The Father of All Things?  
Hypotheses on the Effects of War on Democracy

Prepared for Presentation at the  
International Studies Association Annual Convention  
San Diego, CA  
March 2006

Ronald R. Krebs  
Assistant Professor  
Department of Political Science  
University of Minnesota  
rkrebs@polisci.umn.edu

*** PLEASE DO NOT QUOTE OR CITE WITHOUT PERMISSION***
What effect do war and crisis have on the quality of democracy? Must polities choose between security and liberty? How can they safely exercise emergency powers, addressing their vital needs while preserving core democratic freedoms and the rule of law? These questions loom large as Western governments, confronting the threat of terrorist attacks, have, in the name of national security, claimed emergency powers and passed special legislation that have expanded executive authority and increased the capabilities of intelligence agencies and the police. Leaders with less dedication to liberal democracy, such as Russia’s President Vladimir Putin, have exploited conflicts to undermine their countries’ already-shaky commitment to liberal norms.

These matters, although obviously pressing today, have, with but few exceptions, failed to penetrate political scientists’ research agendas. Western publics and politicians have since the attacks of September 11, 2001, debated which liberties and whose liberties may be abridged and which expanded. The U.S. Congress has recently renewed (and made permanent) the USA Patriot Act, passed just weeks after September 11. Britain, Italy, and other European countries have revised their laws on immigration, preventive detention, and permissible speech as they have become increasingly sensitive to the threat posed by militant Muslims at home. As these developments mount, our discipline has been, with notable exceptions among scholars of public law and political theory, strikingly silent. Students of international relations, comparative politics, and American politics remain today as generally uninterested in exploring the domestic (and even the international) consequences of war as in the past.¹ This is puzzling, however, for

¹ In recent decades, scholars of international relations have decried the lack of attention paid to the consequences of war, but with little apparent impact on the subfield or the discipline. See Rasler and Thompson 1992; Stein and Russett 1980; Thompson 1993. For a similar complaint about American politics, see Mayhew 2005.
making sense of war’s effects, particularly its long-term effects, is of immense theoretical, historical, and practical importance.²

Although political scientists have been slow to consider whether and how war exerts long-run consequences on domestic societies and especially democratic governance, scholars rooted in the disciplines of law, sociology, and history have long inquired into the domestic ramifications of war. This article thus ranges broadly across disciplines to explore what questions have been asked, how well they have been answered, and what silences persist. This interdisciplinary dialogue reveals a number of well-established patterns, notably the positive impact of high levels of war mobilization on democratic participation (expansion of voting rights, creation of representative legislatures) and the negative impact of crisis and emergency on democratic contestation (expansion of arbitrary executive power, diminution of civil liberties). Even more striking, however, is how little we know about war’s long-term consequences, both empirically and theoretically. Academic lawyers have devoted sustained attention to these questions, but their central concern with formal law often misses critical informal forces; they have often drawn lessons from the US case alone, missing potentially important variation; and their research, notwithstanding its strengths, is often undertheorized, leaving crucial causal dynamics underspecified and unexplored. Historical sociologists such as Charles Tilly have highlighted how war mobilization has, in the European context and elsewhere, compelled governmental authorities desperate for material and human resources to bargain with their populations. This is an important insight, but it is only part of the story. Political scientists should have much to contribute to a research area in which so much still remains to be learned.

² If war were to have purely short-term effects on democracy, the findings would be less compelling. Variation in short-run effects might still call for explanation, but that task would seem to be of secondary importance.
This article proceeds in six parts. The opening discussion speculates on why political scientists have devoted so little attention to these questions. The second section presents two traditions of thought on the consequences of war, and the third and fourth sections delve into what existing research has to say respectively about the short-run and long-run ramifications of wars for democratic participation and contestation. The fifth part advances a research agenda that aims to address the lacunae within the existing literature. It lays out a series of hypotheses and arguments about how the nature of the war, the character of the rights restrictions or expansions, and features of the democratic regime—all factors that do not figure in existing accounts—may shape the degree and persistence of wartime effects. It further argues that our causal accounts are incomplete without theorizing the processes of rhetorical contestation that effectively frame a crisis as such, that establish “national security” as a compelling justification for war-related measures, that fix the nature and meaning of a given war, and that shape war’s effects on the gendered political economy. The article concludes by discussing some policy implications.

