup>18</sup> In Schmitt's view, the European legal order placed annihilating war outside its bounds, in lawless, extra-European spaces.<sup>19</sup>

Like Clausewitz, Schmitt regarded the Spanish irregulars resisting French rule as the first guerrilla warriors. Yet unlike Clausewitz, Schmitt was writing past the midpoint of the twentieth century and knew he had to find a way to explain increasingly strong and organized anti-imperial struggles. He did so by characterizing them as otherworldly events

spawned by the marriage of guerrilla tactics and the lawlessness of the extra-European world. Anti-imperial fighters were “unmoored” from the forces containing war in Europe.<sup>20</sup> Once again, warfare beyond Europe made sense only as a deviation from practices in Europe. The irony of Schmitt, as an unapologetic servant of the Third Reich, relegating uncontrolled violence to spaces outside Europe is difficult to miss.

Particularly given the limited historical vantage points and the ideological biases of Clausewitz, Callwell, and Schmitt on small wars, we should reject the automatic association of small wars and guerrilla insurgency. The idea that small wars involved nimble, irregular fighting units arrayed against larger, state-sponsored armies flows, after all, from analytical choice (and the fixation on Spanish irregulars fighting the Napoleonic army) rather than broad or deep historical evidence. The category of “irregular” forces loses its meaning in eras when raids and counterraids dominated fighting on all sides. And later, when empires favored short strikes and empowered armed gangs of settlers to do their bidding, the term also makes an awkward fit with accounts of warfare. At different times and places, anyone might favor—or challenge—violence in the form of sharp, brief attacks. And even if combatants were labeled as stateless rogues or (more rarely) found advantage in representing themselves that way, they usually strained to maintain relations with legitimate sponsors and sought legal cover for their actions.<sup>21</sup>

For multiple reasons, then, it makes sense to define the category of small wars capaciously and flexibly. This book utilizes a broad definition of “small” imperial violence. The phenomenon encompasses raiding and other sporadic violence as well as conflicts that were small in scale, remained undeclared, or lasted for relatively brief periods. The “smallness” of many imperial wars is deceptive, of course, since they often repeated across long phases and extended over vast areas. Once we rid ourselves of the biases behind formulaic assumptions about conventional versus guerrilla warfare and shed ideologically charged representations of legal difference between Europe and the rest of the world, the value of a broad definition of small wars becomes obvious. It allows us to uncover prevalent patterns of violence and transcends fixed notions about small wars based on specific tactics or supposed lawlessness.<sup>22</sup>



The book will show that law, defined broadly, infused all forms of imperial violence.

Waves of imperial violence produced a messy assortment of names for war. I have decided, in part to recognize this confusion of labels, also to deploy a multiplicity of terms. I have kept the term “small wars,” and I will describe some cases where that term helps to make sense out of serial campaigns of violence. I will also refer, at times, to “private” and “peacetime” violence. And I will describe a hidden theory of “limited war” comprising bits and pieces of European legal commentary. The phrase that works best to bundle these terms and phenomena is “violence at the threshold of war and peace.” That is a mouthful, so I use it only where I think it offers clarity. The multiplicity of terms is intentional and designed to recognize a problem shared by legal writers, imperial agents, and Indigenous political actors: how to characterize the legal space for violence between war and peace.

The category of “small wars” in this book thus includes named wars like the War of the Axe and short conflicts with no name. It encompasses sustained campaigns of violence organized around discrete episodes of fighting and brief acts of violence such as attacks described as motivated by plunder, reprisal, or punishment. Although I pay close attention to justifications for violence, I do not impose a typology of forms of violence according to the rationales or tactics of participants and sponsors of violence.<sup>23</sup> Certain forms of violence, such as raiding, were more prevalent in some periods, but they also spanned centuries. Justifications for war arrived in clusters but also carried across eras and regions.<sup>24</sup> It is only by bringing these phenomena together that we can expose the role of small wars in global politics and law.

We can be sure that small wars in empires have not failed to attract systematic study because we lack sources. The historical record brims with sharp complaints about the agony and injustice of these conflicts, including vivid descriptions of the shock they produced for people who struggled to go about their lives without imminent threat of getting robbed, injured, kidnapped, or killed but who were swept up nonetheless in vicious and unpredictable fighting. Jurists and theologians puzzled over the legalities of small wars—and did so rather more often and

at greater length than most historians have realized. Litigants also took notice. Although most plunder went unrecorded, some of it ended up as the subject of lawsuits that generated copious paper trails. Combat itself, whatever its rationales and legitimacy, inspired narratives by both victors and vanquished as they angled for political and economic reward and protection by powerful patrons or polities. Victims of raiding in every world region generated stories of captivity, and officials recorded truces, treaties, payments of tribute, and descriptions of gift ceremonies that reveal the machinations of peacemaking, security pacts, alliances, and other arrangements connected to repeating cycles of violence.

