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Letter from the Editors

We are delighted to introduce the first special edition of the *West Point Journal of Politics and Security*, showcasing articles produced in the context of West Point's Conference on the Ethics of War and Peace, held in 2021. This year, as we mark the 20-year anniversary of the U.S. invasion of Iraq, amid hard-won lessons about the costs of interventionism, it is an opportune moment to revisit the ethics of resorting to war. We are pleased to present innovative undergraduate research from West Point and non-West Point undergraduates addressing important topics concerning the use of force, Just War Theory, and more.

Our second issue begins with an article by Caleb Anderson, Charles Batkin, and Lizette Van der Walt (United States Military Academy), which addresses potentially paradoxical elements embedded in *jus ex bello*, an emerging frontier in Just War Theory. Later in the issue, Jim Kelly adds to the conversation about Just War Theory, exploring the debate over whether non-combatants supporting an unjust war could justifiably be targeted by the victims of that war.

Izza Malik (Lahore University of Management Studies) examines, from the perspective of 2021—prior to the 2022 U.S. withdrawal of forces—the potential for gender-based violence in Afghanistan following a U.S. withdrawal, contending that the United States had a special obligation to prevent such a grim outcome. Later, Marcus Ellinas (University of Chicago) urges a reexamination of the conventional wisdom that all political violence threatens democracy and argues that governments have a moral obligation to prioritize threats to transitions of power, which genuinely endanger democracy.

Lastly, Mercedez Fernandez (United States Military Academy) offers a moral assessment of multinational rubber manufacturer Firestone in the context of its operations in Liberia during the Liberian civil war. With corporations playing a more active role in the international security landscape, her work contributes a fresh perspective about an increasingly important issue.

We are delighted to share these examples of excellent undergraduate research. We appreciate the ongoing support of our contributors and readers, and we encourage you to reach out to share your ideas and recommendations as we continue to expand our readership and improve the quality of this journal. Finally, we want to specially recognize the leadership of Dr. Amira Jadoon and Dr. Jason Warner, our colleagues who preceded us as editors. Beyond their role in establishing the journal, they crafted the vision, curated the articles, and guided the editorial process for this special edition. We are so grateful for all they have done to make this journal a reality.

Go Army!
Dr. Charlotte Hulme
MAJ Josh Woodaz

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Submissions

WPJPS accepts submissions from current or recent undergraduate students based at West Point and outside of West Point. While WPJPS prioritizes publishing the work of current undergraduates, we will consider the publication of work by those who have already graduated, assuming that the work was produced while the author was an undergraduate. Authors should not have completed their undergraduate degrees more than two years prior to submission.

All submissions should include:

- A brief cover letter summarizing the article background, overarching research question, and main contribution to existing knowledge. The cover letter should also confirm that the submitted manuscript is original work, and has not been published or submitted elsewhere for publication.
- The proposed manuscript in Word (not PDF) format, which should be between 3,500 and 5,000 words, including a 200-word opening abstract. For citations, please use footnotes in Chicago style.
- A copy of the author's CV.

Submissions should be sent to the editors at wpjps.editors@gmail.com

Jus ex Bello and Just War as a Non-Zero-Sum Game

Caleb Anderson, Charles Batkin, and Lizette Van der Walt

Popularized by Darrel Moellendorf with his 2008 paper of the same name, jus ex bello *is an emerging field of exploration in Just War Theory. Though* jus ad bellum*,* jus in bello*, and* jus post bellum *are widely considered to cover most lines of inquiry in Just War Theory given proper interpretation, their domains of the cause of war, the conduct of war, and making peace, respectively, have left questions open of when and how to continue or end a war. Such questions are even more concerning given recent protracted conflicts such as the Global War on Terror, and they are precisely the kinds of questions* jus ex bello *seeks to address. Besides Dr. Moellendorf, another notable figure in the field, David Rodin, explores the theory under the terminology of* jus terminatio*. We choose to use Moellendorf's terminology in discussing the extent of both theories broadly but elect to use one or the other where specifically appropriate in the paper. As a new field of thought,* jus ex bello*'s tenets need work, and we intend to show how its current structure can lead to the paradoxical situation of two sides in a conflict being simultaneously justified. This may represent the need for revision, but we also give thought to the utility of the idea, such that further work corroborating it as, indeed, not paradoxical, could still be a fruitful advancement of Just War Theory.*

To clarify what exactly is meant by just war as zero-sum, and therefore what we intend to prove about its non-zero nature under *jus ex bello*, consider how the Oxford English Dictionary defines a zero-sum game: "generally … any situation in which an advantage to one participant necessarily leads to a disadvantage to one or more of the others."[1] When we speak of just war being zero-sum (or not), we are speaking of just war strictly, a situation in which war is just. After all, if both sides have no moral standing, we rightly proclaim it an unjust war. Such a case is not morally interesting, as the implication for both sides of the conflict is obvious: End the war as soon as possible, mitigating as much further injustice as possible. Moellendorf says as much in "Two Doctrines of Jus ex Bello": "if it is unjust to continue a war, then it is reasonable to … end it."[2] Excluding this scenario, the zero-sum game arises out of our moral intuition being a logical exclusive-or. Consider anti-war propaganda. Regardless of the ethical framework used, anti-war movements often shortcut proving a war on one side is unjust by attempting to prove the other side is just. The implied connection between our enemy's righteousness and our depravity assumes the impossibility of their righteousness coexisting with ours. Michael Walzer himself would agree with this assumption, as his eminent *Just and Unjust Wars* proposes just that. In his review, Igor Primoratz concisely summarizes Walzer's stance: "There are no wars in which both sides' causes are just."[3] Thus, in this constrained just war, in which at least one side is just, it is also the case that only one side can be just. The debate is then which side is the just side, a debate that is clearly zero-sum, in that evidence for or against any one side necessarily applies opposite weight to the other.

Moellendorf's assertions under *jus ex bello* "set aside the question of whether the evaluation of a war is belief or

1 "Zero-sum, adj.," Oxford English Dictionary Online, Oxford University Press, 2021.

2 Darrel Moellendorf, "Two Doctrines of Jus ex Bello," *Ethics* 125:3 (2015): p. 658.

3 Igor Primoratz, "Michael Walzer's Just War Theory: Some Issues of Responsibility," *Ethical Theory and Moral Practice* 5:2 (2002): p. 228.

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fact sensitive," and we do the same while maintaining the neutrality of our analysis.[4] This is because epistemic considerations exhibit themselves just as competitive a game as considerations of fact, if not more so. Belief-sensitive claims are more appropriately spoken of in confidence levels, probabilities, and percentages, but even this scale is usually thought of as sum-conservative, since we would say one side being 100% justified implies the other is 0%, and it may be reasonable to extend this to other splits, such as 80/20 or 50/50. Let us not get too lost in the weeds here, as it is possible for the generalizations above to be too broad, but the point about the competitiveness of both actual and epistemic moral value in war should be self-evident.

Regardless of the specific relationship, then, there seems to always be a logical entanglement between the moral value of one side and another. The aim of this paper is to rectify this entanglement, at least to point out how it could be explained by the current *jus ex bello* framework. It is obvious that if we only knew one side was wrong in a conflict, we could not deduce the moral value of the other. Currently, the same cannot be said if we know one side is right. Disproving this requires an exemplary situation in which the moral gain of another does not detract from that of their opponent, in which, to directly oppose perhaps the greatest just war theorist ever, both sides' causes *are* just.

The "Game"

The root of a situation in which both sides are justified in conflict gets to the core of *jus ex bello* and Darrel Moellendorf's independence thesis: "the claim that there is no necessary connection between the justice of resorting to war and the justice of continuing it."[5] We assume the truth of the thesis since this is a discussion of the implications of *jus ex bello*'s tenets more than an evaluation of them. However, familiarization with the proof makes further discussion of the thesis' interaction with other tenets easier, so it will be covered. In general, the independence thesis rests on the truth value of these two claims:

> 1)"It could be morally required to end a war that initially satisfied all four of the principles of *jus ad bellum* even though a victory has not been obtained.
>
> 2) It could be right to continue a war that initially failed to satisfy any one (or more) of the four principles of *jus ad bellum*."[6]

Moellendorf defends the first claim by showing that "a war initially correctly judged to succeed according to the objective interpretation may in the course of events prove to be very unlikely to succeed, or unlikely to succeed within the constraints of proportionality."[7] As for the second claim, Moellendorf "take[s] each [*jus ad bellum*] principle in turn" and shows how they can evolve from being unsatisfied to satisfied. However, only just cause and proportionality are relevant here. Moellendorf shows how it can evolve such that "prior to hostilities there was no injustice whose remedy would serve to justify the war … but during the course of the war such an injustice somehow manifests."[8] His example is the Iraq war, which for the purpose of the thought experiment failed to satisfy just cause on invasion, but soon became a humanitarian crisis requiring continued occupation to mitigate. As far as the proportionality consideration, Moellendorf acknowledges "the very unlikely event that war proves somehow to be less costly morally than it was originally judged to be," but places greater emphasis on how proportionality considerations change with respect to change in just cause.[9] Again, in the case of the Iraq war, no amount of aggression is worth the lack of just cause, but at least some is worth abating a serious humanitarian crisis.

The second tenet of *jus ex bello* relevant to this discussion arises out of the concern that *jus ex bello* "serves to minimize the importance of determining the *jus ad bellum* justice of a war prior to its onset since later moral assessments might

4 Moellendorf, "Two Doctrines of Jus ex Bello," p. 655.

5 Ibid., p. 654.

6 Darrel Moellendorf, "Jus ex Bello," *Journal of Political Philosophy* 16:2 (2008): p. 124.

7 If this scenario is difficult to imagine, reference Ibid., pp. 123-126.

8 Ibid., p. 127.

9 Ibid., p. 128.

redeem an unjust war."[10] "On the contrary," Moellendorf says, "whether or not to start a war is a gravely important moral decision," and "even if it can be just to continue a war that failed to satisfy *jus ad bellum*, the fact that it so failed" remains.[11] This can be seen as the flip side of the independence thesis, since if its main implication is that *jus ad bellum* considerations are inappropriate for judging the continuation of war, the inverse of that is *jus ex bello* being inappropriate for judging the beginning of war. This may seem clear stated outright, but the concern over abuse of *jus ex bello* is a valid one, so it is important to emphasize that "in the event that a war that was unjust to initiate becomes just to continue, the case … is based in part on the danger of compounding the initial injustice … [and] offers no support for the original injustice."[12] Here, it is prudent to acknowledge the difference between this formulation of *jus ex bello* and David Rodin's conception of *jus terminatio*. Though we have previously stated our preference for Moellendorf's terminology and use of it as a stand-in for the ground covered by itself and *jus terminatio*, their relationship is more robust than mere nomenclature. Some of Rodin's work augments Moellendorf's, while other parts of it are in noteworthy tension. The augmentation here is yet another reason to consider *jus ex bello* separate from *jus ad bellum*, whereas the tension is one of the moral status of actors under *jus ex bello* considerations. As far as considering *jus ex bello* separate from *jus ad bellum*, Rodin contends with what the authors feel to be a somewhat reductionist version of Moellendorf's independence thesis defense, calling it "dubious."[13] But he continues with a new reason to distinguish *jus ex bello* from *jus ad bellum*: There are unique costs after the start of war, such as the cost of defeat (as opposed to that of initial surrender). The cost of defeat is not the only "justifying condition for violence appl[ied] differently at the commencement of conflict than when conflict is in progress," but it, as well as others, can give rise to "moral problems" or "dilemmas" if the "*ad bellum* conditions continuously [apply] over the course of the conflict."[14] That is, *jus ad bellum* is insufficient because it leads to lose-lose situations, as opposed to creating clear courses of action, as intended.

Now, it is precisely these situations, or dilemmas, for which Rodin wants to use the language of *jus terminatio*, but offers no real solution besides "more often than not, the only good way to get out of a trap is not to get in."[15] Here is our more concrete reason for siding with Moellendorf's *jus ex bello* over Rodin's *jus terminatio*: It provides a way forward instead of a recursive 'oops.' As Moellendorf explains, our second tenet's allowance of a present justice to coexist with a past injustice more accurately describes such situations:

> "David Rodin maintains that a war that was unjust to begin is necessarily unjust, even though it may also be unjust not to continue to prosecute it … he aims to support that view by means of what he claims to be an analogous dilemma. Suppose one were to dangle another person out the window, then come to realize that doing so is wrong, but be unable to lift the person out of the window without help. One may not simply stop dangling the person by letting go. But Rodin claims that the continued dangling is also wrong. The conclusion drawn from the analogy, however, is not convincing because the continued dangling of the person, if it has become part of an activity of rescue, is not wrong. Doing what one can to rescue a person, even if one's efforts alone are insufficient, is commendable. The example looks rather more like a case in which the moral character of a war has changed because the reason for the war—the cause—has become just."[16]

Rodin names his dangling man analogy a "sunk-cost dilemma"[17] since the moral relevance of the time spent dangling pre-epiphany is complicated. Do we add it to the time post-epiphany and indict the dangler for total time dangled? Or do we ignore it, and regard all the time post-epiphany as righteous given that it was being used to attempt

10 Ibid., p. 130.

11 Ibid.

12 Ibid.

13 For Rodin's characterization of Moellendorf's argument, see David Rodin, "The War Trap: Dilemmas of Jus Terminatio," *Ethics* 125:3 (2015): pp. 676-677.

14 Ibid., p. 677.

15 Ibid., p. 675.

16 It is the opinion of the authors that while Moellendorf's rebuttal, cited here from "Two Doctrines of Jus ex Bello," is insufficient for all of Rodin's arguments, it is capable of being adapted to all of them. To assess Rodin's arguments more comprehensively, see Ibid., pp. 674-695.