**The Consequences of War: The Lay of the Literature**

“War,” wrote Arthur Stein and Bruce Russett in 1980, “is a major agent of change but a neglected one” (Stein and Russett 1980, 399). Such neglect is not quite as pervasive today, but one could hardly characterize the study of war’s consequences as a vibrant research program. The reason does not lie in the subject’s lack of importance: few would deny that wars have often served as “critical junctures” that transformed the participant societies’ economies, cultures, and politics in ways that shaped their future development.³ One German veteran vividly depicted World War I as “a gash [that] goes through all our lives. … With a brutal hand, it has torn our lives in two. …. Behind everything is the war. We will never be free of it” (Whalen 1984, 181-3).

³ On path dependence, see, among others, Mahoney 2000; Pierson 2004.
Whether this conventional wisdom regarding individuals’ military experiences is accurate is open to debate, but few would assert that large-scale wars are not capable of exerting such an impact on the participant societies and polities.

At least three explanations might be advanced to account for such relative neglect, but the last is most persuasive. First, it has been suggested that assumptions about both the nature of war and the purpose of social science may have combined to make the study of war’s consequences seem fruitless at best and inappropriate at worst. War has widely been characterized, often implicitly, as an episodic phenomenon, rather than as a regular process embedded in and potentially transforming social life. Since positivist social science has generally concerned itself with explaining regularities, it could contribute little to the understanding of so singular an event as war, and the larger social scientific enterprise would make little progress by funneling scholarly resources toward such research (Kasza 1996; Thompson 1993, 126). This explanation may have some merit, but techniques adapted from the health sciences have boosted social scientists’ capacity to analyze such rare events (King and Zeng 2001). More importantly, this implies that social scientists should have refrained from studying the causes of war—an endeavor to which they have seemed not at all hesitant to devote their intellectual energies.

Second, teasing out the consequences of war has posed daunting methodological challenges, which may have scared off all but the most intrepid (or perhaps foolish) of scholars. The effects of war might be temporary or permanent, they might follow directly or indirectly, and they might display themselves immediately or only after some time. Nor have the effects of war distributed themselves evenly across domestic populations (Thompson 1993, 125-26). Finally, isolating the impact of war, as opposed to other events and long-term social processes, is necessarily a

---

4 For a critical view, in certain respects, see Krebs 2004.
5 See, however, Modell and Haggerty 1991.
difficult task in complex societies: it would be hard to determine whether “wars involve real discontinuities in historical development or … simply cause ripples in a basically continuous process … that is fueled by other determinants” (Stein and Russett 1980, 418). Such concerns may have played a role, but it is hardly clear that establishing the causes of war is any simpler. Nor is it clear that one can more easily isolate the impact of other public policy choices, from welfare to macroeconomics to education.

Third, and most convincingly, political scientists’ normative commitments have driven them to focus on the causes of war, at the expense of research into its consequences. After the terrible destruction of the two world wars and in the shadow of nuclear war, the overriding concern was how to prevent a future catastrophe in which millions would again perish. International relations theory has thus been inextricably linked to the causes of (global or total) war and peace. Studying war’s consequences not only seemed less important, but also was potentially troubling. War could most easily be prevented if it were widely viewed as being without any redeeming value. It was consequently more comfortable to blame mad military leaders or expansionist capitalist interests or pathological decision-making for seemingly senseless deaths than to recognize war as a rational policy choice embraced by responsible statesmen. Similarly, the discovery that war had desirable domestic ramifications—if it turned out to promote economic growth or expand democratic citizenship—would run counter to the goal of delegitimizing it.⁶

There are of course important exceptions to this generalization. Across disciplines, scholars have explored the effects of war on veterans’ economic prospects, social status, psychological well-being, and even their capacity and will for political action (Mettler 2005; Modell and Haggerty 1991). Research on defense spending and economic performance was especially