The record is so vast, in fact, that one can only proceed by focusing on select cases and themes. Rather than offering a comprehensive history of imperial small wars, I analyze exemplary conflicts in overseas European empires between 1400 and 1900 to reveal broader patterns. I have chosen to focus on small wars in regions that are typically less well integrated with global histories, especially Latin America and the Pacific world. That means that some other regions, including Africa and the Middle East, get short shrift. I include material from French and Portuguese empires but give special attention to conflicts in the Spanish and British empires. Some choices of wars to analyze were serendipitous; they came about when I found intriguing examples or followed promising sources. Others flowed directly from a desire to test or illustrate arguments about global violence. I do not always construct elaborate bridges from examples to generalizations, but the bridges are not figments of my imagination, either. The connecting sinews are made up of law—how people involved in violence thought about law, and how observers wrote about it in relation to violence.

The legal framework of small wars spans the realms that historians describe as theory and practice. I typically begin with conflicts in empires to show how the regulation of violence emerged partly from the actions and pronouncements of people far from Europe. Most histories of the laws of war start and stay in Europe and the United States, and they explain texts by analyzing the contexts in which they were made. The circle of context can be drawn tightly, for example, by focusing on a single writer, or it can be extended to encompass distant events and

trends.<sup>25</sup> Here I take a different tack. Except in a few cases, I do not map the circulation of information or ideas between Europe and other regions. I instead enlarge the production of theories about law and war to include the whole world. At the same time, I analyze European writing on war and juxtapose it to histories of small wars. These moves break down the often implicit, artificial separation of theory (located in Europe) and practice (in events unfolding in or beyond empires). People in very different positions inside and outside Europe were grappling with similar problems of how to justify and regulate violence. We can think of my method as an exercise in refraction. It is like holding two objects next to each other to view each one in the reflected light of the other. I use imperial small wars as a prism focusing light on overlooked corners of European writings on war, and I look to European texts to illuminate more diffuse approaches to violence at the threshold of war and peace.

### Strange Violence, Big Law

In 1504, a Dutchman penned an account of his voyage as a crew member on Vasco da Gama's second expedition into the Indian Ocean. At Calicut (Kozhikode) on the western coast of India, the Portuguese ships bombarded the port with cannon fire. After three days of fighting, the Portuguese took the prisoners they had seized and "hanged them to the yards of ships" within sight of the walls. They then pulled the captives down from the rigging and methodically "cut off their hands, feet, and heads" before piling the body parts in a ship and casting it adrift toward the town, with a letter on a stake. For good measure, they seized another ship in the harbor, set it on fire, and "burnt many subjects of the king."<sup>26</sup>

A casual reading of this account might give the impression that the Portuguese were resorting to theatrical violence to deliver their message across a stark communication divide. The context tells a different story. Gama already knew Calicut because his ships had spent three months there on his first voyage, when mutual distrust had colored negotiations. The two sides had exchanged hostages to cool the mood—a common practice—but, with the Calicut ruler and local merchants openly

disdainful of Portuguese goods, trade was disappointing. Now, on his second approach, Gama had more fully embraced violence—both for the plunder it yielded and for its success in forcing trade and tribute. The display of mutilated bodies doubled as reprisal and an ultimatum to submit. Massacre and mutilation did not require exquisite explanation in a world where demands delivered at the gates of towns were deeply familiar and where extreme violence in response to perceived betrayal was common. The note among the corpses was there for emphasis, not explanation.<sup>27</sup>

The notion that Europeans fought with people who had fundamentally different ways of making and understanding war is common. It has also been much exaggerated. The idea of deep cultural misunderstandings in imperial wars can in part be traced to European chronicles written by men with a vested interest in extolling their own abilities to interpret foreign cultures and to translate exotic signs. The idea of misunderstanding—creative or otherwise—has also struck a chord with some historians of European-Indigenous interactions.<sup>28</sup> The impenetrability of violence has had eloquent defenders. The brilliant Australian historian Inga Clendinnen wrote that Spaniards in the conquest of the land they called New Spain were “baffled” by Mexica people’s sacrificial killings and that locals puzzled over the invaders’ odd “predilection for ambush” and their practice of killing enemies on the battlefield instead of taking captives.<sup>29</sup> In Clendinnen’s telling, the conquest of New Spain was a “tangle of missed cues and mistaken messages.” The destruction of the city of Tenochtitlan, on the future site of Mexico City, occurred because the Spaniards failed to elicit the Mexica people’s surrender and the leader, Hernán Cortés, found himself heaping atrocity on atrocity to diminishing effect.<sup>30</sup>