17 Ibid., p. 686.

retrieval? Moellendorf obviously thinks this is not a "dilemma," but he does not treat the problem of moral sunk costs lightly. In his discussion of *jus ex bello* proportionality, Moellendorf speaks at length on why the moral costs accrued under the *jus ad bellum* "proportionality budget" should not be completely discounted even while *jus ex bello* considerations may be changing the nature of the conflict.[18] He recognizes the potential for what he calls a "purely forward-looking conception of responsibility" to accrue sunk costs *ad infinitum*. Moellendorf credits Rodin for being first to "ask the question clearly" in his article "Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression." The example Rodin considers, and Moellendorf reconsiders, centers on a set number of acceptable casualties in war and shows that if the next expected number of casualties is less than the original, then fully writing off sunk costs can cause bodies to pile up forever.[19] Moellendorf quotes Rodin saying, "the sunk costs conception of proportionality 'essentially hands a blank cheque to combatants to continue a war on revised assessment of its future costliness.'"[20]

The above metaphors only take Moellendorf so far in his conception of proportionality, however. He writes off discounting sunk costs, but after considering Jeff McMahan's extended trolley problem—in which a malfunctioning lever can kill bystanders before the train arrives at its junction and several people have a chance to consider pulling it before the train arrives—basically says 'it depends' on right limitation. "We need not settle these fundamental matters of proportionality," he says, "to make the modest point that even if one warring party is required to stop a war on proportionality grounds it might not follow that another may not take up the cause."[21] Even more so, the exception he makes for just cause, as far as this paper is concerned, is the most crucial tenet of *jus ex bello*. It is also probably the most suspect, but given its interesting implications, we press forward with about as much justification for it as Moellendorf gives. In "consider[ing] again the case of Afghanistan," he says, "suppose for a moment that preventing post-invasion widespread civil war … provides a just cause for a continued … military presence there. In that case," he continues, "counting all of the past moral costs against the proportionality budget would be rather like factoring the costs of the war in Iraq into the judgment of whether to continue the war in Afghanistan … the costs of another war are not to be counted." What makes this a new war? The "new just cause." Further, in response to challenges based on "temporal and geographical continuity,"

> "[These] are not determinative of the moral identity of the war over time. More important is the cause for war. Judgments of proportionality, prospects for success, and necessity are all relative to the just cause of the war. Once the cause changes, these judgments also change."[22]

Now for a big question: If the moral *identity*, not just the moral *value* of our wars, can evolve through cause alone, can the enemy's as well? What if moral identities evolve in a different direction? Or what if they are simply in a position that resists evolving with us for some reason? Much of Just War Theory is written on a one-sided basis (i.e., how do we know when we/they are right/wrong), but there is little on the relationship between the two. Perhaps there is some latent zero-sum intuition there. However, let us ponder for a moment that since ostensibly our cause for war was never our enemy's cause for war (often, though not always, they are opposites), does a shift in our cause necessitate anything about our enemy's cause? *Jus ex bello* is silent on the issue, but we think the necessity of the connection is doubtful within it, if for no other reason than the leftover injustice of violating *jus ad bellum* principles. Recall how the *jus ex bello* considerations not only do not erase this but occupy such a morally distinct lane that a given actor can simultaneously be justified and unjustified under each. Presumably, the enemy could be so split, or perhaps not even, since if we hypothesize a war in Afghanistan in which there are no other moral considerations besides us as the *jus ad bellum* unjustified aggressor, Afghans would become *jus ad bellum* justified defenders. The space between the physical domain and the moral domain Moellendorf has created here—that

18 Though meant "in the wide sense, as Jeff McMahan understands it, namely, the harms or wrongs imposed only on those who are not morally liable to attack … for the sake of simplicity, [he takes] the moral costs covered by the proportionality budget to be the killing of civilians." Moellendorf, "Two Doctrines of Jus ex Bello," p. 662.

19 For the full argument, see Ibid., pp. 661-668.

20 Ibid., p. 665.

21 For the full argument, see "Two Doctrines of Jus ex Bello," pp. 665-668.

22 Ibid., p. 669.

parties in one physical conflict can be engaged in two distinct moral wars because of a difference in cause—brings up more potential ramifications than can be fleshed out.

For now, let us complicate things even more, augmenting the conversation with Rodin's examination of *jus terminatio* in Iraq. Like Moellendorf, Rodin, in his "War Trap" deliberations, cites the fact that "many people believe … it lacked just cause," going on to say that "once the allies had toppled the Saddam regime, the Iraqi population … faced anarchy and civil war … [and] occupying forces were therefore under an obligation to continue with the occupation" to prevent societal collapse.[23] He says this is a real-life moral dilemma, but for reasons previously discussed, under Moellendorf, this situation is one that fails *jus ad bellum* while meeting *jus ex bello*. Regardless, it is mere background for Rodin's stance that "new entrants (provided they are acting with the appropriate intention) can contribute to an unjust course of action without any culpability at all, if such action is permissible or required on a forward-looking basis."[24] Now, we have also previously discussed the issue with a strictly forward-looking morality, so let us assume there is an implied limit on Rodin's forward-looking basis to keep everything straight. His example includes that possibility, as he considers a U.S. citizen enlisting in the Army after the invasion of Iraq who "believes the invasion … lacked a just cause but … to prevent anarchy there … contribute[s] to the occupation." Rodin says not only is this soldier "without any culpability," but even that "a newly elected president may continue to prosecute a disproportionate war commenced by his predecessors without any culpability, when doing so would mitigate … the war's proportionality."[25] These particular claims seem to fail "right authority," a *jus ad bellum* consideration not explicit to *jus ex bello*, but probably implicit to it. However, reminiscent as they are of Moellendorf's proposition that "another [warring party] may … take up the cause" without assuming previous moral cost, the examples are reasonable to elevate to the state level.

Consider New Zealand. Rodin's idea is that in some cases only initiators are "responsible for … the wrongful course of action."[26] If we use May 1, 2003, the date of President Bush's infamous "Mission Accomplished" speech, as the end date of the invasion and the beginning of the security phase, then New Zealand's deployment of troops in September 2003 would be directly analogous to Rodin's enlistment example. Assuming no further moral complications, surely we would not hold New Zealand responsible for the *jus ad bellum* considerations that we do the United States, and it would have moral credit to its name for right continuation of war under *jus ex bello*.

If we apply this to our hypothetical two-moral-war Afghanistan, then lack of culpability leads to all sorts of interesting places. Say we have a New Zealand analogue continuing a war under *jus ex bello* considerations and not bearing the *jus ad bellum* cost the United States does. At some point, New Zealand fighters could engage Afghans (under the auspices of morally distinct wars, recall) and carry no moral weight of any kind. The same can be said of Afghan allies, since at this point it may be difficult to imagine what moral weight the Afghans themselves are carrying, if there is any, those joining them later certainly have the potential for less. At some point, New Zealand fighters and Afghan allies may find themselves fighting each other, justified under *jus ex bello*, and neither of them holding any kind of moral culpability, for anything. Further, imagine a situation in which the United States and the Afghans leave the war (perhaps not rightly).[27] If the *jus ex bello* conditions hold, we have New Zealand fighters and Afghan allies as not just two but the only participants in a conflict, bearing no moral weight while maintaining their obligation to fight. Such a situation may be difficult to imagine for our particular example, but we believe it is possible given another.

Conclusion

Based off the independence thesis, the non-resolution of *jus ad bellum* transgressions, and the transience of war's moral identity, we have explored how *jus ex bello* considerations give rise to situations in which both sides are

23 Ibid., p. 689.

24 Ibid., p. 691.

25 Ibid.

26 Ibid.

27 Indeed, the United States did withdraw its troops from Afghanistan in August 2021.

separately justified. Within these situations, we identify two immediate moral goods. The first is, perhaps, just another answer to the criticism of *jus ex bello* explored earlier, namely the possibility of military leaders taking advantage of changing moral status by entering a specious conflict under *jus ad bellum* considerations, only to lay claim to the different requirements of *jus ex bello*. The temptation to plan on being able to say 'Yeah, I was wrong then, but now I'm right' may seem great, so Moellendorf's rebuttal is worth repeating here in a different context: "Insofar as [*jus ex bello*] is a case against compounding injustice [i.e., creating another injustice by ending a war that should be continued], it offers no support for the original injustice," in that the violation of *jus ad bellum* stands as a distinct moral injury.[28] That another actor could build off this initial injury to be their just cause for conflict seems a compelling cost to consider *ante bellum*. Very few, presumably, would want to fight someone who has legitimate reason to fight back, as the potential disadvantages are by no means limited to increased enemy resolve and lack of public support.

The second moral good of this *jus ex bello* framework is its implications for maintaining just cause in future conflicts, even when there is a shift from the original *ad bellum* justification. In recalling war's epistemic shroud, it can be easy to forget how many soldiers become convinced of the righteousness of their side in conflict. While moral theorists, the public, or high-level decision makers may tolerate agnosticism about the actual moral state of their conflict and settle for probabilities, often a conscious or subconscious need to resolve cognitive dissonance makes those on the ground believe in the purity of their cause, if only to justify the horrendous actions they are asked to perform. This certainty feeds into the moral intuition this paper has tried to subvert, and they come to believe their enemy is evil since they are good. This reductionism on the ground can lead to dehumanization, which itself can lead to violation of *jus in bello* principles and mass atrocity. Not all soldiers resolve their internal conflict in this way, and certainly most who do, do not follow through on their certainty by pillaging, raping, and massacring, which might itself stem from a moral perversion beyond the reach of the point here. However, if our righteousness in conflict does not necessitate the depravity of our enemy, then that can be yet another institutional and cultural barrier against dangerous lines of thinking.

28 Moellendorf, "Jus ex Bello," p. 130.

The War Against Women in Afghanistan: Is a Surge in Gender-based Violence an Inevitable Consequence of the U.S. Withdrawal from Afghanistan?

Izza Malik

Note: This paper was written before the U.S. withdrawal and Taliban's takeover of Afghanistan in August 2021.

U.S. President Joe Biden announced on April 14, 2021, that the U.S. military would exit Afghanistan by September 11—ending a 20-year occupation. Following the announcement, Afghan women worried that as soon as U.S. and North Atlantic Treaty Organisation (NATO) forces left the country, they would become subject to extreme forms of gender-based violence and abuse. After the U.S. invasion, things improved for women on several counts. Thousands of girls barred from education under Taliban rule went to school. Women were allowed to join the workforce and earn a living after years of being confined to their homes. However, as soon as the president made his decision to end America's 20-year war in Afghanistan, Afghan women worried that all these gains would be lost and they would have to endure the same level of violence that they did in the 1990s when Afghanistan last fell into the Taliban's hands.

On April 14, 2021, U.S. President Joe Biden announced that all American troops would leave the country by September 11 and that the drawdown of the remaining 2,500 troops would be completed by the 20th anniversary of the 9/11 attacks—a cataclysmic event that had touched off the initial military invasion. Some weeks after al-Qa`ida attacked the United States, President George W. Bush declared that the United States had launched attacks against al-Qa`ida and Taliban targets in Afghanistan to bring them to justice. Inside Afghanistan, the Taliban government and its fighting forces were crushed by American troops by the time 2001 drew to an end.[1]

With the U.S. withdrawal, a mission that has vexed four American presidents will finally come to an end. In the midst of President Biden pledging continued support for Afghanistan and with peace talks at an impasse, the perennial objective of the war remains the same: ensuring that Afghanistan is never used again as a terrorist base to plan and launch attacks against the United States.

In the backdrop, violence has escalated in the country, especially against women—generally a less opaque concern in peace talks. Fear is engulfing Afghan women now that U.S. and North Atlantic Treaty Organization (NATO) forces will leave the country. Afghanistan is consistently ranked one of the worst countries in the world for women;[2] it is susceptible to the most extreme forms of gender-based violence and abuse.

After the U.S. invasion, women's rights in the war-torn Afghanistan became a rallying cry and were increasingly prioritized. From a healthcare system completely in shambles where women had very little access to any medical services, 3,135 health facilities had been built by 2018, which 87 percent of Afghans could access (at least in theory as the ever-increasing presence of Taliban, militias, and criminals made travel extremely unsafe). The enrollment of girls in primary schools increased from 10 percent to 33 percent by 2017—still low, but indicative of some progress. Over the same time period, the enrollment of girls in secondary education increased from six percent to 39 percent. Additionally, by 2020, 21 percent of Afghan civil servants were women,16 percent of them in senior management levels; and 27 percent positions of the Afghan parliament were occupied by women (under the Taliban, almost no

1 "The U.S. War in Afghanistan: 1999 – 2021," Council on Foreign Relations, retrieved May 18, 2022.

2 Shamali Madina Kohistani, "Afghanistan Ranked Worst Country for Gender Gap," Tolo News, July 14, 2022.

Izza Malik studied Political Science at the Lahore University of Management Sciences. His major areas of interest are misinformation, democracy, and political mobilization, and he hopes to explore them more at the graduate school level.

women held any political positions).[3] However, despite these gains for—mostly urban—women and a remarkable shift in the role of women in Afghanistan in the post-Taliban political dispensation, institutionalized misogyny and patriarchal customs remain entrenched in the society.

Given the hastened withdrawal of American troops, Afghan women fear that a triumphant Taliban will coalesce on Afghanistan's political scene, take hold of more territory, and ratchet up and reinstitute oppressive measures they enforced under their regime in the 1990s. The specter of violence against women is an enduring problem in Afghanistan. In this paper, I argue that the U.S. withdrawal will inevitably lead to gender-based violence in Afghanistan.

Theoretical Framework

There are different conceptualizations of violence against women. "Sexual" and "sexualized" violence are construed differently. The argument goes that sexuality and sexual acts—even violent ones—are not just tied to individual preferences; they mirror the power structures in society. The feminist perspective also holds that patriarchal institutions lead to violence.[4]

Some theorists argue that sexual violence and non-sexual violence can be differentiated; sexual violence is distinct from other forms of violence—for example, assault or murder. Alternative debates, however, insist that all violence is gendered. In this view, violence is a direct consequence of patriarchal social relations, and therefore, it should be analyzed from the "sexual violence approach," even if no overt sexual act takes place.[5] Sexual violence against women then includes violence that occurs at home, the workplace, or the street corner; violence based on prejudices such as racism, homophobia, and xenophobia; violence that takes place the world over, including domestic and international trafficking of women; and violence in war.[6]

This leads to questions around the behavior of men as a collective group and the benefits they draw from sexualized violence. Scholars employing this perspective say that men, as a group, benefit from wielding sexual violence, or simply its threat, even if they are not direct perpetrators of violence, whatever their social position. Women from across the racial and class spectrum fall victim to sexual violence. Even in the way that state regimes are built, the right of all men to abuse women is preserved. Women are underrepresented in state institutions and therefore have little effect on state policies.[7] Third-world states in particular serve as sites of violence against women. In India, for example, state brutality has obstructed the women's movement.[8]

This paper takes the position that violence is, in fact, embedded in the patriarchal fabric of the Afghan society. The state's patriarchal and misogynistic dispositions and men's unchallenged political and personal power leads to women becoming targets of sexual violence in Afghanistan. The Taliban rule in Afghanistan in the 1990s was largely perceived as illegitimate across the world, and the Taliban fell short in putting state structures in place to protect Afghan women from the ravages of war. The "statelessness" of Afghanistan, in turn, led to a lack of institutional development that was required to perform basic functions of a modern, democratic state, including protecting women against violence. Fast forward to 2021, we see the mantle of the same kind of statelessness falling over Afghanistan all over again.[9] Though the Taliban have formally planted themselves in the government, their rule is widely considered illegitimate because it falls short of providing women their freedoms and basic rights among other reasons.