⁶David Mayhew (2005) similarly argues that the lack of attention to war as a causal force in American politics was the result of a dominant liberal-Progressive historical narrative.
vibrant as US military budgets climbed, but no clear consensus emerged regarding the net costs or substantive significance of the defense burden (Sandler and Hartley 1995, 200-20). More pertinent to this paper’s subject, scholars inspired by the German historian Otto Hintze (Hintze 1975) have, over the last 30 years, developed an impressive corpus on war and European state formation and, to a lesser extent, the emergence of constitutional democracy (Downing 1992; Porter 1994; Rasler and Thompson 1989; Tilly 1992), and others have recently explored whether and how that analytical framework might yield insight into state-building in other regions and at other times (Centeno 2002; Herbst 2000; Heydemann 2000; Katzenelson and Shefter 2002; Sparrow 1996). Others have examined the effects of war and militaries on the construction of nations (Centeno 2002; Colley 1992; Krebs 2004; Smith 1981), and research, largely by historians, has emerged on the role of war in shaping social memory (Blight 2001; Fussell 1975; Winter 1995; Winter and Sivan 2000). Still more relevant, the relationship between war and domestic conflict has attracted some concentrated attention, though empirical research remains largely confined to the United States (Rasler 1986; Stein 1978; Stohl 1976). And, in recent years, scholars have explored the impact of war on political leaders’ tenure in office (Bueno de Mesquita and Siverson 1995; Bueno de Mesquita et al. 1992; Chiozza and Goemans 2003; Goemans 2000). Finally, David Mayhew has recently urged scholars of American politics to explore how wars have sparked policy change, inspired new issue regimes, shaken up electoral coalitions, transformed ideological stances, and introduced new causal stories, but it remains to be seen if others will take up that research agenda (Mayhew 2005).  

---

It is also worth noting that Mayhew’s insightful article hardly speaks about the effects of war on US democracy, outside the important areas of race and gender. Mayhew’s inductive arguments are also undertheorized, which he views as inevitable since “it is probably a mistake to invest in grand schematic explanations of American history that underplay contingency, and wars are hard to beat as bearers of contingency” (Mayhew 2005, 482).
The quality and vibrancy of this scholarship is striking, yet the sheer quantity continues to pale in comparison to other research programs. No political science department would feel complete if it did not offer a class on the causes of war, yet few perceive a similar need to teach courses on the consequences of interstate and intrastate conflict. It is, moreover, revealing that neither of two prominent critical literature reviews saw fit to devote even a page to the potential effects of war on democracy (Stein and Russett 1980, 418; Thompson 1993). Yet it is this topic that has exercised scholars and pundits in the United States and around the world since the terrorist attacks of September 11, 2001.

Two Traditions

While the postwar social sciences have in general devoted meager resources to exploring the effects of war and war mobilization on liberal democratic structures and processes, these matters have been, across the ages, a central concern of political thinkers, who have arrayed themselves into two camps with views that are seemingly opposed.

1. The Garrison State. The “garrison state” tradition views liberal democracy as a luxury afforded only by those living in relatively peaceful international environments. For Otto Hintze, it was hardly accidental that the early democratizers, Great Britain and the United States, were surrounded by water and weak neighbors and were relatively isolated from European great power politics. The more threatened a state, the more powerful was its military and the more absolute was its form of government; Prussia, surrounded by powerful states, was the epitome of the militaristic authoritarian regime (Hintze 1975). Harold Lasswell famously argued during the Second World War that constant war mobilization would exert similar effects in the twentieth century. Even as formal democratic procedures and structures were retained, real power would
increasingly lie in the hands of the technocratic managers of violence. The democratic republic would be replaced by the “garrison state” (Lasswell 1941).