This version of the story of conquest passes quickly over evidence of mutually intelligible diplomacy and violence. The Mexica rapidly adjusted to Spanish styles of fighting and accurately read Spaniards’ intent. They also recognized that when the Spaniards and their local allies turned down their offer of tribute, fighting was imminent.<sup>31</sup> The likely consequences of refusing to submit were not lost on the inhabitants of Tenochtitlan. The clarity of likely consequences led some Mexica

fighters to escape the city and join the Spanish side and persuaded others to refuse to surrender. For the Spaniards, unusual circumstances removed the possibility of half measures. They were not culturally opposed to captive taking, but in Tenochtitlan they found themselves “wandering men without a city.”<sup>32</sup> They suspended an interest in acquiring captives in part because they had no way to keep them, a condition that would not last long. For the Mexica, meanwhile, the choice to fight to the death was informed by their own history of brutal punishment of the vanquished. They imagined, not without reason, they would be unlikely objects of mercy if they surrendered.<sup>33</sup>

The point is not to challenge the possibility of any degree of misunderstanding about violence but to begin from a different premise. We need not choose between the supposition that violence by strangers was incomprehensible to others and the assumption that violence was always transparent. Combatants everywhere interpreted the actions of enemies and adjusted their strategies in response, often very quickly. Historical actors knew that they lacked a full understanding of the violence of strangers, but they also recognized that by analyzing violent actions they could learn useful information about structures of authority, procedures for marking difference, and the strength of legal and political commitments. They were plainly aware that war and law were inextricably intertwined.

It is hardly surprising that groups of people who came into contact actively scanned societies for signs of how they worked. Strangers needed to know with whom to negotiate and, in contests for control, whom to seek to supplicate, incorporate, or topple. To make such judgments, travelers and locals looked for ways of ordering authority. They took note of routines of supplication and mercy, and anxiously sought to interpret acts of public punishment. Guided by experiences of unequal power in their own societies, they were alert to gradations of authority. Nearly everyone recognized a few broad categories of legal action: jurisdiction (the exercise of legal authority), protection (arrangements of security involving two or more legal authorities), and punishment (actions that announced and enforced legal authority). Together these rubrics composed a framework of “interpolity law.”<sup>34</sup> As a

convenient shorthand, we might use the label “big law.” The framework of big law preceded the rise of international law, and it spanned political communities with very different legal sources and procedures.

To regard acts of violence as legal in this way means treating law as something much bigger than doctrine and less tidy than systems of rules or norms. The approach moves beyond a view of law as a constraining force. Operating instead as a social field, or framework, law set flexible parameters for conflict. It combined patterns of practice, which were lawlike because they shaped expectations about the regularity of behavior and its likely consequences, and trends in written or customary law that encompassed legislation, commands, and learned commentary as well as the pronouncements and strategies of a wide range of actors. Patterns of violence encoded and sometimes altered expectations about justice, cruelty, and mercy. They conformed to, while also shaping, law that stretched across polities and regions.

A further advantage of this perspective is that it allows us to bring Europe’s interlocutors into the picture much earlier than usual and to treat them as active participants in making law across polities. Wherever possible, I pay special attention to non-elite, Indigenous actors’ legal and strategic engagement with Europeans in small wars.<sup>35</sup> We know that in the nineteenth and twentieth centuries, local elites around the world used and altered European doctrines of international law in conflicts over sovereignty and self-determination.<sup>36</sup> But we can also find evidence of this intercommunication much earlier, in practices of violence and negotiation. Some legal approaches to war and diplomacy that we once thought of as exclusively European had clear counterparts in traditions and settings beyond Europe. Not just legal practices but also broader legal strategies were often mutually legible, and they were also often interactive. For example, just as Europeans represented warring imperial subjects as rebels or enemies, Indigenous political communities confronted with European aggression alternated between appeals for legal protection and assertions of their own capacity and right to make war. Moving nimbly between characterizing antagonists as enemies or subjects crudely but effectively marked out a space for violence at the threshold of war and peace. The process conjured into existence a

framework of big law well before anyone was claiming the possibility, much less the authority, of international law.