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3 John R. Allen and Vanda Felbab-Brown, "The fate of women's rights in Afghanistan," Brookings Institution, September 2020.

4 Susie Jacobs, Ruth Jacobson, and Jennifer Marchbank, *States of conflict: gender, violence, and resistance* (London: Zed Books, 2000).

5 Marianne Hester, Liz Kelly, and Jill Radford eds., *Women, Violence and Male Power* (Bristol, PA: Open University Press, 1996).

6 Chris Corrin ed., *Women in a Violent World* (Edinburgh: Edinburgh University Press, 1996).

7 Ibid.

8 Shirin Rai, *Women and the State in the Third World: Some Issues for Debate* (London: Taylor and Francis, 2013), pp. 13-30.

9 Rubina Saigol, "At Home or in the Grave: Afghan Women and the Reproduction of Patriarchy," Sustainable Development Policy Institute, 2002.

The Advent of the Taliban

In September 1996, from the minarets of mosques in Kabul, the Taliban announced their arrival. Their entry into the government had devastating consequences for Afghan women. The Revolutionary Association of the Women of Afghanistan (RAWA) drew up an "abbreviated" list of 29 extremely harsh restrictions that the Taliban imposed on women. These included women being beaten in the streets if they wore white socks or walked outside without a burqa and being denied access to voting or participation in politics in any way because the Taliban claimed that they were less intelligent than men.[10]

The way the Taliban served justice was also vicious, barbaric, and utterly absurd. Their notions of meting out justice revolved around flogging and imprisonment for minor infractions, amputating hands for theft, and death by stoning for adultery or "multiple intercourses"—sleeping with two or more men in a month—if four or more witnesses testified.[11] Journalist Jan Goodwin reported a Taliban spectacle that she witnessed in 1998: a decrepit, worn-down Olympics stadium in Kabul thronged with a sea of 30,000 men and boys, costermongers touting nuts, biscuits, and tea to a very eager crowd. These men had gathered to see a young woman, Sohaila, receive 100 lashes because she was found strolling in the street with a man who was not her relative—a crime severe enough for her to be deemed guilty of adultery. Because Sohaila was single, she was flogged; if she had been married, she would have been stoned to death.[12]

Women's freedom of movement was severely curtailed under Taliban rule. Women could not leave the house without completely veiling their entire bodies or a *mahram*, a close male escort. Those who could not afford a burqa or had no male chaperone were not allowed to leave their houses even if it was for basic, everyday things. Several women felt hesitant about seeking medical attention for the fear of being beaten up if they were seen outside without a burqa. The Taliban even declared a hospital's waiting room as "public," which meant that a woman was forbidden from showing up to a hospital without a veil. A woman reported that as her mother's asthma worsened in a hospital ward, she removed her face veil to breathe. A Talib stormed into the ward and gave her mother 40 lashes while she looked on despairingly.[13]

Women were prohibited from seeking employment or going to school; the Taliban decreed that schools were a gateway to hell, and that they eventually led women into prostitution.

Within three months, 63 schools were closed, affecting 103,000 girls. Women who previously worked as teachers and medical workers were cast into unemployment, illicit labor, and penury. They were often reduced to beggars on the streets, selling all their possessions to make ends meet. Many women turned to prostitution while trying to eke out a living. Women were even restricted from laughing or talking too loudly so that they would not sexually excite males. High heels were banned because their sounds were perceived as provocative. Makeup and nail varnish were also banned; a woman's thumb was cut off because she wore nail polish. The Taliban went so far in impeding women's mobility and contact with the outside world that they forced women into painting their home windows black, depriving them of even the ground-level view of the street. A Taliban minister was heard saying that there are only two places for a woman—her husband's bed and the graveyard. Even small acts of defiance—often unintentional—resulted in harsh punishments such as whipping, public beatings, and stoning to death.[14]

RAWA suggests that suicide escalated among Afghan women under the Taliban because of experiencing depression that resulted from cabin fever. They were cooped up within four walls and suffered assaults on their bodies and honor. Their endurance slowly crumbled, leading to a wave of self-immolations among Afghan women. RAWA gives the example of Lida, a 20-year-old girl, who doused herself in kerosene and set herself ablaze because of the overwhelming feelings of depression she felt under the Taliban rule. RAWA's anecdotal evidence was confirmed by

10 Rosemarie Skaine, *The Women of Afghanistan Under the Taliban* (Jefferson, NC: McFarland & Company, Inc., Publishers, 2002).

11 Ibid.

12 Robert D. Crews and Amin Tarzi eds., *The Taliban and the Crisis of Afghanistan* (Cambridge, MA: Harvard University Press, 2008).

13 Ibid.

14 Skaine; Crews and Tarzi.

a survey of Afghan women conducted by the Physicians for Human Rights (PHR). The survey revealed that 97 percent of the women experienced depression and 86 percent of the women demonstrated symptoms of anxiety because of the daily violence that they faced at the hands of the Taliban.[15]

The Taliban rule ensued till 2001, after which their government was toppled by American troops in retaliation of the September 11 attacks.[16]

Different Frames of Violence

Gender-based violence in Afghanistan takes two forms: "legitimate" and "non-legitimate." Legitimate forms of violence are lent legitimacy through tradition and religion. These include "forced marriage," "child marriage," and "marital rape." Non-legitimate types of violence are seen with reproach, and include "rape," "gang-rape," and "prostitution."[17] Afghanistan is a patriarchal society, where women often find themselves vulnerable and prone to extreme forms of violence. A study conducted in 2015 revealed that 90 percent of women in Afghanistan fall victim to gender-based violence, mostly perpetrated by close family members.[18]

Afghanistan is a country weary of war. In each war, violence against women has been used as a weapon.[19] State repression against women increased dramatically with the beginning of the mujahideen era. The president at the time, Burhanuddin Rabbani, issued religious decrees preventing women from holding office in the government, working in the media, and forcing them into wearing a veil.[20] Most of these mujahideen have persisted in positions of authority, conserving the gender order constructed by the Taliban. Women are far smaller in stature than men in the current political structures, which are sewn with threads of misogyny; to them, women are "second human."[21] Under the rule of the mujahideen, rape, kidnapping, tearing off women's breasts, and cutting open wombs of pregnant women were commonplace.[22]

Marriages were—and still are—an important and extremely politicized institution. Forced marriages have often been used to win political alliances; in case a political proposal was turned down, consequences fell on women. For example, when a 17-year-old girl refused to marry a 58-year-old commander, he stormed her house and took her away by force. Public rapes have also been used to achieve political ends; they have often been used to smear the sexual purity of women in war. During the civil war in 1993, Karima was raped while she was four months pregnant. The militants raped her and her sister-in-law when they tried to escape from home because of the war. She was so severely traumatized that she attempted suicide several years afterward.[23]

After the U.S. invasion, violence against women changed its face. Although there was an emphasis on "de-veiling" women and sending them back to school, these objectives have mostly remained unfulfilled. Even after the Taliban's downfall, all political institutions remained plagued with misogyny. Women's testimonies were blatantly disregarded. The law was deaf to their pleas. One such example was of a woman named Khatera. She was repeatedly raped by her father and later became pregnant. Her testimony, however, fell through the cracks. Rapists have frequently escaped punishment because they have been supported by the police or local commanders.[24] The violence became more militarized after the United States invaded Afghanistan and the opium trade thrived. The relentless dissemination

15 Crews and Tarzi.

16 Lida Ahmad and Priscyll Anctil Avoine, "Misogyny in 'Post-War' Afghanistan: The Changing Frames of Sexual and Gender-Based Violence," *Journal of Gender Studies* 27:1 (2016): pp. 86-101.

17 Ibid.

18 Ibid.

19 Suk Chun and Inger Skjelsbæk, "Sexual Violence in Armed Conflicts," *PRIO Policy Brief* 1 (2010).

20 Carol Stabile and Deepa Kumar, "Unveiling Imperialism: Media, Gender and the War on Afghanistan," *Media, Culture and Society* 27:5 (2005): pp. 765-782.

21 Ehsan Shayegan, "The Invisible Trauma in Afghanistan," *Global Journal of Arts Humanities and Social Sciences* 2:5 (2014): pp. 25-35.

22 Huma Ahmed-Ghosh, "Afghan Women: Stranded at the Intersection of Local and Global Masculinities," Center for Women Studies, 2006.

23 Ahmad and Avoine.

24 Ibid.

of weapons, military training, and the drug trade have radically affected women's lives. The lines between the private and public realms have dissolved; both domains have become breeding grounds of violence against women.[25] The devastating impact of militarization and increased opium consumption are also blatantly visible on women. In 2015 RAWA reported on the case of a woman named Setara. Her husband, an unyielding drug addict, pressured her into providing him money to sustain his addiction. When Setara could not collect enough money, he struck her with a rock and cut up her lips and nose. Because all institutions in Afghanistan are extremely misogynistic, Setara struggled with filing for a divorce.[26]

Although Ashraf Ghani's—Afghanistan's current president—regime is supported all around, it is no surprise that former mujahideen sit in all important positions in the government. His cabinet is comprised of warlords. Having former militants in important political positions means increased social, cultural, and political prejudice against women. They perpetrated violence against women with the materiel they collected during wars.[27] A report by the Afghanistan Independent Human Rights Commission estimated that 91 percent of sexual assaults and honor killings that occurred between the years 2011 and 2013 were carried out by gunmen.[28] In 2005, a woman named Sara was gang-raped by three gunmen in her village, Ruyi Du Ab, in Samangan. A local commander, Karim, ordered the rape. There were competing judgments on why the rape was ordered; some reports said that Sara's son raped Karim's relative, and others said that he refused to align with Karim's election campaign. Whatever the reason, it was Sara's body that became a site of combat and vengeance.[29] In recent years, things have marginally improved for women. Several NGOs working with the U.S. Fund for UNICEF for female education and women empowerment in Afghanistan have emerged. These include Girl Scouts of the USA, Delta Kappa Gamma Society, and Women's National Book Association. RAWA has especially proven exceptional in helping women living in Afghanistan and its border regions. RAWA ran several underground schools even during the Taliban era so that women could pursue education unimpeded.[30] Additionally, with the U.S. troop presence in the country, more than 270 female judges worked in the justice system. Special courts with female judges, along with special police units and prosecution offices were established to deal with cases of violence against women. These women brought reform to several courts, especially in urban areas, by sitting in judgment of men and delivering justice to large numbers of women and girls assaulted by close male relatives.[31]

Female education is still not widespread in Afghanistan. The main impediments to women's education in Afghanistan are related to the persistence of violence against women. Some of these problems include criminal behavior such as "warlordism," "drug trafficking," "extortion;" gender-based violence such as "rape," "gang-rape," "murders," "abduction," "forced marriages;" "suicide attacks" and the bombing of girls' schools; ethnic violence—especially sexual violence against Pashtun women in the cities of Kandahar and Mazar.[32]

Cultural Explanations of Violence

In all instances of violence, the currently available evidence points to a couple of causal commonalities—socio-cultural factors and misogyny. First, the mantle of preserving men's honor falls on women's shoulders. If one woman is sexually assaulted, her entire community feels chagrined. Second, misogyny contributes to and sustains gender imbalance and the inferior stature of women. It is not simply an enduring detestation of women; it is a far more complicated system with far-reaching ideological and political implications. All political and legal institutions in

25 Charles Hirschkind and Saba Mahmood, "Feminism, the Taliban, and Politics of Counter-Insurgency," *Anthropological Quarterly* 75:2 (2002): pp. 339-354.

26 Ahmad and Avoine.

27 Lida Ahmad, "Rape and Gang Rape in War and Postwar Afghanistan," *Revista Temas* 3:8 (2014).

28 Ahmad and Avoine.

29 Ibid.; "'Today We Shall All Die': Afghanistan's Strongmen and the Legacy of Impunity," Human Rights Watch, September 6, 2021.

30 Hayat Alvi-Aziz, "A Progress Report on Women's Education in Post-Taliban Afghanistan," *International Journal of Lifelong Education* 27:2 (2008): pp. 169-178.

31 David Zucchino, "Afghan women who once presided over abuse cases now fear for their lives," *New York Times*, October 20, 2021.

32 Alvi-Aziz.

Afghanistan are built on misogynistic foundations. They give women very little space to seek justice.[33] The successive wars in Afghanistan reconfigured the definitions of masculinity and femininity. The female body became a site of conducting politics and explicitly tied to the "symbolic" and "real" reproduction of a nation. Hence, controlling the body and shrouding it in the notions of "morality" makes it extremely important in "war" and "post-war" landscapes.[34] In Afghanistan, a country ravaged by war, women's bodies became a weapon of war. Many women were raped, abducted, or forced to marry against their will.[35] They also became a site of violence and revenge perpetrated by rival political factions; raping women became a part of their political campaigns.[36]

Conclusion

After the U.S. withdrawal from Afghanistan is completed, the worry is that the Taliban may take back power by force, or through political negotiations with the Afghan government.

Regardless, their hold will ineluctably spread. In a country where a 40-year war drags on, many Afghans fear the beginning of a new, inevitable civil war. The resilience of the Taliban within Afghanistan's political landscape means that women will have to confront the same level of oppression that they did when the Taliban last ruled from 1996 to 2001.

If history is any indicator, a wave of devastatingly regressive laws and edicts targeting women will permeate the society. Given that women are a marginalized group and have been used as expendable political fodder in the past, it is not unreasonable to expect that once again the Taliban and the men of the Afghan government will put women's rights and the progress made so far in a thimble and use it as leverage to satisfy their own ambitions. This time, however, even the American pretension about women's rights in Afghanistan will not be available to provide comfort. And therein lies the real tragedy.

Recommendations

The world has a responsibility to pull women and girls in Afghanistan out of the current crisis by upholding their rights, and the United States has a special obligation to help women if the world fails in making it a reality. This assistance should include:

• Humanitarian – primarily livelihood opportunities for households in which women were/are the primary wage earners

• Education – allowing women and girls access to education through community-based education programs that are designed and operated by non-governmental groups

• Psychological – trauma and mental health services that provide safe and secure counseling

• Protection – for women and girls facing persecution and gender-based violence, even for women and girls outside of Afghanistan.