From this perspective, war, particularly large-scale or total war, upsets two equilibria that lie at the heart of liberal democracy: (1) the “balance” between state authority and national security, on the one hand, and individual liberty, on the other; and (2) the “balance” among contending state interests, functions, and branches. Especially since the American and French Revolutions, ambivalent statesmen, scholars, and citizens have wrestled with the problem of executive power. Republican thinkers recognized that the executive was, despite his title, more than a mere agent of the people and that “necessity” would at times require that he be endowed with the power to stretch the limits of law and on occasion even act outside it. They sought to design constitutional arrangements that would give the executive enough authority to meet those pressing needs—and no more (Mansfield Jr. 1989). During and especially in the wake of “emergency”—when the executive openly seizes powers normally wielded only secretly, if at all, and often either oversteps its bounds or proves hamstrung to the point of ineffectiveness—debates over the limits of executive authority and appropriate constitutional design are rekindled. Such moments also revive debates over the appropriate balance between security and liberty and over what kinds of political and legal institutions would be best suited to discovering and maintaining that balance. As long-dormant disputes sprang up in the United States and elsewhere after September 11, they revealed how little consensus has been forged.

The “garrison state” view has, since September 11, dominated academic, and, to an extent, popular discourse. Supporters of the aggressive counterterrorist measures enacted in the United

---

8 Lasswell was of course wrong: despite his fears and despite the pressure of the Cold War, the United States did not become a “garrison state.” See Friedberg 2000.
9 See, among others, Breyer 2003; Ignatieff 2004a. For analyses of whether tradeoffs are actually necessary, see Donohue 2005a; Hardin 2004; Waldron 2003.
States and Europe have argued that the attacks that day and since revealed that transatlantic societies needed to revise those balances in light of Islamist threats from within and from without. Opponents of such steps suggested, in a similar but more pejorative vein, that democracies tend to abandon their own principles in times of crisis. As one scholar concludes, “Experience shows that when grave national crises are upon us, democratic nations tend to race to the bottom as far as the protection of human rights and civil liberties, indeed of basic and fundamental legal principles, is concerned. Emergencies suspend, or at least redefine, de facto, if not de jure, much of our cherished freedoms and rights” (Gross 2003a, 1019). Such accounts typically draw persuasively on American history: the Alien and Sedition Acts, Lincoln’s suspension of habeas corpus, restrictions on speech during and after World War I and the Red Scare, the wartime interment of Japanese aliens and Japanese-Americans, McCarthy-era loyalty oaths and investigations, and FBI activity during the Vietnam War. Machiavelli encouraged the prince to foster an atmosphere of crisis so as to loosen conventional restraints (Mansfield Jr. 1989, 135-36), and the Left has similarly accused the Bush administration of manipulating the politics of fear to seize unprecedented power (Robin 2004).

2. War and the Foundations of Democracy. In seemingly stark contrast, a second tradition, rooted in historical sociology, portrays war, particularly total war, as a driver of democracy. The turn to the mass army in nineteenth-century Europe required regimes to bargain with their populations for human and material resources (military conscription and taxes), and the price for their compliance (and even consent) was political representation and, in some cases, an extensive welfare state. Intense war mobilization in the age of nationalism may be credited with the creation of representative assemblies and the extension of citizenship (Dolman 2004; Mann
Stanislav Andreski famously argued that the “military participation ratio”—what portion of the population was under arms—was the best predictor of a country’s form of government: the higher the MPR, the more democratic the regime (Andreski 1954). Although these sociologists were inspired by Otto Hintze’s “bellicist” approach, the core insight directly contradicted Hintze’s expectations, as he had suggested that maritime powers, which had a relatively low MPR, were more hospitable to democratic governance, while land powers, which had a relatively high MPR, were more likely to embrace authoritarianism (Hintze 1975, 214-15).

A related mechanism also points to the pro-democratic import of a high MPR. Western norms, whose roots stretched back to ancient republican Greece and which had been preserved in medieval militias, depicted military service as a sign of full membership in the political community as well as evidence of worthiness for membership: military service thus made available a categorical claim upon the state (Feld 1977; Janowitz 1976). As disenfranchised populations invoked their participation in the armed forces, citizenship would broaden. Substantial democratic advances consequently would not necessarily require high participation ratios, but the higher the MPR, the more broadly available this rhetorical mode. Ironically, this mechanism too could be traced to Hintze, who had argued that “whoever puts himself in the service of the state must logically and fairly be granted the regular rights of citizenship” and thus that universal service in particular was conducive to constitutional government and political representation (Hintze 1975, 211). The mass army appears today to be in terminal decline in the West, but the norm nevertheless continues to command rhetorical assent. In July 2002, as

---

10 Martin Shaw, however, argues that the consolidation of parliamentary democracy in the West came only after World War II and rested on state coercion and the international balance of power more than on the strength of domestic forces. Because the United States and its allies marginalized or defeated left-wing movements across Europe, postwar reform and reconstruction proceeded with little input from popular initiatives (Shaw 1988).