## Law and War

Traditional accounts of the history of war and law do not give a prominent place to small wars, or to the strategies they spawned. The usual narrative begins with Roman jurists' commentary on war, followed closely by medieval European political theologians selectively mining Roman legal sources to develop theories of just war. Sharing the view that only one party in a conflict could possess a just cause, these writers elaborated on the definition of just war as a response to injury or an act of self-defense authorized by a legitimate ruler.<sup>37</sup> The story then fast-forwards to the early seventeenth century, when Hugo Grotius, a Dutch lawyer, wrote *Mare Liberum* (*The Free Sea*), a work commissioned by the Dutch East India Company to justify the Dutch seizure of the Portuguese ship *Santa Catarina* in the Singapore Strait. Grotius expanded the foundations for legitimate violence by arguing that both public and private actors could punish violators of natural law and that both sides to a conflict might possess a just cause.<sup>38</sup>

The next great turning point in the evolution of the laws of war, according to standard accounts, arrived in the eighteenth century. Marked by the publication and wide circulation of *The Law of Nations* by the Swiss jurist Emer de Vattel, the idea gained traction that states were the principal units of global legal order. Vattel's "dizzying array of rules" about war replaced just war theory as the centerpiece of European laws of war.<sup>39</sup> Building on this turn toward "Enlightenment rules of law," late nineteenth-century jurists, most notably Frances Lieber during the U.S. Civil War, codified standards of conduct in war. The tradition continued in other agreements, including the 1907 Hague Convention and the 1949 Geneva Conventions.<sup>40</sup> These efforts to codify the laws of war paralleled the formation of international institutions, including the League of Nations and the United Nations, and, we are told, foregrounded attempts to outlaw and "humanize" war in the twentieth century.<sup>41</sup>

Uncertainty and disagreement surrounded all these developments. Political theologians debated every aspect of just war doctrine, including who possessed the authority to sanction violence or declare war, what acts might constitute injuries that justified reprisals, and to what extent a war had to promote the common good to be classed as just.<sup>42</sup> Grotius's influential views remained open to interpretation, too, and posed new questions, for example about the variety of conditions under which private actors, commanders, or local officials might enjoy the same legitimacy as sovereigns in making public war.<sup>43</sup> In the wake of the wide circulation of Vattel's work, the consensus among European powers that "civilized" states were the responsible authors of the laws of war raised tricky problems about membership in this group. Increasingly, the widening participation by non-Europeans in debates about international law clashed with efforts to restrict entry into the international community.<sup>44</sup> Meanwhile, empires and micropolities persisted, even as nation-states proliferated and claimed their place as arbiters of international laws of war.<sup>45</sup>

In later centuries, creative interpretation of and selective deference to international law continued. International lawyers have repeatedly found themselves on the defensive, justifying the value of a kind of law that must operate without an effective authority—a world state, for example—to enforce it. With the UN Security Council unable to end many conflicts, small wars multiply and linger; they sometimes spread to engulf whole regions. Multisided proxy wars, like the conflict in Syria that erupted during the Arab Spring in the 2010s, have proven especially intractable. Actions against outliers, as in economic sanctions against Russia after its invasion of Ukraine, showcase the complexities of containing aggression without robust international jurisdiction to regulate war.

Past and present ambiguities of international law suggest the need for a new account that encompasses the regulation of war in all its dimensions: law-in-practice, including the actions of people outside Europe; institutions, defined in the broadest terms; legal and political theory, with attention to both legal writings and vernacular expressions regarding justice in war; and sequences of treaties or truces and outbreaks of violence not clearly labeled as war. This is a tall order. I approach the



challenge in this book by beginning with local practices of violence in order to identify broad patterns that assumed the shape of global regimes. In the transition from one regime to another, I emphasize how decentered conflicts assembled big trends in violence and law. Only then do I turn to European texts and use the history of conflict to read them in new ways to uncover a theory of limited war.

The result is that some familiar topics in the history of the laws of war recede into the background. Common questions about law and imperial raiding—the status of pirates, for example, or whether to restore the rights and property of returning captives—become less salient.<sup>46</sup> In their place, I follow participants' commentary on raiding to highlight arguments about the punishment of truce breakers and about self-defense and protection in empires. Similarly, instead of tracking developments in *jus ad bellum* (the authorization of war) and *jus in bello* (the regulation of conduct in war) as separate phenomena, I show how participants and writers blurred these categories to describe lawful violence at the margins of war and peace. The approach takes us well beyond standard texts or common interpretations of the laws of war, and it points to the importance of inchoate theories of limited war.