Epilogue: The Taliban in the Future

Note: This paper was written before the U.S. troop withdrawal from Afghanistan. The following section outlines the current situation.

The Taliban took power on August 15, 2021, after waging an insurgency against the U.S.-backed government in Kabul. The successful takeover marked an important milestone in the insurgents' unfaltering efforts to increase their

33 Ahmad and Avoine; Laura Sjoberg and Megan Gerecke, "Explaining Sexual Violence in Conflict Situations" in Laura Sjoberg and Sandra Via eds., *Gender, War, and Militarism: Feminist Perspectives* (Santa Barbara, CA: Praeger, 2010).

34 Francine Banner, "Beauty Will Save the World': Beauty Discourse and the Imposition of Gender Hierarchies in the Post-War Chechen Republic," *Studies in Ethnicity and Nationalism* 9:1 (2009), pp. 25-48.

35 Shaista Wahab and Barry Youngerman, *A Brief History of Afghanistan* (New York: Checkmark Books, 2010).

36 Ahmad and Avoine.

stranglehold on the Afghan government. However, ever since the Taliban have regained power, they have been seen stripping away women's hard-won freedoms.

Afghan educators are trying to grapple with the new reality of education. The emerging government has made it clear that it intends to deny women and girls the educational freedoms that they earned over the past 20 years. The system will likely be as—if not more—draconian than when the Taliban last ruled in the 1990s. After schools reopened, only male students were asked to report for their studies from grades seven through 12. The Taliban did not ask girls in those grades to come to school, which they understood as a directive to stay home. Only girls in grades one to six have been allowed to attend school. The Taliban have also made it compulsory for female students to wear a hijab to school and have forbidden male teachers from teaching girls.[37]

The Taliban have banned women going to work, which was seemingly a temporary measure that the Taliban claimed they enforced for security reasons. Consequently, in just a few weeks of the Taliban retaking power, women's earnings vanished, making it difficult for them to make ends meet. The Taliban also used violence to clamp down on women's protests against the Taliban government; Taliban members scared marchers by pointing firearms at them and called them "puppets of the West" and "whores." The Taliban went so far in their quest of crushing women's protests that they used an electric device to shock some of them and physically assaulted several protesters as well.[38]

There is a deep-seated feeling of uncertainty that engulfs Afghan women. Ever since the second iteration of the Taliban came into power, women's morale has sunk even lower, because they are seeing their biggest fears realized: reversion to a society where violence against them was pervasive, and they had very little rights.

37 Victor J. Blue and David Zucchino, "A Harsh New Reality for Afghan Women and Girls in Taliban-Run Schools," *New York Times*, September 20, 2021.

38 Sahar Fetrat and Heather Barr, "Taliban Use Harsh Tactics to Crush Afghan Women's Rights Protest," Human Rights Watch, January 18, 2022.

The Dissipation of Liability: Rescuing the Theory of Intervening Agency

Jim Kelly

Within the conventional Just War Theory, there exists a principle that non-combatants are immune from being targeted. However, scholars such as Jeff McMahan argue that those who are morally responsible for threatening lethal harm incur liability to be harmed themselves, defensively. In this context, a debate has emerged over whether non-combatants supporting an unjust war could justifiably be targeted by the victims of that war. This paper explores the moral justifications for discrimination, where only combatants can be rightfully attacked and killed, while non-combatants enjoy the privilege of non-liability, specifically examining the Intervening Agency theory that draws on the concept of causal proximity and liability to defensive killing.

According to conventional Just War Theory, combatants are defined as that class of people whose enterprise is to fight on command, being equipped with weapons and trained in the art of combat.[1] Combatants are typically soldiers. Non-combatants, conversely, are those not directly involved in the violence of war, typically known as civilians. There is a principle within conventional Just War Theory that non-combatants are immune from being targeted. However, in his book *Killing in War*, Jeff McMahan argues that those who are morally responsible for threatening lethal harm incur liability to be harmed themselves, defensively.[2] In this context, a debate has emerged over whether non-combatants supporting an unjust war could justifiably be targeted by the victims of that war. Non-combatant immunity coincides with Just War Theory's principle of discrimination, which stipulates that attackers must discriminate between non-combatants and combatants when choosing their targets. This makes sense to the casual observer, but in philosophical ethics, one wants to identify an explicit moral justification upon which to base the principle of non-combatant immunity. After all, why would a civilian instigating and perpetuating an unjust war be immune from attack while the conscripted soldier is not? Clearly, the instigator and funder of a war is as morally responsible for the harm inflicted, if not more so, than the soldier. And if this is the case, then what is the moral justification for discrimination, that only combatants can be rightfully attacked and killed, while non-combatants enjoy the privilege of non-liability? One theoretical answer to this question is Intervening Agency.[3] Intervening Agency, however, is not wholly unsusceptible to reasonable reservations. But Intervening Agency can be rescued from those problems and effectively stand as a moral justification to the principles for discrimination and non-combatant immunity.

The idea of Intervening Agency as presented by David Rodin, and subsequently challenged by Helen Frowe, is proffered within the context of the temporal and causal factors relevant to the agent threatening unjust harm. As Rodin notes in his response to the "troubling conclusion" that McMahan makes about non-combatants being liable to direct attack in "certain rare circumstances," causal proximity will affect liability relative to the imminence of the attack. The hypothetical Rodin provides to explain this is that of "a cutler who made a knife used by a third party to threaten the life of the [victim]."[4] "Most people," he posits, "would not believe that [the cutler] is liable to be killed even if this were the only way to avert the attack."[5] Rodin concludes that "if causal proximity plays a role in determining liability," then one can avoid the "troubling conclusion" that remote agents (i.e., civilians) are liable to defensive killing, regardless of the inherent moral responsibility they incur by supporting the unjust war efforts.[6] Rodin argues that moral responsibility does not alone determine liability, but that proximity plays a crucial role. He

1 Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2015), pp. 144-145.

2 Jeff McMahan describes liability as a state where a person would not be wronged by being attacked. It comes from the notion that all humans have the right to not be attacked, and to attack them is to violate that right. But one has the agency to behave so as to forfeit that right. By attacking another, one forfeits their right to not be attacked; hence, they are liable to harm. For more on the principle of liability to defensive killing, see Jeff McMahan, "Just Cause for War," *Ethics & International Affairs* 19:3 (2005): pp. 1-21.

3 David Rodin, "Justifying Harm," *Ethics* 122:1 (2011): p. 91.

4 Ibid., p. 90.

5 Ibid., p. 90.

6 Ibid., p. 90.

admits that the potential problems of assigning some degree of liability in accordance with the imminency of the attack are "unlikely to be settled at the level of intuitive assessment of cases," but that a "good theoretical explanation for why causal and temporal proximity affect liability" is required.[7] The proposed explanation is Intervening Agency. From Rodin:

> Where two or more persons share responsibility for unjust threatened harm, defensive force should be presumptively directed at the agent whose intervening action is most proximate to the threat. However, in order to be plausible, those principles will have to allow for cases in which the proximate agent is an institutional or collective agent. For example, in war, defensive force can be employed against anyone within the chain of command, not merely those who fire the guns. Similarly, any member of a criminal conspiracy seems potentially liable to defensive force. What seems to make the difference […] is a particularly strong form of shared intention to bring about harm, often existing in a formal or institutional context.[8]

Intervening Agency is a theory that essentially boils down to the concept of proximity. In justifying the discrimination between combatants and non-combatants, Intervening Agency identifies the last component in the causal chain of unjust harm (e.g., the soldier firing the rifle at the victim) as the most liable to defensive killing, because the soldier is the proximal agent. The rescued version that this author presents here incorporates the notions of social agreement and dissipation to make up for those reasonable reservations to which Intervening Agency is susceptible.

Those reservations are illuminated in Helen Frowe's, "Non-Combatant Liability in War."[9] Here, Frowe uses slightly altered versions of the hypothetical scenarios that Rodin presented to set up her argument against Intervening Agency:

> **Naughty Minister:** Criminal has been released from prison as a result of financial cuts in the prison system. The cuts are a direct result of fraudulent mismanagement of the finances by the Minister, who acted in the full knowledge that his actions would endanger the public. Criminal is trying to kill the Victim, who can save his life either by killing Criminal, or by lethally trampling over Minister.
>
> **Provocation:** Villain culpably provokes Attacker into attacking Victim. Victim can save his life either by killing Attacker, or by lethally trampling over Villain.[10]

According to Intervening Agency, Criminal and Attacker are the proximal agents, and their liability to defensive killing supersedes that of Minister and Villain, respectively. But Minister and Villain bear a greater measure of moral responsibility, or culpability. This result, where the proximal agent bears more liability to defensive killing, is morally challenging, because we know that it was the actions of Minister and Villain that ultimately led to the harm upon Victim. And does it not seem right that those most responsible for the outcome should be the most liable to defensive harm? This is not to say that Attacker and Villain bear no liability, for they are agents who of their own volition have chosen to inflict harm upon Victim, third-party influence notwithstanding. However, though Intervening Agency identifies the proximal agent as the most liable, it is clear from these scenarios that the proximal agent is not always the most *culpable*. As such, we have pinned liability to those less culpable.

Culpability in war is not exclusive, nor is it binary. Culpability is scalar. Non-combatants who vote for government officials knowing they will work to wage an unjust war, happily pay taxes for funding the war efforts, and work in bomb-making factories or for supply-chain contractors to move necessary equipment to strategic locations bear a greater degree of culpability than non-combatants who actively protest the war and have sought to avoid contributing to war efforts. But war would not be possible without the cooperative economic and logistical efforts of the populace *in toto*. Therefore, it is reasonable to conclude that all non-combatants bear some varying measure

7 Ibid., p. 91.

8 Ibid., p. 91.

9 Helen Frowe, "Non-Combatant Liability in War," in Helen Frowe and Gerald Lang eds. *How We Fight* (Oxford: Oxford University Press, 2014).

10 Ibid., p. 176.

of culpability in war because without their collective contributions, both witting and unwitting, the war could not exist.

Still, even in war, certain lines should not be crossed. The line demarcating combatants and non-combatants as legitimate targets is one of the lines drawn by conventional Just War Theory. Indeed, targeting civilians is a slippery slope that is in our best interest to avoid. However, we must satisfy our conceptions of morality while staking out that line, lest we find we have drawn it arbitrarily. As is seen by the application of Intervening Agency in the two scenarios mentioned above, the theory faces some problems when used to justify that line. But an augmented version of Intervening Agency that incorporates the concepts of social agreement and dissipation into its mechanics does provide the "theoretical explanation for why causal and temporal proximity affect liability," in a way that provides a moral undergirding in support of the principle of discrimination.

Of all people, Frowe is the critic whose suggestion rescues Intervening Agency from these problems. She proposed that "an intervening agent can voluntarily take on the liability to defensive killing."[11] This proposal is her offer of a rescued version of Intervening Agency, and it is close to what this author believes to be the most tenable moral defense of discrimination and non-combatant immunity, despite the fact that Frowe presents it as an impotent final trick to try to save Intervening Agency, a theory she finds lacking. However, when dismantling this rescued version, she only goes on to say that it "doesn't seem like something" we, as society, would agree to do.[12] For all of Frowe's insight and thoughtfulness in her approach to moral justifications of non-combatant immunity, this author believes this is where she is mistaken. Frowe writes:

> We might try to rescue a version of [intervening agency] by arguing that an intervening agent can voluntarily take on liability to defensive killing. This is another pretty popular idea with respect to the relationship between combatants and non-combatants. We talk of combatants 'assuming risks' on behalf of their non-combatants: by donning a uniform, a person invites enemy combatants to target them instead of the non-combatants. But I doubt that this will do the trick. It would be very odd if those posing an unjust threat got to decide amongst themselves who was liable to be killed to avert that threat, making it impermissible for their victim to aim defensive force at some group members rather than others. Liability to defensive harm doesn't seem like something we get to allocate by agreement.[13]

Frowe's argument fails to take into account that the constructs of a society are a result of social agreement. Morality and war are two such constructs. And the attributes of liability and culpability are shareable if that is what society agrees for them to be. We do this with money. We do this with time. We do this with social norms, mores, and taboos. We decide, as a society, all manner of constructs in our cooperative effort to live happy, or peaceful, or at least stable and predictable lives. If we collectively agree that a piece of paper printed at the mint is valued at X, or that we should change the hours of our clocks on the same day every year, then why could we not agree that an intervening agent can volunteer to take on the liability of defensive harm? Morality is an abstract concept, like time, and it is subject to our general, collective thoughts on the matter. This author sees no reason why liability is barred from such a category.

As mentioned previously, culpability is not exclusive, but shared, and it scales relative to the degree of support given to the unjust war effort. It seems, however, that in our search for that demarcating line of discrimination, we want liability to be exclusive. And when we begin drawing that line among civilians, we approach the slippery slope. Therefore, to justify the principle of discrimination between combatants and non-combatants, we agree that liability can be voluntarily transferred. But the transferability of liability is not its only quality that we can rely on to satisfy our concerns about principles of discrimination.

Liability can also be ephemeral. Hypothetically speaking, if all the combatants in an unjust war have been killed, culpability of that war still exists among the non-combatants. But they are no longer liable to defensive harm because

11 Ibid., p. 179.

12 Ibid., p. 179.

13 Ibid., p. 179.

the liability has disappeared. Liability comes with threat, and the remaining non-combatants in that society, though culpable, no longer pose a threat. So, even though Frowe and others might argue that liability cannot be rightfully transferred from one to another, and since liability to defensive killing only exists where there is a threat of danger, it stands to reason that liability dissipates once the assumer of risk (i.e., uniformed military personnel) is eliminated. And this is how the concepts of social agreement and dissipation rescue Intervening Agency as a satisfactory moral basis for non-combatant immunity and discrimination. The rescued version allows us to draw the line of distinction at the point of non-combatant.