11 For more on the operation of this mechanism, see Krebs 2006.
President George W. Bush announced that the thousands of non-citizens serving in the US armed forces would immediately be eligible for naturalization, he proclaimed military service “the highest form of citizenship.”

**A Synthesis?** These two traditions are often cast as competing, but they are in fact complementary. One solution might be to link them serially: David Rousseau and Bruce Newsome thus suggest that political rights are reduced in wartime (a la the first tradition) but expand in the postwar long run (a la the second tradition) (Rousseau and Newsome 2004). This move is appealing, but its theoretical logic is unclear. Lasswell, for one, was more concerned about war mobilization than war itself, and the emergence of the garrison state did not hinge on the actual eruption of war. The resource-extraction model, meanwhile, would predict the expansion of political rights during war, not afterwards: with the war’s conclusion, the state’s resource needs would decline and so too would the pressure that the politically excluded could muster.

The two traditions are in fact not as opposed as they seem at first glance, because they focus on different *dimensions* of democracy. Democratic theory suggests that regimes might be usefully viewed as lying along two continuums: (1) *contestation*: the extent to which political opposition and competition is sanctioned and even protected, among those permitted to participate in governance; and (2) *participation*: what proportion of the population can meaningfully engage in contestation, however that system may be designed (Dahl 1971). Liberal democracies (or what Robert Dahl calls “polyarchy”) rank high along both dimensions, illiberal democracies allow many to participate in the political system but restrict the scope of their involvement and impact, liberal authoritarian regimes observe the rule of law and permit

---

13 Lasswell foresaw that the twentieth century would be dominated by intensive and regular preparation for war, but was agnostic as to whether war would break out.
relatively high degrees of political contestation but impose strict limits on who may participate, and despotic regimes rank low along both dimensions.¹⁴ The garrison-state tradition captures war-inspired limits on contestation, while the resource-extraction approach accounts for war-driven expansions of participation. It is entirely conceivable that war and war mobilization might have positive effects on one of these dimensions and negative effects on the other.¹⁵ These processes need not move in tight lock-step. To cast war as entirely inimical or entirely beneficial to democracy is, therefore, too simple.

Both traditions suffer from a common flaw, however. Clearly not all wars have equally negative effects on participation and equally positive effects on contestation. The critical variable in both accounts is the *scale* of war, with the greatest impact coming when war is total and war mobilization extensive. As William Thompson summarizes the conventional wisdom: “The impacts of war are primarily a positive function of the extent of societal mobilization, population losses, and war duration and a negative function of distance from the battlefield” (Thompson 1993, 126-27).¹⁶ But to think that large effects are the product only of large causes is a classic fallacy of causal reasoning (Fischer 1970, 177). Large consequences may emerge from more modest beginnings, as social scientists informed by both complexity theory and path dependence have argued (Jervis 1997; Pierson 2004, 18-19). System-altering wars often have been limited in their stakes, intensity, and duration, and large-scale wars have sometimes had modest international consequences (Bueno de Mesquita 1990; Levy 1990), and this insight should apply equally to the domestic ramifications of war.¹⁷ It is consequently not obvious that the effects of

---

¹⁴ On the distinction between democracy and liberalism, see, among others, Zakaria 2003.
¹⁵ It is also conceivable that war might enlarge the zone of contestation or impose new limits on participation. Neither of the two existing approaches seems to allow for these possibilities.
¹⁶ Arthur Stein and Bruce Russett (1980, 401) similarly, but more cautiously, conclude: “Typically, it is assumed that larger wars are likely to manifest more consequences and effect more long-term changes.”
¹⁷ See Mayhew 2005, 480-81.
total war on democracy are deeper or more pervasive along either or both dimensions. Nor is it clear that the consequences of total war are longer-lasting: neither tradition cogently theorizes when wartime policies are sticky, when they deepen, and when they are undone. In fact, I will suggest below that total wars may have a deep and long-lasting impact on participation but only a more mixed, and even short-term, effect on contestation; more limited wars, both interstate conflicts and counterinsurgent/counterterrorist campaigns, may make a greater and more enduring impression on contestation.