It might seem counterintuitive to call scraps of analysis and patterns of violence a theory of anything, much less a theory of limited war. We find only rare explicit mention of limited war by writers whose commentary mainly referenced related phenomena, such as truces, controls on private violence, and the authority to contain violence by regulating conduct in war. But however unsystematic and obscure, commentary on law and war betrays a continual preoccupation with defining and justifying violence in forms other than open and unbounded war. Peacetime raiding, captive taking, punishment of rebels, short strikes against Indigenous polities—these and other varieties of violence prompted worried debate precisely because they threatened to provoke all-out war. Writers on law were painfully aware that they were operating with an impoverished vocabulary to describe violence at the threshold of war and peace—and to explain how it might be kept at tepid temperatures, somewhere between hot and cold war. The problem was especially salient in and on the edges of empires.<sup>47</sup>

It was not just Europeans, and not just law-trained elites, who were commenting on war. People planning and fighting in imperial wars on all sides made legal arguments, discernible sometimes through their actions or treaties, about the lawfulness of “small” violence. They were making law as they acted and wrote (or spoke). In most of the narratives of conflicts in this book, I give greater attention to European violence and European writings on small wars. There is no doubt that European imperial violence was especially consequential—for its victims and for the direction of global change. European sources are more numerous, and also more easily accessible to researchers. But the “small” violence that occupied the very center of successive global regimes elicited legal positioning and pronouncements from a broad array of parties. The actions of Indigenous groups in the Americas, Africa, Asia, and the Pacific world, this book will show, helped to create and alter the global legal framework for violence.

## Empires and Global Violence

European conquest and colonization were not novel in the modes of violence they deployed, or in relation to the legal framework that sustained them. Empires everywhere relied on plunder, and they required ways of distributing it, including ways of integrating captives. Europeans were like other early modern peoples in their devotion to raiding and slaving. But they managed circuits of plunder that ensnared growing numbers of Indigenous peoples in the greater Atlantic, Pacific, and Indian Ocean worlds.<sup>48</sup> As European settlers pushed the boundaries of colonies, they intensified raiding and used common practices to turn opportunistic raiding into systems of enslavement and organized plunder.

A regime of plunder centered on raiding and captive taking expanded rapidly because its component parts were everywhere deeply familiar. Short strikes for booty, waves of raiding in advance of conquest, ultimatums at the gates of towns, and punishment of resisters to invasion—these and other practices composed an orderly choreography of conquest. Europeans did not invent these practices. They did not even perfect them. Conquest and colonization shared rhythms and rationales, and

generated patterns of lawful extreme violence, including massacres in which perpetrators blamed the victims because they had refused to submit.

Captive taking was an elemental practice. The conversion from enemy to captive signified an act of mercy because warriors were forgoing the right to kill enemies. But slaving-through-war was only the first piece of a larger process. Captives had to be integrated legally into captor communities. There were mechanisms for their assignment to sovereigns or to the sovereigns' officers and delegates, for example, when captives labored in gangs on fortifications or other public works. Much more commonly, households and kin groups took charge of captives. We think of households as social units, but they were also legal entities, unusual in that they encompassed the most intimate domestic spaces, but commonplace as arenas where a recognized legal authority, the household head, possessed the right to restrict subordinates' rights. The relationship of households to sovereign power made sense out of captivity and war—and made both profitable. Sovereigns went to war to protect communities of households, and households continued war on behalf of sovereigns by holding and disciplining captives.

The first part of this book traces the way the regime of plunder worked in early European overseas conquests and in the militarized garrisons that advanced European imperial power. It first maps serial small wars as components of conquest and examines the logic of truces, truce breaking, and massacre. It then turns to households in early empires and their role in maritime raiding and captive taking. In uncovering concerted efforts to promote household formation and use communities of households to support a right to make local war in early overseas European empires, I highlight raiding's social and institutional effects and how they extended far beyond the actual routines of slaving and raiding.