Problematizing ethical theories like Intervening Agency with hypotheticals and abstruse arguments can at times feel dubious when considered in light of the blood and death of the warzone. In an attempt to provide a purely ethical (not merely ethical in the applied sense) basis for the principles of non-combatant immunity and discrimination, we problematize through hypotheticals to the point of moral futility. Franz Kafka's short story, "The Top," illustrates this conundrum. The main character, a philosopher, believes that if he can understand the smallest detail—in this case, the detail of a spinning top that children are playing with—then he can understand all things. But every time he picks up the spinning top to observe its details, he finds nothing but disappointment, followed by the piercing screams of irritated children. Like Kafka's philosopher, when examining ethical arguments, we often peer so closely into the mechanics of the thing we wish to understand that we look right past the very thing that intrigued us in the first place, leaving what we desired to know in the fading wake of our zealous investigation.[14]

Our efforts to problematize and challenge theories that provide moral grounding for principles of Just War Theory are not misguided, and they are certainly not fruitless. In searching for a principled justification of non-combatant immunity, our aim is to stand with moral certitude that it is unacceptable to kill the children of a belligerent nation that has waged unjust war against its victim. Now, drawing the killing line with the children of a belligerent nation is an easy line to draw. But what if we move the line to include the disabled, or the elderly, or pregnant women, or farmers? As we move that line, we begin to feel a little better with each degree. Perhaps pregnant women are also off limits, but maybe farmers can be included, and that would not feel as egregious as assigning liability to pregnant women and children? If we continue sliding that line in the direction of civilians working in bomb-making factories and for supply-chain contractors, we feel increasingly better about labeling those who fall behind that line as being liable to defensive killing. So, where do we draw the killing line in an unjust war? That line has been drawn by the traditionalists of Just War Theory, and that line is between the combatant and the non-combatant. It is a good practice to examine this line and the reasons for which it has been drawn there, so long as our practice does not leave us adrift among the aimless waves of esoterism. If morality exists, then it must shape our behavior, no matter how hard it may be to divine its boundaries.

If war is a collective effort by combatants and non-combatants—and as such, war cannot be made without the cooperative effort of both classes, indeed that, according to Frowe and "many just war theorists, […] there doesn't seem to be any principled – *or morally significant* – difference between the contributions" of the two—then what if one of those groups volunteered to be liable to defensive killing?[15] That group could wear a uniform that identifies them as such. That group could take the most dangerous positions in the war effort. Persons mobilized for the war effort would consist predominately of persons from that group, though not necessarily exclusively, but predominately nonetheless. That group would be 'directly involved in the hostilities.' And that group would consist of persons who, no matter what their assignment or duty is within that group, they would be not only willing, but committed to picking up a gun and killing enemy combatants. This group would be, of course, uniformed military personnel.

Frowe argues against this by objecting to the idea that liability can be transferred. "Even if a person volunteers to bear a defensive harm in your stead, this does not rid you of liability nor make it impermissible for your victim to kill you."[16] However, Frowe's assumption does not quite 'do the trick,' and here's why. Culpability remains, but liability has dissipated with the elimination of a necessary component that helped create the threat. If German citizens were

14 Franz Kafka, "The Top," in Nahum N. Glatzer ed. *The Complete Stories* (New York: Schocken Books, 1971), p. 444.

15 Frowe, pp. 174-175.

16 Ibid., p. 179.

responsible, and therefore culpable, for the unjust harm inflicted during World War II, are they necessarily liable to defensive killing after the war ended? Of course not. The whole idea of liability to defensive killing exists only in a situation of threat, such as in the domain of war. Remove the threat, and there is nothing to defend against.

First, if we were to use the example of "Provocation" again, once Victim killed Attacker, Victim would no longer be permitted, legally or morally, to also kill Villain. Once Attacker is dead, the organization whose intent it was to kill Victim is no longer functional as a threat. The two work together to accomplish the full consequences of the threat, which leads this author to his second point. If killing in unjust warfare is a result of a group consisting of non-combatants and combatants alike, then the threat is neutralized once part of that group has been killed. It does not matter if the group of non-combatants were killed off to enough of an extent that their supportive function ceases to be effective, or if the combatants were killed off to such an extent. In either event, the entire machine would no longer function as a credible threat. Even Frowe acknowledges this nature of the combatant/non-combatant teamwork to accomplish unjust warfare goals when she says, "there doesn't seem to be any […] significant difference between the contributions of combatants compared to those of non-combatants."[17] But the problem with identifying non-combatants as being liable to defensive killing is that children (and the elderly, and pregnant women, and farmers) exist in that group, whereas they do not, except in extremely outlying circumstances, among the uniformed military personnel.

It is understood that uniformed military personnel are those who will be firing the rifles, even if they are cooks or clerks, or high-ranking military commanders. Children, the disabled, the elderly, and so forth do not conscript themselves into the military. Though they may contribute to the unjust war effort, such as school-aged children writing letters of moral support and encouragement to soldiers at the front, it is objectively immoral to target those children, no matter their measure of culpability. So, society makes a tacit contract with uniformed military personnel and all agree that the military will bear a large measure of culpability of that war, and also the liability to defensive killing. Though it may not satisfy Frowe and those who seek an impenetrable moral justification for non-combatant non-liability, the goal of finding a moral basis for avoiding the intentional killing of non-combatants (children, et al.) has been accomplished through a temporal chain of events wherein those assuming liability and culpability on behalf of non-combatants are volunteering to be legitimate targets. Intervening agency thus achieves its status as a theory grounding non-combatant immunity and discrimination in morality by having uniformed military personnel voluntarily, saying "me first" in accordance with the social agreement made among the populace.

The reality of war is that it is a fog, and as Clausewitz has observed, it proves to be limitless, reaching new heights of atrocity with each epoch of technological advancement. Ethics mean nothing if not applied, and the arena of war may be the most crucial of human domains in which to define morality. But war is also a matter of practice involving societies, not individuals, so considerations of how morals play out in the theater of war cannot be removed from the social nature of definitions on these matters. Just because something has only a practical advantage does not necessarily mean that it is not a moral win. We want a moral justification for non-combatant immunity to feel confident that our rules of *jus in bello* are right, not just practical. But if a practical result that aligns with our highest estimations of morality is the best we can do, then we are indeed manifesting morality. In our search for an objective moral justification of the Just War principles of non-combatant immunity and discrimination—should we agree that liability to defensive killing is either transferrable or ephemeral, and we can certainly decide to agree as much if we so choose—then we can be certain that limiting our defensive killing to those unjustly doing us harm to uniformed military personnel is indeed justice in war.

17 Ibid., p. 174.

Democracy in Danger? Political Violence, Peaceful Transition, and Threats to Democracy

Marcus Ellinas

Many claim that political violence[1] (PV) threatens democracy. These claims often rest on the grounds that PV toxifies political discourse, fosters polarization, and constrains a government's capacity to honor citizens' policy preferences. There is a distinction, however, between PV that diminishes a democracy's ability to do desirable things and PV that jeopardizes democracy itself. This paper argues that PV that threatens the peaceful transition of power does *endanger democracy itself, while most other forms of PV do not. Accordingly, democratic governments are morally obligated to prioritize threats to peaceful transitions of power over threats that do not endanger democracy. Establishing a hierarchy of moral priorities does not give governments license to ignore certain threats, but rather, helps clarify which security measure a government is morally obligated to take if two are in conflict or how to proportionally allocate resources when those resources are limited. This paper proceeds in three parts. The first section offers a definition of democracy. The second section argues, based on this definition, that many types of PV do not threaten democracy itself, and consequently come second to peaceful transition threats on the list of a democratic government's moral priorities. The final section considers the implications for present-day American security policy.*

Terrorism, it is often argued, threatens democracy.[2] Evaluating this claim requires taking a step back. We need to know what democracy *is* in order to decide whether and how PV threatens it. What makes a democracy a democracy? What exactly is the dispositive factor that separates a democracy from a non-democracy? Many regime characteristics feel intuitively democratic—elections, representation, debates, campaigns. Since there is not, of course, an objective definition of democracy, our intuitions seem like a fair starting point for defining what that democracy is: What exactly makes it different from the things that are not it?

Accordingly, Robert Dahl's classic theory outlines two reasonably intuitive, necessary conditions of democracy: high levels of 1) "participation" and 2) "contestation." That is, to qualify as democratic, a regime must have 1) near universal suffrage and 2) no burdensome restrictions on who can run for office.[3]

Intuitively, this is plausible. A regime where half the population is categorically denied suffrage at birth indeed seems decidedly undemocratic (e.g., a regime absent women's suffrage). We might justifiably place certain limitations on voting—in many democracies, suffrage is restricted by age—but all citizens presumptively retain suffrage and cannot be denied the right to vote on the basis of ascriptive identity or political affiliation. With respect to contestation,

1 Throughout this paper, I will frequently use the term "political violence" to refer to behavior often described as "terrorism." I prefer the former term as it is less politically charged and avoids the semantic debate over what does or does not count as terrorism. Political violence includes terrorism, but also may include violent protest or other politically motivated violence. In most instances in this paper, the two terms are interchangeable. For a useful definition of political violence, see "Forms of Political Violence," European Consortium for Political Research, 2014.

2 See, for example, Daniel L. Byman, "Terrorism and the Threat to Democracy," Brookings Institution, November 25, 2019; Marc J. Hetherington and Elizabeth Suhay, "Authoritarianism, Threat, and Americans' Support for the War on Terror," *American Journal of Political Science* 55:3 (2011); Brian Jenkins, "Waging War Beyond the Battlefield: Remarks at the Celebration of 50 Years at RAND," RAND Corporation, 2019; and Parliamentary Assembly of the Council of Europe (PACE) — Political Affairs Committee, *Terrorism: a threat to democracies* (Strasbourg: PACE, 2004).

3 Robert Alan Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971), Chapter 1, especially pp. 5-8. I should note that, for Dahl, these two conditions are necessary but insufficient. I borrow the conditions here because they are a useful starting point for building this section's definition of democracy. Additionally, "burdensome" is my term, not Dahl's; it is my way of describing the kind of restriction that might make a regime have low levels of contestation.

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when the pool of individuals who are allowed to become representatives differ wildly from the pool they are supposed to represent (e.g., a regime with racial restrictions on officeholding), this too seems undemocratic. Individuals in a democracy should at least have the option to elect representatives who share their background or identity. Again, we might justifiably constrain contestation (residency requirements for candidates), but these restrictions cannot be burdensome. As with suffrage, restrictions cannot exclude on the basis of ascriptive identity or political affiliation and cannot have the cumulative effect of rendering contestation effectively impossible even if an individual is not categorically excluded (e.g., excessive fees for establishing one's candidacy). As such, high levels of participation and contestation are reasonable, necessary conditions for democracy. Defining democracy by these two conditions helps distinguish between democracies and regimes we generally label as non-democracies: Non-democratic regimes might have one of the two factors, but they do not have both.[4]

However, participation and contestation alone are not sufficient to qualify a regime as democratic; these are necessary but insufficient conditions. To define democracy along these two dimensions alone is to suggest that regime types only differ during election season. Our set of conditions for defining democracy thus needs something more. A proper definition of democracy should capture what makes a democracy a democracy *between* elections as well. It should capture what makes democratic *rule* democratic, distinct from non-democratic rule. To merit definition as a separate regime type, we should expect democratic leaders to behave differently toward citizens than non-democratic leaders.

Adam Przeworski's definition of democracy accepts Dahl's two conditions, but adds a third: In order for a regime to qualify as democratic, it must systematically undergo *peaceful transitions of power*.[5] The process of peaceful transition must also be normalized in some way, such that officeholders and voters expect a peaceful transition to occur when the incumbent loses. I will call this expectation a "peaceful transition mechanism," and posit that peaceful transition mechanisms are a third necessary condition of democracy. This extra condition is the missing piece of our definition because it captures the difference between democratic and non-democratic *rule*. By creating institutional incentives for officeholders to honor citizens' interests, a peaceful transition mechanism generates a *responsiveness* that we expect from democratic rule but not from non-democratic rule.

The prospect of peaceful transitions generates incentives for officeholders to respond to voters (to consider/implement their policy preferences) between elections, because voters can punish incumbents—hold them accountable—at the ballot box. Conversely, without transitions (without the threat of removal), leaders lack institutionalized threats to their power and therefore lack incentives to represent citizens. Non-democratic officeholders may sometimes honor citizens' interests, but only as a means to maintain order. When citizens can only induce transition violently, officeholders need only do enough to make citizens not revolt, rather than do enough to earn their vote. Because citizens face higher costs in revolting than they do in voting differently, officeholders in regimes without a peaceful transition mechanism can afford to be far less responsive. This unresponsiveness to citizens' interests, or responsiveness merely as a means to placate the population and further one's self-enrichment, is a characteristic many would intuitively associate with non-democratic rule.

Peaceful transitions also facilitate the process by which voters *select* candidates whose stated policy preferences align with their own—that is, peaceful transitions help ensure that candidates who win elections actually take office. This selection effect might also encourage responsiveness, if candidates can only win election when already predisposed to implement voters' policy preferences. Absent the threat of removal, however, selected candidates can more easily renege on campaign promises, highlighting how the accountability element of peaceful transitions is especially central to transitions' effect on responsiveness.

It is therefore necessary to include peaceful transitions in a definition of democracy in order to ensure that our

4 Many present-day authoritarian regimes (e.g., Russia and Belarus) offer near universal suffrage but go to great lengths to constrain contestation. Citizens can vote, but have few choices of candidate beyond the dominant party.

5 Adam Przeworski, "Minimalist conception of democracy: a defense," in Ian Shapiro and Casiano Hacker-Cordón, *Democracy's Value* (Cambridge: Cambridge University Press, 1999), pp. 23-25. Specifically, he defends that democracy is "a system in which rulers are selected by competitive elections ... in which citizens can get rid of governments without bloodshed" (p. 23). Throughout his analysis, he assumes Dahl's conditions hold (p. 25).

definition distinguishes democratic rule from non-democratic rule. Peaceful transition mechanisms generate institutional incentives for officeholders to be responsive to citizens' interests, a responsiveness that we expect from democratic rule but not from non-democratic rule.

Of course, responsiveness is not the sole difference between democratic and non-democratic rule.[6] But if we are searching for a plausible difference to ground a definition of democracy, responsiveness seems like a fair option. Social contract theory—foundational to democratic theory and our intuitions about democracy—demands responsiveness by positing that authority for democratic leaders derives exclusively from the "consent of the governed," or the "will of the people."[7] This expectation is outlined in prominent democratic documents, such as the Universal Declaration of Human Rights and the U.S. Declaration of Independence.[8] Citizens of democracies thus feel entitled to some degree of "power-sharing" with officeholders, such that the interplay between the officeholder and constituent ultimately produces policy actions; the officeholder *responds* to their constituent, hearing their views and constructing policy in turn. The point is, given the ubiquity of these ideas of "power sharing" or responsiveness in everyday discourse about democracy, basic democratic theory, and democratically grounded documents, it seems reasonable to ask that democracies be responsive to constituents. It seems reasonable to suggest that a regime, in order to *qualify* as democratic, must be responsive to some degree.[9]

By generating the necessary institutional incentives for responsiveness, peaceful transitions are thus a necessary condition for democracy. It is essential to emphasize, then, that to *lose* a peaceful transition mechanism is to lose democracy itself. Voting and contestation alone do not get the job done. They produce a democracy only in the presence of a peaceful transition mechanism that incentivizes leaders to respond to voters.[10]

Before moving forward to a discussion of political violence, a few clarifications are necessary. Given the elevated moral and political significance I am ascribing to peaceful transition, it is worth outlining more carefully what I mean by "peaceful transition" and "peaceful transition mechanism." A peaceful transition (as I will use the term here) occurs when the incumbent loser of a competitive election relinquishes control of their office without external use of force to induce removal. If the incumbent loser must be forcibly removed, either by other governmental actors or members of the general population, the transition is not peaceful. Accordingly, non-peaceful transition also occurs when the use of force is necessary to protect essential intermediate elements of the transition process (e.g., if an incumbent is expected to lose an election and attempts to violently prevent vote-counting). Although the incumbent loser is not literally forced from office, force is nonetheless necessary to bring about their removal downstream.