Scale is a powerful explanatory factor, but it is a crude one. By considering separately the short-run and long-run effects of different kinds of war on these two dimensions of democracy, participation and contestation, we can develop a more nuanced understanding of war’s effects. This organizing scheme will guide the following survey of the more specific hypotheses offered by literature from across several disciplines.

**War and Democracy: Short-Run Consequences**

**Participation.** Large-scale wars have, by many accounts, played a key role in opening up political systems to excluded groups. Across nineteenth century Europe, states preparing to wage war negotiated with recalcitrant populations to relinquish their hard-earned money to tax collectors and their young men to the armed forces. The authorities initially employed coercion to acquire these resources, but, as interstate competition intensified, they found this insufficient. Governments with greater legitimacy could extract more resources less expensively and thus compete more effectively on the international stage. Across Europe, more representative parliamentary institutions were created, and voting rights were bestowed upon lower class males, having previously been restricted to men of means and property (Dolman 2004; Tilly 1992, 96-
126; Tilly 1995). Large-scale war similarly underpinned the modern welfare state: to secure populations’ compliance with state demands on their resources, the scope of citizenship was extended to new arenas of social life (Titmuss 1969 [1958]).

Population groups whose peripheral status was maintained through gendered, ethnic, or racial discourses also exploited the state’s dependence on their resources to work their way toward the center. Women in England and the United States contributed to their national war efforts during the First World War and won at least some gains in return. Their war work—extending, in Woodrow Wilson’s words, “upon the very skirts and edges of the battle itself” (Flexner and Fitzpatrick 1996, 302-03)—precipitated a major shift in public opinion on the suffrage question in the United States and Britain (Graham 1996, 105, 46; Harrison 1978, 203-05). Similarly, African-Americans made substantial strides only during and in the wake of large-scale war (Klinkner and Smith 2000). Finding the Union stretched by the demands of the Civil War, Abraham Lincoln issued the Emancipation Proclamation in 1863, and thousands of African-Americans donned Union blue as a consequence; with the end of the war came constitutional amendments ending slavery, recognizing blacks as citizens, and guaranteeing blacks the vote. African-Americans, however, made little headway during a minor war against a declining imperial power (the Spanish-American War) and a global war in which the US role was critical but short-lived (World War I).

These efforts have born fruit unevenly, however, and they have not necessarily translated into lasting gains. White American women attained the vote toward the end of World War I, but they failed to make similar headway in the labor market after either world war. The United States relied heavily on women’s industrial muscle, but gender nevertheless remained “an organizing

---

18 On the extension of citizenship’s scope, see Marshall 1950. Others, however, see more extensive public welfare provisions as the product of state initiative, not struggle from below (Shaw 1988).
premise in the distribution of rights and responsibilities” (Ritter 2002, 203). Despite their contributions during the Great War and despite the suffragists’ impressive prewar strength, French women were even denied the vote, with motherhood (as a means of addressing wartime “depopulation”) trumping emancipation (Hause 1987). In their sweeping analysis of African-Americans’ struggle for rights, Philip Klinkner and Rogers Smith concede that large-scale war was at most necessary, not sufficient, for African-American progress, and they identify as equally critical an inclusive wartime rhetoric and an established protest vehicle (Klinkner and Smith 2000).19

Contestation. The short-run effects of war on democratic contestation are also well-established. There is little disagreement that wars tend to lead to the expansion of executive authority, at the expense of other branches of government, and to the diminution of civil liberties.