In the nineteenth century, another regime of violence emerged. It is the subject of the second part of the book. As Europeans inserted themselves into politically complex regions, trading companies and settlers secured control over limited territories. They relied on networks of alliance, proxy wars, and collaboration with other empires to fight against

Indigenous polities and “rebels.” In this context, imperial agents began to insist, with increasing force, on Europeans’ authority to regulate the conduct of war. Instead of describing the Europeanization of the laws of war as a process that began in Europe and spread outward to the rest of the world—the usual story—I trace how conflicts in and on the edges of empires prompted new claims about European authority over war. As imperial agents debated standards of battlefield conduct, they affirmed Europe’s power to regulate war and peace. In the process, they sharpened characterizations of Indigenous fighters as savage and increasingly labeled them as rebels.

Global militarization in the Seven Years’ War and the Napoleonic Wars further altered these routines. Imperial navies and armies on patrol were authorized to make decisions about violence against groups located both inside and outside imperial spheres of influence. The practice established a new global regime of armed peace in which Europe and the United States claimed a right to intervene militarily anywhere in the world. It is tempting to pair claims about a right to armed intervention with the rise of ideas about humanitarian intervention. I emphasize instead how violence on patrol could preface colonial campaigns of dispossession and extermination. What I label “protection emergencies”—calls to shelter imperial subjects from harm—turned easily into broader programs to protect imperial interests and promote regional order. The shift encouraged colonial officials and settlers to redefine entire Indigenous communities as natural enemies who could be attacked and killed anywhere without need for further authorization.

Across these centuries, Europeans represented conquest, colonial rule, and intervention as projects of peacemaking. An element of pure cant was at play, but there was also more. Justifications for imperial violence routinely referenced peace and order. Campaigns of conquest approached the resumption of war after unstable truces as lawful reactions to even minor threats to peace on invaders’ terms. Again and again, Europeans accused Indigenous groups of drawing them into war. Captivity was represented as punishment for refusal to make and keep the peace and defined as an act of mercy for defeated adversaries or rebels. Pledges of peacemaking also informed other visions of global order. In increasingly

militarized empires, Europeans authorized violence in the form of measures short of war to protect not just imperial subjects and interests but also, more expansively, a vague objective: global order itself.

Some distinctive temporal qualities of imperial violence emerged. Small wars made for choppy violence, but just as they do today, they also operated against the backdrop of perpetual war.<sup>49</sup> Truces, cease-fires, and rituals of surrender—these and similar practices defined peace as transient and tricky, a mere interruption of an ongoing state of war. Staccato small wars permeated participants' everyday experience of violence and their expectations about future violence, while also presenting challenges to traditional justifications for warfare.

Spatially, small wars arranged violence unevenly, and at odd scales. The logic of violence centered on households, garrisons, archipelagic spaces occupied by armies and navies, and pluripolitical regions. The spatially complex conflicts of our own time appear less unusual in a wide and long historical frame. Corporate interests, religious and ideological solidarities, and shifting local-state alliances created kaleidoscope landscapes of war. Imagining terrorists as universal enemies with the capacity to cross borders, hide in plain sight among civilian populations, and transform with mysterious speed into battle-ready armies makes a hash of borders and other typical spatial referents of war. But wars with no fronts or with fractured fronts are not new. They find ample precedents in the imperial past—and not just because fighting in empires was often unconventional. In attending to phenomena at different scales and multiple sites, such as complexes of raiding, communities of households dependent on captive labor, and moving militias and squadrons authorized to engage in small violence, this book maps unusual landscapes in which scattered small wars assembled global regimes of violence.

Precisely because empires encompassed multiple political communities and had fluid boundaries, distinctions between internal and external violence were very blurred. Raids in which small bands attacked, scooped up booty, and withdrew provide quintessential examples. They could occur within the bounds of empires; continue in peacetime across fluid political boundaries; arrive in sets to form long campaigns of

“quiet” warfare; and trigger major, formally declared wars. Like raids, various other types of small violence defied easy description because they challenged the distinctions between domestic and global or international order, and between war and peace. Small wars strained the legal and political vocabulary of binaries.

The history of small wars in European empires and global history is bleak—but necessary to tell. The hidden logic of limited war drove the pace and structure of conflicts across centuries and regions. It shaped and sustained vast empires and gave anti-imperial movements shared modalities. Never insignificant for the victims, series of small wars profoundly affected the lived experiences of people in a world of empires. The conflicts molded discourses of despotism, brutality, civility, and justice, and entered the daily workings of intimate spaces of households and the contours of public squares, real and conjectural. The imagination of perpetual war loomed in the background of extended moments of negotiation, accommodation, and unstable peace. Imperial small wars were, and perhaps still are, the beating heart of global order.

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