By this definition, a peaceful transition can only occur in regimes that meet Dahl's two democratic conditions; the point is not just that power changes hands sans violence, but also that the peaceful change is produced by a competitive election. This distinction is necessary to exclude bloodless transfers of power with little relevance to

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6 For example, democratic rulers may be more likely to govern transparently, providing voters with additional information on, for example, the polity's macroeconomic performance. Democratic rulers might also be more likely to engage in publicized political debates, as a means to reconcile differences in preferences between constituencies. I have chosen to isolate responsiveness because it tends either to function as the cause of other elements of democratic rule or the other elements function to facilitate responsiveness. Democratic officeholders are transparent because voters prefer it, they debate (at least in part) because voters prefer it, and debates help voters select officeholders who are most likely to be responsive.

7 See, for example, John Locke, (Peter Laslett ed.) *Two Treatises of Government* (Cambridge: Cambridge University Press, 2012) Chapters 6-8.

8 See United Nations General Assembly, The Universal Declaration on Human Rights, Article 21, and "Declaration of Independence: A Transcription," Paragraph 2.

9 The reader might be skeptical of my focus on responsiveness if they believe that, as an empirical matter, democratic leaders are not responsive. If such an empirical claim were true, the heightened importance I am attaching to peaceful transition would be purely idealistic. Although there may be reasonable grounds for doubting responsiveness—for example, moneyed interests skewing electoral incentives—there is nonetheless a body of political science research that suggests that (on average) incumbents do alter their behavior in response to the threat of removal, in a manner consistent with voter well-being. See, for example, James Alt, Ethan Bueno de Mesquita, and Shanna Rose, "Disentangling Accountability and Competence in Elections: Evidence from U.S. Term Limits," *Journal of Politics* 73:1 (2011); Charles Tien, "Representation, Voluntary Retirement, and Shirking in the Last Term," *Public Choice* 106:1/2 (2001).

10 I owe very much to Monika Nalepa for guiding my thoughts on definitions of democracy. Her undergraduate course in comparative politics and forthcoming book chapter outline multiple definitions of democracy (including those from Dahl and Przeworski) in a very lucid fashion, and this paper would not exist without those contributions. For her book chapter, see Monika Nalepa, "Regimes and Regime Change," in Josh Tucker and Andrew Rudalevige eds., *A Political Science Experiment* (forthcoming).

responsiveness. For example, power may transfer peacefully from one party leader to another in a single-party authoritarian regime (e.g., from Kim Jong-il to Kim Jong-un), but this transfer does not alter officeholders' incentives toward constituents. The purpose of including peaceful transition in a definition of democracy is to distinguish democratic from non-democratic rule, and types of peaceful transfer divorced from officeholder incentives do not aid in this distinction.

Moreover, I have suggested above that any democratic regime must have a peaceful transition *mechanism* (not merely peaceful transitions themselves): It must be the expectation or norm that incumbent losers peacefully cede power. This expectation is likely outlined or implied in the regime's constitutive documents (e.g., as in Article I and II of the U.S. Constitution). A regime has a stronger peaceful transition mechanism when incumbents and members of the general population trust that the norm of peaceful transition would be enforced by other governmental actors against a rogue incumbent. It is the mechanism, the *expectation* of peaceful transition, that induces responsiveness—not the peaceful transition per se. The incumbent's future-looking expectation that a swing in votes alone can bring about their removal alters their responsiveness toward citizens in the present, distinguishing democratic from non-democratic rule. Hence, the *mechanism* is a necessary condition of democracy, not merely the existence of peaceful transitions. The next section discusses political violence that threatens this mechanism, thereby putting democracy itself at stake.

When Does Political Violence Threaten Democracy?

Political violence, broadly speaking, is the use of violence to achieve political goals. PV includes terrorism, but also may include violent protest or other politically motivated violence.[11] As the previous section suggests, we should be careful when claiming that PV "threatens democracy." True threats to democracy must jeopardize one of democracy's necessary conditions. Various threats may challenge the ability for a democracy to do desirable things, but this is not the same as threatening democracy itself.

Indeed, many oft-cited terrorist threats to democracy are *not* threats to democracy itself.[12] Rather, they threaten a democratic regime's ability to function in a more ideally democratic way, a regime's capacity to fulfill obligations it holds as a democracy, or the lives of a subset of a democratic regime's citizens. These are, of course, important concerns, but a democracy can remain intact without them. It therefore follows that threats to a government's peaceful transition mechanism deserve priority over these other concerns, because democracy itself is at stake. By prioritize, I do not mean PV that does not threaten peaceful transition should *not* be addressed. Rather, establishing a hierarchy of moral priorities helps clarify which security measure a government is morally obligated to take if two are in conflict, or how a government should proportionally allocate resources when those resources are limited.

What does it look like when PV threatens a peaceful transition mechanism? Generally speaking, PV that threatens peaceful transition involves the use of force by the incumbent loser, their administration/political allies, or external actors in an attempt to keep the incumbent loser in office. This violence can take many forms, possibly targeting the opposing candidate or some aspect of the institutionalized process of transition. These attempts seek to delegitimize the mechanism itself; they undermine the expectation that incumbent losers must leave office, thereby eroding the very expectation that incentivizes responsive governance. This sort of PV threatens democracy itself, while many other forms of PV do not.[13]

I will now consider three specific ways in which PV is often said to threaten democracy. In each instance, I will show why a) the threat in question is not a threat to democracy itself and b) the actual concern at stake is less essential

11 See earlier footnote for the reasoning behind my use of the term "political violence."

12 I should stress that my purpose here is to consider only those instances in which *political violence* might threaten democracy. Other developments that do not qualify as PV could surely also threaten democracy (e.g., plans to abolish voting rights).

13 As a caveat, it is obvious that some threats to peaceful transition are not morally significant. Mere words can "threaten" a peaceful transition mechanism (and therefore, democracy) by "delegitimizing" the expectation (e.g., an incumbent saying they might not leave office if they lose), and my argument is not that this type of threat deserves moral priority over significant threats of other kinds. A threat to democracy itself can be less important than a threat to something else of value, if the threat to democracy is low in magnitude or unlikely to materialize. My point is, all else equal, threats to democracy itself (such as threats to peaceful transition) come first.

than democracy, and therefore comes second to peaceful transition on the list of a democratic government's moral priorities.

1. Coercive Threats

Terrorism and PV are coercive tools; they impose (or threaten to impose) costs on a regime in order to alter the regime's behavior. For example, Hezbollah's 1983 bombing of the Marine barracks in Beirut sought to coerce the United States into removing its troops from Lebanon; this coercion was ultimately successful as President Reagan ordered withdrawal the following year.[14] When directed against democratic regimes, coercive threats may seem to challenge democracy itself. Coercive threats can compel democratically elected officeholders to make choices their citizens would not support, absent the terrorist threat. As such, coercive threats might seem to jeopardize democracy itself by diminishing officeholders' ability to carry out the will of the people.[15]

Indeed, coercive threats are an important concern and should be addressed if possible. Nonetheless, they do not threaten democracy itself, and thus come second to peaceful transition threats. I said before that democratic governments are necessarily responsive, in that officeholders consult with constituents to produce policy choices. If coercive threats were to impinge upon this responsiveness, they would indeed put democracy itself at risk. However, when facing coercive threats, democratic officeholders still consult with constituents, still respond to the will of the people; they simply have an external constraint against carrying it out. Assume, for example, that a) the American people generally supported the idea of occupying Lebanon and b) President Reagan knew this. President Reagan's choice to withdraw (despite general support for the occupation) would not be a failure of democracy. If he simply *ignored* constituents in choosing an alternative policy, this would indeed be unresponsive, and thus undemocratic. The key here is that the officeholder would most likely choose the preferred policy if he could do so.[16] A parent is still responsive to the needs of his child even if, despite his best efforts, he cannot meet those needs; an officeholder is still responsive to the interests of her constituent even if she cannot, despite her best efforts, honor those interests due to some external constraint.

One could still object, however, that a) a regime should not qualify as democratic if it cannot carry out the will of the people, and therefore b) coercive threats *do* jeopardize democracy. This objector might suggest that democracies exist for the instrumental purpose of implementing the will of the people, and a regime that cannot do so is not properly a democracy, even if it retains responsive interaction between officeholder and constituent. However, I think this objector is mistaken to claim that simply when a regime cannot execute its desired policies, it ceases to be democratic. Such a standard is unfair to otherwise democratic regimes with a low position in the international hierarchy of states. Any state without international bargaining power or lacking in economic resources would have its status as a democracy put in question. These political and economic limitations are, to some extent, outside of a regime's control, and it is unfair to deprive a regime of democracy status due to arbitrary factors entirely exogenous to the regime itself.

As such, coercive threats are not true threats to democracy. However, they still endanger a valuable interest: a democratic government's ability to carry out the will of its people. Why is this interest less valuable than democracy itself? In other words, why does the fact that coercive threats fail to jeopardize democracy mean they should fall lower on the list of priorities than threats that *do* endanger democracy? Why should coercive threats come second to peaceful transition threats?

Again, the primary concern with coercive threats is that they challenge the ability for officeholders to carry out

14 Robert A. Pape, *Dying to Win: The Strategic Logic of Suicide Terrorism* (New York: Random House Trade Paperbacks, 2005), pp. 27-31, 64-70.

15 This argument has featured prominently in international deliberation on security policy, including the proceedings of the Parliamentary Assembly of the Council of Europe (PACE). See, for example, PACE Political Affairs Committee, *Terrorism: a threat to democracies*.

16 As stated above, I am assuming that, as a general empirical matter, politicians tend to be responsive to voter preferences. Of course, this is not always the case. Whether or not President Reagan actually would have done x or y at any given time is not really the point; my goal is just to illustrate that responsive officeholders are not behaving anti-democratically if they are coerced into choosing policy measures that their constituents would otherwise not prefer.

their constituents' will. However, in order to understand what this will *is* in the first place, officeholders must first interact and consult with their constituents. They must be responsive. If the regime's peaceful transition mechanism collapses, leaders have few institutional incentives to be responsive (as argued in section 1); they have few incentives to even comprehend the will that coerced leaders are struggling to carry out. As such, while coercive threats make honoring constituents' will difficult, the absence of peaceful transitions generates conditions in which said will is likely to be ignored entirely.[17] Democratic officeholders have an obligation to preserve the conditions in which *some* will-honoring is likely to occur, before they seek to maximize will-honoring. Protecting peaceful transitions (and in turn, protecting democracy) accomplishes the former; addressing coercion accomplishes the latter. Accordingly, addressing threats that threaten a democracy's peaceful transition of power must come first.

2. Procedural Threats

Another type of threat may challenge democracies by infecting debates with unproductive discourse, legitimizing extremist political views, and fostering polarization. For example, the 2019 white supremacist mass shootings in two Christchurch mosques polarized discourse among New Zealand media and politicians, inducing some to reiterate anti-Muslim tropes while others denounced white nationalism and blamed their political opposition for the attacks.[18] I call threats of these sort procedural threats, threats that undermine practices some might view as characteristic elements of the democratic process, such as compromise, persuasion, and debate. By corrupting these key deliberative practices, *procedural threats* might be viewed as threats to democracy itself.[19] Democracies (as distinct from non-democracies) tend to maintain various fora aimed specifically at fostering discourse on social and political questions: electoral debates, town halls, free press, debate societies. Democratic decision-making is necessarily collective, and we might think that collective decisions are not truly democratic when made without meaningful cooperation between the collective's members.

As with coercive threats, these procedural threats certainly jeopardize significant interests. We might prefer to live in a regime with level-headed debates, discredited extremes, and the absence of polarization. But these are not necessary conditions of democracy. A regime absent these deliberative qualities is still a democracy, assuming it meets the conditions specified in section 1; therefore, New Zealand did not cease to be a democracy after the Christchurch attacks. Democratic regimes will have varying degrees of deliberation, and those with less deliberation should not lose democracy status because their present politicians cannot get along or because their democratically selected policy choices are more extreme. Uncooperative decision-making may be undesirable, but is a problem inherent to majority rule; the majority need not cooperate to govern.[20] Uncooperative democracies are just flawed democracies, not non-democracies.

As such, procedural threats do not threaten democracy itself; they imperil the *ideal functioning* of democracy. It follows that democratic governments should prioritize peaceful transition threats over procedural threats. Officeholders have an obligation to secure the existence of democracy before securing its ideal function.

My argument here could also be used to counter the claim that terrorism threatens democracy by increasing citizens' support for "authoritarian" or anti-democratic national security policy, such as enhanced surveillance.[21] These policies might be perceived as contravening a boundary between government and individual liberty that many view as foundational to democracy. "Authoritarian" security policy, while perhaps undesirable, more closely threatens the ideal functioning of democracy, not democracy itself. Although many viewed the 2001 Patriot Act and subsequent NSA intelligence-gathering as anti-democratic (largely due to their effect on civil liberties such as privacy), I would doubt that those same critics thought democracy writ large was in danger. It is true that terrorism

17 Or, as discussed in Section 1, the will would be honored only as means to maintain order.

18 See, for example, Gay Alcorn, "Andrew Bolt and my other media colleagues seem incapable of self-reflection after Christchurch," *Guardian*, March 19, 2019.

19 For an example of this argument, see Byman or Jenkins, pp. 2-3.

20 To put this point a different way, we might think that supermajority requirements (e.g., the filibuster) are desirable in that they counter this potential tyranny of the majority, but we would not say that democracy evaporates sans supermajority constraints.