That the executive branch expands in times of war and emergency, across all sorts of regimes, is a truism. For Locke, Montesquieu, and the Federalists, “necessity” demanded the creation of extensive, if always bounded and checked, executive authority. Assuring the state’s physical security requires immediate action, and the deliberation typical of legislative politics is a handicap to effective policymaking. It is widely believed that the executive branch is more capable of acting with dispatch than standard or even accelerated legislative processes and better capable of designing good policy under temporal and cognitive constraints.20 The intellectual history of this assumption is imposing (Mansfield Jr. 1989), and it has deeply shaped the contemporary debate over the prosecution of counterterrorist campaigns.21 The executive has a

19 Yet the “protest vehicle” was by no means as exogenous to the war experience as Klinkner and Smith imply. The NAACP was vastly strengthened by World War II (as it had been by World War I), and it maintained that strength into the late 1940s (unlike after WW I). In contrast, however, the French women’s movement, which had in 1914 gathered half a million to protest for suffrage, emerged from the war a shadow of its former self.
20 For critiques of this presumption, see Scheuerman 2003; Scheuerman 2005.
21 As Michael Ignatieff has recently revealingly written, “Checks and balances work slowly—Congress must deliberate; the courts must review—and meanwhile, the crisis calls out for decisive action. This is why terrorism’s....
possible further advantage in times of crisis because she can typically lay claim to the “national interest” more credibly than can legislators beholden to parochial concerns, and the very malleability of “necessity” as a category allows for its manipulation by executives desirous of greater authority, as Machiavelli understood (Mansfield Jr. 1989, 135). For Carl Schmitt, however, it was during crises that liberal regimes revealed their fundamental incoherence: as they invoked emergency powers lodged in the executive, they dramatically demonstrated that law was not king and that effective rule required domination, no matter how encircled with formal constraints (Schmitt 1985).

The expansion of executive authority should not by definition be counted as a strike against liberal democracy, however. Part of the process of constructing state capacity, more powerful executives are perfectly consistent with liberal-democratic norms. More autonomous and arbitrary executive power is not. Restraint of executive action hinges on other actors’ capability for both review and enforcement. In the absence of either, the executive becomes increasingly despotic. The expansion of arbitrary executive authority may be married to democracy—the executive in the twentieth century became by some measures both more powerful and more democratic (Scheuerman 2000, 1884)—but it is contrary to the spirit of liberalism. What is less clear from the existing literature is why democracies do not expand arbitrary executive powers uniformly in response to similar policy challenges.

chief impact on democracy … has been to strengthen the power of presidents and prime ministers at the expense of legislatures and courts and to increase the exercise of secret government” (Ignatieff 2004b).

22 Early in the Cold War, President Harry Truman and State Department officials were among the few in government pressing for race reform, for they most directly saw how much damage racial discrimination did to US foreign policy interests. See Borstelmann 2001; Dudziak 2000.

23 Interestingly, Stephen Holmes reads Machiavelli as seeing the foundation of the rule of law in the exigencies of war: “To achieve the social cohesion necessary for war, Machiavelli asserts, the elite must renounce its immunity and expose itself to legal challenges. This is how power politics, if the elite is sufficiently prudent, can incubate the rule of law” (Holmes 2003, 37). It should be obvious that political elites have rarely been so prudent.

24 For this understanding of constitutionalism (and liberalism), see Finn 1991.
The most infamous effects of war that impinge on democratic contestation have come in the realm of civil liberties. Throughout the transatlantic space, countries have revised their civil-liberties baselines in the years since the September 11 attacks. Geoffrey Robertson, one of Britain’s leading civil rights lawyers, put it well in July 2005: “It’s always the case that the flame of civil liberties burns less brightly when surrounded by the smoke from bombed buses and tube trains” (Lyall 2005).