21 For an example of those who claim terrorism threatens democracy in this way, see Hetherington and Suhay.

can induce democracies to temporarily adopt domestic security policy somewhat reminiscent of authoritarian rule, but those policies are still a) endorsed by a majority of elected representatives and b) do not alter any structural elements that I have identified as foundational to democracy (e.g., free contestation).

3. Life Threats

Finally, one might argue that terrorism threatens democracy itself by endangering the lives of a democratic regime's people. Democracy cannot exist without people to run it.

Life threats may indeed jeopardize democracy itself if the life threat is so violent that its realization would remove the regime from existence or generate such instability that the basic electoral processes of democracy could not be sustained. But outside of this special case, life threats risk lives, not democracies. Civilian casualties from terrorism are tragic, and life threats should be addressed whenever possible. However, purely in terms of priorities, peaceful transition threats come before life threats.

This claim may seem dubious on face. Surely, the first responsibility of a government is to ensure its citizens are alive? Being alive is a prerequisite to enjoying the fruits of democracy. Something that threatens life itself should surely be addressed before something that threatens a way of living, such as life in a democratic regime. How could life threats not come before threats to democracy?

The argument here is that the need to prevent moderate loss of life is outweighed by the need to secure the background institution—democracy—necessary to reliably secure rights for the vast majority of a polity. Again, I do not mean that democratic leaders should not try to save their citizens' lives if possible. My goal is to establish moral *priorities* when a government is faced with various, sometimes conflicting obligations. If forced to choose, governments should save democracy before saving a moderate number of lives.

I must outline, then, why democracy is necessary to reliably secure basic rights. The argument might proceed as follows:

1. Individuals will inevitably disagree on their respective entitlements, the distribution of duties, and the proper enforcement structure of these entitlements and duties.
2. Without authoritative institutions as third-party arbiters (e.g., an independent judiciary), individuals will be unable to settle these disputes. These institutions are necessary to establish a universal body of rules that render rights "determinate and publicly knowable."[22]
3. Only democratic regimes have the persistent incentive to *maintain* these institutions necessary to enforce basic rights (because of the transition mechanism and threat of removal described in section 1).
4. Only democratic regimes will be perceived as *legitimate* rights-enforcers because individuals have some degree of input into the regime. This perceived legitimacy is necessary to foster compliance with the universal body of rules that outlines rights.

If these propositions are valid, I think it is reasonable to conclude that democracy is necessary to reliably secure basic rights. Consequently, if democracy is necessary to secure rights for most of a polity, then threats to democracy are more dire than threats to the lives of a small subset of the population.[23]

The reader may still be skeptical of the claim that the interest at stake in threats to democracy (secure rights for

22 These first two points (and the quoted language) derive from Anna Stilz's natural duty theory. See Anna Stilz, "Is There an Unqualified Right to Leave?" in Sarah Fine and Lea Ypi eds., *Migration in Political Theory: The Ethics of Movement and Membership* (Oxford: Oxford University Press, 2019), pp. 71-72. For a lengthier figuration of her theory, see Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton, NJ: Princeton University Press, 2011).

23 Of course, not all democracies will properly enforce rights. Robust rights-enforcement is not a necessary condition of democracy, hence it was not included in Section 1's definition of democracy. The argument is that democracies have a much higher propensity to secure rights than non-democracies, and democratic officeholders have an obligation to preserve the conditions in which rights are more likely to be respected even at the cost of moderate loss of life.

most of a population) is more valuable than the interest at stake in life threats (lives of a subset of the population). Perhaps a more concrete scenario would help. Consider the following:

> Autocracy X invades democracy Y. Democracy Y has a choice between a) fighting a war to preserve democracy that it knows it will win, but losing 3,000 lives, or b) surrendering immediately to the invasion and subsequent dissolution of the democracy.

Which would we choose? I think many would choose the former. There is clearly *some* price in life that many are willing to pay to preserve democracy, if paying that price is absolutely necessary. We invest substantial value in the fact that democracies, in general, more reliably secure rights than non-democracies. The fact that we are willing to sacrifice life (beneath a certain threshold) to save democracy demonstrates that the interest at stake in life threats is less than the interest at stake in threats to democracy. As such, when democratic governments are faced with both threats to democracy and life threats, threats to democracy itself (e.g., threats to peaceful transition) come first.[24]

Implications for U.S. Security Policy[25]

A PV threat may fall into any and all of these categories. Most are life threats; many are coercive. It is clear, however, that many PV threats do not imperil democracy itself, and thus come second to peaceful transition threats. Combating threats to peaceful transition should be a security priority of democratic governments. What are the implications for present-day U.S. security policy?

As the reader has likely anticipated, the January 6th insurrection is the primary concern. Although President Trump himself would eventually leave office peacefully on Inauguration Day, his supporters threatened the peaceful transition mechanism by violently disrupting the certification process necessary to secure the transition of power. This violence not only rendered a singular transition unpeaceful, but also threatened to undermine the transition mechanism: the expectation that incumbent losers will leave office without the need for the use of force to bring about their removal (in this case, the use of force in response to the insurrectionists' force). The Capitol insurrection qualifies as PV that threatens peaceful transition.

This threat has not subsided. Survey data from Robert Pape and the Chicago Project on Security and Threats (CPOST) indicated in April 2021 that approximately 10 million Americans would be willing to use violence to overturn a "stolen" 2020 presidential election. Of these 10 million, 360,000—approximately the size of the National Guard—are likely to be male veteran gun owners, and therefore trained users of weapons. Individuals with these politics have already demonstrated capability to breach the Capitol with 800 people; an armed force in the thousands is an alarming prospect.[26]

Such an insurrectionist "movement" could threaten the present administration. This is a peaceful transition threat, a threat to democracy itself, insofar as the movement's goal is to reverse legitimate election results and reinstate the incumbent loser. Or, this movement may threaten future transitions of power, whether at the presidential level or in down-ballot elections, if not properly addressed.

Because it is a peaceful transition threat, current American officeholders have a moral obligation to address the insurrectionist movement before other types of PV threats that do not jeopardize democracy (for all of the reasons discussed in section 2). The list of PV threats currently facing the United States that come second to the insurrectionist movement is lengthy, but a few examples are evident.

First, the insurrection should be prioritized over preventing radical Islamic terrorism. Islamic terrorist threats, whether from domestic lone-wolf actors or transnational organizations, are coercive, procedural, and life threats, but

24 Also, from a utilitarian standpoint, one could perhaps argue that the loss of democracy (and subsequent non-democratic rule) would result in more deaths over time than deaths from terrorist attacks in democratic regimes. So, even if life is the sole concern, it might be better in the long-term to prioritize threats to democracy than more immediate threats to life.

25 The term "security policy" can more or less be read as "counterterrorism policy." I prefer the former term for the same reasons I preferred the term "political violence;" it is less politically charged and avoids semantic debates over what does or does not count as terrorism.

26 Robert A. Pape, "Understanding American Domestic Terrorism: Mobilization Potential and Risk Factors of a New Threat Trajectory," Chicago Project on Security and Threats, April 6, 2021, slides 42-56.

they do not jeopardize American democracy itself. These threats do endanger significant concerns and should not be ignored. Nonetheless, American officeholders at present have a moral obligation to prioritize the insurrection over radical Islamic terrorism. This could entail allocating proportionally greater monetary resources toward combating the insurrection, or placing a greater premium on gathering intelligence related to the insurrection.

Second, the insurrection should be prioritized over PV associated with recent protest activity, such as violence during anti-police brutality demonstrations or protests of COVID safety measures. This violence jeopardizes lives, not democracy. As above, it is an important concern, and should be addressed when possible, but is second to the insurrection.[27]

Conclusion

I have argued that PV that jeopardizes peaceful transition jeopardizes democracy itself. Democratic governments, given constrained resources, are morally obligated to prioritize threats to peaceful transition over threats that do not endanger democracy. Although PV often threatens other valuable interests, such as deliberative discourse and policymaking freedom, these interests come second to democracy itself. The normative argument implies that addressing the Capitol insurrection should be a primary concern of current U.S. security policy.

27 I am deliberately not discussing violence from domestic right-wing extremist groups. This political violence is often racially motivated; the question of how officeholders should weigh threats to democracy against threats to racial equality (especially in a regime with a history of racial oppression, where reparative obligations may be relevant) is a more nuanced issue that I cannot properly address here.

Tires & Tribulations: A Moral Evaluation of Firestone's Actions in Liberia's Civil War

Mercedez Fernandez

This study provides a moral assessment of Firestone—a multinational rubber manufacturer—and its operations in Liberia during the Liberian civil war. It examines Firestone's history, especially as it pertains to Liberia, and traces key developments in the Liberian conflict and Firestone operations. Examining journalistic reporting and criticism of the company's actions, the author argues that Firestone's actions during the Liberian civil war were, to a great degree, immoral.

"It is a mistake to assume that the law should always enforce morality."
— Peter Singer[1]

Liberia's first civil war, from 1989 to 1997, resulted in the deaths of over 200,000 and the displacement of over one million Liberians. The conflict was shaped by underlying tensions involving differing ethnic memberships and included a popular rebellion against the Liberian government, led by Samuel Doe. When Doe became the first non-Americo-Liberian president and established a repressive regime, Charles Taylor responded by organizing a force of 100 rebels, known as the National Patriotic Front of Liberia (NPFL), and orchestrated a plot to assassinate Doe.[2] The would-be assassin, however, disagreed with Taylor's vision for the future of Liberia, so he turned on Taylor. This only aggravated the violence. Eventually, due to the fear and exhaustion of Liberian citizens, Taylor succeeded in his insurrection and was elected president in 1997, thus ending the first Liberian civil war. Unfortunately, due to a failure to disarm and reform after Taylor's election, the country's second civil war began just two years later. The conflict between rebel groups remained constant until Taylor's exile in 2003, and the fragile country's narrative became one of widespread torture and sexual assault.[3]

It is indisputable that the warlords and their rebel armies committed atrocities—including but not limited to hacking off limbs, gouging out eyes, raping and killing daughters in front of their families, slaughtering five American nuns, and placing bets on the sex of a fetus before "opening up [the mother] with a bayonet to see."[4] Without question, these are all horrifyingly brutal and immoral actions. And while it is paramount to investigate the morality of these direct perpetrators in the study of crimes against humanity, it is also important to take a look at the *unlikely actors*—those the media tends to overlook—in the discussion of ethics and guerrilla warfare. In the case of Liberia's civil war, that unlikely actor was Firestone—a multinational rubber-manufacturing corporation known for its automobile tires.

Despite the lack of literature surrounding the morality of Firestone's actions and the international community's failure to effectively address it, I will provide a moral assessment of Firestone's behavior during the Liberian conflict. First, I will summarize Firestone's history, particularly as it pertains to Liberia, then transition to a summary of key developments in the Liberian conflict and Firestone operations. Next, I will delineate reporters T. Christian Miller and Jonathan Jones' criticism of Firestone's actions, followed by Firestone executive John Schremp's support for his company's decisions. Lastly, I will analyze both sides' claims, abiding by their corresponding frameworks,

1 Peter Singer, *Practical Ethics* (3rd ed.) (Cambridge: Cambridge University Press, 2011), p. 130.

2 An Americo-Liberian is a Liberian of African-American origin or descent.

3 Sarah Left, "War in Liberia," *Guardian*, August 4, 2003.

4 Firestone and the Warlord, PBS Frontline, November 18, 2014.

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and ultimately demonstrate that Firestone's actions during the Liberian civil war were, to a great degree, immoral.

In order to evaluate the ethics of Firestone's decision to continue operations in the conflict-affected country, one must first examine Firestone's history, especially as it pertains to Liberia. Firestone Tire and Rubber Company was founded on August 3, 1900, in Akron, Ohio. Twenty-five years later, the corporation began to operate a one-million-acre plantation in Harbel, Liberia, exporting liquid latex and crepe rubber. This marked the beginning of the subsidiary Firestone Natural Rubber Company, LLC, otherwise known as Firestone Liberia Inc. and the primary focus of this paper. With this subsidiary granting Liberia access to world trade, over the course of two decades, Liberia's net foreign trade increased from $3 million a year to $45 million.[5] The rubber plantation became the largest contiguous one in the world. With the increase in government revenue through duties on trade and direct taxation came reliance on the American business. Compounding Liberia's dependence, Firestone operated "a hospital, a hydroelectric power plant, a botanical research division, and a transatlantic radio service" as well as maintained "roads, housing, schools, and a literacy program" in west-central Liberia.[6]

Narrowing in on the company's operations during the civil war, Suzanne McCoskey describes both sides of the debate in "The Firestone Tire & Rubber Company and Liberia's Civil War: Evaluating Firestone's Intent to Operate During Chaos." She offers a neutral frame of Firestone's actions, imparting the following summary of the Liberian Truth and Reconciliation Commission Report: "With its longer narratives of the history of Liberia and the conflict, Firestone was criticized for specific actions including (1) paying Taylor for protection and (2) allowing a military base for Taylor's siege on Monrovia, called 'Operation Octopus.'"[7]

Reporters T. Christian Miller and Jonathan Jones are much more fervent in their exposé. In their ProPublica article "Firestone and the Warlord," they weigh Firestone's hierarchy of obligations as they pertain to the consequences that ensued. The reporters conclude that Firestone had a moral obligation to avoid deals that might legitimize the guerrilla leader as the ruler of Liberia. We can lay out their argument as follows:

1. If Firestone supported an unjust actor in conflict, then Firestone shares culpability.
2. Firestone supported an unjust actor in conflict.
3. Therefore, Firestone shares culpability.

The reporters qualify the support Firestone provided, writing that the company "served as a source of food, fuel, trucks, tools, and cash." Taylor's rebel army also used Firestone's plantation for housing and to store weapons, ammunition, and communications equipment.[8] These resources provided Taylor "with the political capital and recognition he needed as he sought to establish his credentials as Liberia's future leader."[9] Miller and Jones also qualify the unjust actor, Charles Taylor, writing that his forces were "publicly denounced as violent, vicious, and rapacious by the U.S. government and human rights groups."[10] Thus, according to the reporters, regardless of Firestone's true intent or justification for doing business with Taylor, the American corporation was morally wrong in consequently helping the warlord obtain international legitimacy and thereby commit more violations of human rights.

By way of contrast, in his letter to the Interim Government of National Unity (IGNU), John Schremp, a Firestone corporate executive who oversaw the Liberian rubber operations, stresses how Firestone Liberia's agency was

5 "Colonial Rule," Encyclopedia Britannica, October 16, 2014.

6 "Harbel," Encyclopedia Britannica, October 16, 2014.

7 Suzanne Kathleen McCoskey, "The Firestone Tire & Rubber Company and Liberia's Civil War: Evaluating Firestone's Intent to Operate During Chaos," *Business & Professional Ethics Journal* 33:2/3 (2014): p. 271.

8 T. Christian Miller and Jonathan Jones, "Firestone and the Warlord," ProPublica, November 18, 2015.

9 Ibid.

10 Ibid.

constrained and how it, therefore, acted in a way corporate believed was best.[11] According to Schremp, Firestone operated in a way it could best assure "the personal security of [its] employees, and the economic security of [its] investment."[12] He claims that Firestone's actions were centered around its impact on employment in Liberia and, by extension, the country's overall economy. Schremp focuses on the fact that corporate "had no viable choice" and "Firestone very much needed to begin to generate some revenue to meet the heavy social, operational, and capital costs it was incurring."[13] As it stood, according to Schremp, there were no practical alternatives for Firestone's economic decision to pay taxes to Taylor, and more, Firestone leaders knew "absolutely nothing about the military plans or activities of the NPFL."[14] Schremp argues that Firestone Liberia was merely an "innocent party caught in a tragic civil conflict."[15] We can lay out his argument as follows:

1. To merely submit to the power and authority of an unjust actor is not an offense.
2. Firestone only submitted to the power and authority of an unjust actor.
3. Therefore, Firestone did not commit an offense.

Schremp argues that Firestone merely "submit[ted] to the power and authority of the NPFL over its assets."[16] He emphasizes that Firestone did not willingly allow the NPFL to militarize its plantation, especially since Firestone's "own economic objectives in Liberia [could] only be advanced under … [peaceful] conditions."[17] According to Schremp, there was no deliberate cooperation with Charles Taylor. Firestone simply lacked the ability to stop the warlord from militarizing its plantation. Following this rationale, Firestone's actions were morally permissible, as corporate only submitted to the power and authority of the NPFL over its assets. Firestone, as maintained by Schremp, is therefore innocent of any wrongdoing vis-à-vis the Liberian civil war.

The aforementioned arguments utilize different fundamental modes of rationalization. In *Doing Ethics*, Lewis Vaughn provides a lens for us to investigate these modes respectively, qualifying the ethical landscape by describing several major moral theories of obligation, which he elaborates are "concerned with the rightness or wrongness of actions."[18] Vaughn describes a consequentialist theory as "a theory asserting that what makes an action right is its consequences" and a non-consequentialist theory as "a theory asserting that the rightness of an action does not depend on its consequences."[19] This begs the question: If consequences are negligible, how can one determine the rightness of an action? Vaughn answers the hypothetical by means of deontological ethics, using Immanuel Kant and his categorical imperative as the bedrock. Deontology specifies that the morality of an action depends on whether it is right or wrong under a series of rules, or categorical imperatives—rules "that we should follow regardless of our particular wants and needs."[20]

The deontological approach is central to Schremp's argument since his premises evaluate whether Firestone's actions were intrinsically offensive. He believes corporate's actions ought to be gauged by the connatural 'rightness' or 'wrongness' of the acts themselves, as opposed to the consequences of those same actions. Instead of arguing against deontology, I will accept the theory in the context of his argument and target the institutions—the normative

11 An interim government, or provisional government, is formed to look after the internal and external affairs of a country until a new government is elected. The IGNU, specifically, was a faction governing the capital, Monrovia, with the help of a West African multilateral peacekeeping force. Liberia's interim government did not have an army. See "ECOWAS Decisions on the Liberian Crisis - Special Supplement of the Official Journal," *Official Journal of ECOWAS* 21 (1991).

12 John Schremp, "Letter from John Schremp to Francis T. Karpeh," July 8, 1993, available via "Exclusive Documents from Firestone and the Warlord" by ProPublica.

13 Ibid., p. 2.

14 Ibid., p. 3.

15 Ibid., p. 5.

16 Ibid., p. 10.

17 Ibid., p. 3.

18 Lewis Vaughn, *Doing Ethics: Moral Reasoning, Theory, and Contemporary Issues* (New York: W.W. Norton & Company, 2019), p. 65.

19 Ibid., p. 69.

20 Ibid., p. 141.

rules—that enable his end-state justification.

As it stands, Schremp's argument is nested within the scope of international law, which maintains that multinational corporations (MNCs), unlike other non-state actors, have minimal obligations. In other words, companies are essentially treated as private entities in the International Criminal Court and "there is no hard law to regulate MNCs."[21] Schremp evaluates Firestone's actions on this basis of privatized legality. He argues that since Firestone is a private company, it cannot recognize insurgent regimes, such as the NPFL. Schremp elucidates that private companies therefore ought to "deal with those exercising local authority just as private individuals would in the same circumstances."[22] Thus, if I can prove that MNCs have an elevated moral obligation—one over that of the private individual—then Schremp's argument, even under his deontological framework, completely unravels.[23] It would qualify Firestone Liberia's submission to the NPFL as intrinsically wrong, as opposed to intrinsically neutral or right.

Miller and Jones, however, have a much stronger argument. Their premises are comprised of empirical evidence, such as the specific resources Firestone provided Taylor, and the implications of that evidence. In its entirety, their contention is consequentialist: If Firestone's actions resulted in additional violations of human rights, then its actions were morally wrong. Accordingly, to evaluate Miller and Jones' line of reasoning, alternative options and their outcomes must be compared to Firestone's decision to continue business with Liberia and, more specifically, with Charles Taylor. Furthermore, if either argument can be strongly refuted within their own framework—using deontological reasoning with Schremp and consequentialist rationale with Miller and Jones—then their conclusions ought to be rejected. In the end, I find that Schremp's argument cannot withstand scrutiny, while Miller and Jones' remains intact; ergo, I conclude that Firestone's actions were largely immoral. Regardless of whether a consequentialist or deontological framework is accepted, the verdict stands.

First, I will assess Firestone's actions from a deontological standpoint. Schremp specifically focuses on intent, emphasizing that "Firestone lacked the criminal intent required by law because it acted while subject to the authority and compulsion of an armed force, the NPFL."[24] He explains that Firestone was desperate to generate revenue and did not intend for its facilities to be used for military operations, arguing that the company wanted to preserve the plantation, not "expose it to destruction as a staging base for military operations."[25] Moreover, he writes that "all required work permits were obtained" and that, overall, there was no "specific intent to defraud or evade" the interim Liberian government.[26] Thus, Schremp claims that Firestone did not commit any criminal law violations and, therefore, did not behave immorally by acquiescing to a hostile armed force that declared itself the government of Liberia.

Granted, while there is little literature on entrepreneurship in conflict-affected countries, evaluating actions based on cagey rationale—whether or not the action is *technically* legal—is palpably inadequate. Just because it is not codified into law that a private corporation ought not to engage with a warlord does not make it morally permissible. In Schremp's case, it boils down to the wording of international law, as opposed to true ethics. Hence, it is imperative that if we are looking at Firestone's actions through the lens of deontology, we should use the correct institution to frame its conduct—one that can withstand not only legal scrutiny but also moral scrutiny.

As it stands, the underlying rule of Schremp's argument stems from international criminal law, but in "Business under Fire: Entrepreneurship and Violent Conflict in Developing Countries," the authors explain that "destructive entrepreneurship can go beyond criminality to spill over into violent conflict."[27] Moreover, principles of corporate

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21 Adefolake Adeyeye, "Corporate Responsibility in International Law: Which Way to Go?" *Singapore Year Book of International Law* 11 (2007): p. 146.

22 Schremp, p. 10.

23 Multinational Corporations are business organizations that are registered and operate in more than one country at the same time.

24 Schremp, p. 13.

25 Ibid.

26 Ibid.

27 Tilman Bruck, Wim Naude, and Philip Verwimp, "Business under Fire: Entrepreneurship and Violent Conflict in Developing Countries," *Journal of Conflict Resolution* 57:1 (2013): p. 4.

social responsibility have been created and fine-tuned to handle these exact cases. For instance, the Organization for Economic Co-operation and Development (OECD) provides a progressive set of rules called Due Diligence Guidance for Responsible Supply Chains.[28] First adopted in 2010, this guidance includes a list of "specific actions that responsible businesses might take to prevent or mitigate the risks posed by conflict-affected countries," especially as they pertain to "sourcing minerals or metals."[29] This—unlike the institution of international law, which was written with state actors in mind—perfectly aligns with the situation at hand, as Firestone was sourcing natural rubber in conflict-affected Liberia.

As such, the OECD's guidance should be used when assessing the morality of Firestone's operations. On that account, the OECD highlights the requisite of "going beyond legal compliance" and instructs MNCs to "carry out due diligence on business partners in conflict-affected countries to a level commensurate with the risk of engaging with partners with a history of human rights violations."[30] Firestone's decision to conduct business with Taylor clearly violates this policy and thereby immediately disproves Schremp's first premise and, by extension, the rest of his argument.

In light of Miller and Jones' consequentialist claims, as opposed to investigating intent and adherence to rules, the effects of the corporation's decision to continue business must be evaluated. By the same token, in *Corporations and Counterinsurgency*, the authors explain that even the unintentional actions of MNCs "can reinforce the dominance of particular elites or ethnic groups [and] change the local balance of power."[31] According to one of Taylor's top advisers, John Toussaint Richardson, "[they] needed Firestone to give [them] international legitimacy … [and] credibility."[32] And that is exactly what Firestone did; the American company helped pave Taylor's path to the presidency.

By way of illustration, Firestone's storage centers stored Taylor's guns. Firestone's houses housed Taylor and his top ministers. And more, Firestone's communications equipment was used "to broadcast messages to his supporters, propaganda to the masses and instructions to his troops."[33] Since MNCs can be used in these ways—as counterinsurgency tools—they are morally obligated to consider the consequences of their actions, as opposed to just their intent. MNCs must act carefully and consciously to avoid exacerbating armed conflict by means of finance, ethnic favoritism, or other conflict accelerants.

We can appraise the extent of Firestone's impact based on an explanation by Charles Taylor, the terrorizing warlord himself. When he was on trial for war crimes at The Hague, Taylor explained that when they captured Harbel, Firestone "became at that particular time [the NPFL's] most significant … source of foreign exchange." He further testified that "his dealings with Firestone netted $1 million to $2 million every six months."[34] Even if that money was not paid *directly* to Taylor's NPFL, it not only legitimized Taylor as having de facto sovereignty but also funded his rebel army. Ultimately, Firestone's actions represent "a stunning example of a transnational arrogance in the pursuit of profit, heedless of the human cost of its actions," speaking toward both the intrinsic and instrumental assessment of its conduct.[35]

Of course, a consequentialist case can be made by the opposition. We must first examine the most obvious of Firestone's options—continue business in Liberia by engaging with conflict actors or pull out of Liberia entirely, or as

28 "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition," Organisation for Economic Co-operation and Development, March 20, 2013.

29 Human Rights and Business Dilemmas Forum, "Doing Business in Conflict-Affected Countries," Verisk Maplecroft in Partnership with the United Nations Global Compact, n.d.

30 Ibid.

31 William Rosenau, Peter Chalk, Renny McPherson, Michelle Parker, and Austin Long, *Corporations and Counterinsurgency* (Santa Monica, CA: RAND Corporation, 2009), p. 23.

32 Miller and Jones.

33 Ibid.

34 Ibid.

35 "Preliminary Report: Bridgestone/Firestone's Role in the Liberian Civil War," United Steelworkers of America, September 1996, p. 4.

Schremp qualifies, "generate some income or abandon [its] employees and mothball the plantation."[36] As previously explicated, Firestone's continuation of business in Liberia was devastating, but would it have been any better for Firestone to completely evacuate? To this day, Firestone is *still* Liberia's largest private employer.[37] Considering this, abandoning its rubber plantation during the conflict would have removed a fundamental fuel for Taylor's insurgency, but it also would have set Liberia's economy aflame. The American corporation remains critical "to the lives of the tens of thousands who depend on it for wages, healthcare, housing and education."[38]

The next level of options concerns which faction Firestone chose to do business with. In hindsight, however, there were no 'good,' conflict-free Liberian actors to facilitate profitable business in order to maintain the plantation. Firestone would have simply been making a deal with a different "devil."[39] On the other hand, Human Rights Watch recalls that "only the interim government led by Amos Sawyer … has not been responsible for human rights abuses."[40] If only Liberia's interim government had been as strong as Taylor, perhaps Firestone could have contributed to the rise of a state actor that would not have facilitated widespread killing and brutality.

Regardless of whether viable, money-making alternatives existed, Firestone's "agreement to do business with Liberian warlord Charles Taylor indirectly and perhaps directly contributed to mass death and destruction in Liberia and prolonged the Civil War by providing Taylor with badly needed revenue and a base of operations."[41] Given this, it is unlikely any of the aforementioned alternative options' consequences would have been worse than, let alone amount to, the outcome of Firestone's actions. Indeed, corporate existence is secondary to avoidance of "mass death and destruction."

Altogether, both the consequentialist and the deontological vantage points produce the same conclusion. In the scope of consequentialism, Firestone's actions enabled Taylor's forces and, therefore, played a role in perpetuating the mass atrocities against civilians that occurred during Liberia's civil war. Firestone's actions, albeit unintentionally, resulted in more mass killing, more mutilation, more rape, more torture, and other violations of human rights. Under the deontological framework, when applying the moral lens of the OECD to evaluate Firestone's cooperation with Charles Taylor, John Schremp's argument collapses. As Firestone did not carry out due diligence on business partners, Schremp's argument could not withstand both legal and moral scrutiny. Thus, Firestone's actions during Liberia's civil war were largely immoral.

So, where do we go from here? For starters, we can implement international institutions that apply specifically to non-state actors and their conduct in conflict-affected countries. While it might be "a mistake to assume that the law should always enforce morality," in the case of mass atrocities, principles of morality are indispensable to the law.[42] The cries of 'Well, it's not illegal' are simply not enough. It is too late to constitutionally hold MNCs, such as Firestone, accountable for past failures, but it is never too late to hold policymakers accountable for shaping the future. MNCs must be held to a standard, and when that standard is not upheld, there must be a process to hold them accountable.

36 Schremp, p. 2.

37 "About Us," Firestone Natural Rubber Company website, accessed January 18, 2023.

38 Sarah Childress, "Firestone Responds," PBS Frontline, November 18, 2014.

39 Miller and Jones.

40 "Human Rights Watch World Report 1992 – Liberia," Human Rights Watch, January 1, 1992.

41 "Preliminary Report: Bridgestone/Firestone's Role in the Liberian Civil War," p. 3.

42 Singer.

WPJPS