The existing literature has perceptively explored the different motives and incentives confronting both political elites who initiate restrictions on civil liberties in the face of threats as well as mass publics who support these measures. Regarding elite motivations, there are three notable reasons. First, elites might sincerely believe that restrictions on individual liberties constitute a rational response to a new or rising threat. Recent British moves to prohibit the “glorification of violence” may not effectively address young British Muslims’ alienation, but the policy is clearly intended to silence radical preachers who have given this alienation violent direction and at least inspired the July 2005 attacks on London’s transportation system. Second, in the wake of attack, politicians are typically eager to demonstrate to their constituents that something is being done to protect them. Politicians may care less about whether the resulting policy bolsters state security than about whether it achieves substantial political benefits at relatively low cost. Violating civil liberties may not necessarily provide much protection, but it may bring political gain. This logic explains why politically weak population groups are common targets of state action (Cole 2003a; Gross 2003a; Stuntz 2002). Perhaps the most salient example here is the World War II internment of Japanese aliens and Japanese-Americans residing in the continental United States in the weeks and months after Pearl Harbor. Third, and related, mounting threats or recent attacks create opportunities to pursue political and institutional
agendas utterly independent of the crisis. The attacks of September 11 opened political space, less for discrimination against Muslim and Arab Americans, than for federal agencies’ pursuit of powers long-denied them.  

Regarding public support for sacrificing civil liberties, two categories of causes have been noted. Supporters of such measures typically portray public acceptance of particular restrictions as a rational response to new threats. In August 2005 Prime Minister Tony Blair defended aggressive new proposals by alluding to the previous month’s brutal Underground and bus attacks: “For obvious reasons, the mood is now different. People do not talk of scaremongering” (Cowell 2005). Opponents generally argue that mass support for emergency measures is rooted in psychological dynamics, both “cold” cognition and “hot” emotion, especially fear (Gross 2003a, 28-31). Experimental research confirms that threat is a determinant of public attitudes with regard to tolerance (Marcus et al. 1995; Sullivan et al. 1982). One post-9/11 study found

---

25 Although President Bush’s public rhetoric emphasized respect for Islam, the government conducted more intensive surveillance of Arab and Muslim immigrants, and the number of hate crimes directed at Arabs and Muslims rose dramatically (Gerstle 2003).

26 Academic literature, which tends to be critical of wartime measures, hardly considers this possibility. Observing domestic policies in response to threat that they deem poorly designed, legal scholars have ascribed public support to mass irrationality. Yet mass publics respond more rationally to events, including foreign policy, than traditionally thought (Page and Shapiro 1992; Zaller 1992). Moreover, rational mass publics may produce a policy that is irrational at the national level, since individuals may (rationally) pursue parochial ends.

27 Fear is greatest when confronting risks that are seemingly beyond one’s control and that are randomly distributed, and national security threats generally meet these criteria. Fear heightens the public’s sensitivity to threats, and fearful individuals are attracted to measures that claim to eliminate, rather than just moderate, the threat (Viscusi and Zeckhauser 2003). Fear may also lead individuals to focus on the “badness” of outcomes rather than on their likelihood, contributing to an excessive reaction to low-probability events and a willingness to pay high costs to reduce risks even by small degrees (Sunstein 2003). When fearful, the public is particularly tolerant of measures that restrict the civil liberties of peripheral populations and even of those that impinge on the citizenry as a whole. However, fear, at least in moderate doses, also improves the quality of decision-making, and some thus argue that it can prevent over-reaction and civil liberties violations (Posner and Vermeule 2003, 626-35). Even if this is true, to the extent that anxiety focuses attention and promotes learning, it destabilizes existing norms with regard to civil liberties and paves the way for their reconsideration (Davis and Silver 2004, 30). Moderate levels of fear appear, for good or for ill, to contribute to the revision of civil liberties baselines.
that “each increase in the level of concern about another attack is associated with a 5-percentage point decrease in support for civil liberties” (Davis and Silver 2004, 35).  

Oren Gross (2003) has, in a seminal article, persuasively argued that four “assumptions of separation” have underpinned emergency measures.  

A temporal distinction—crisis vs. “ordinary” times—seeks to assure publics that restrictions on democratic contestation are temporary and will be rescinded as soon as the crisis has passed. The three other distinctions emphasize that such measures are directed against “others.” A spatial distinction, distinguishing between an “anomalous” zone (such as the Occupied Territories or Northern Ireland) and the territorial state, pledges that such restrictions are confined geographically. A second spatial distinction distinguishes between foreign territories (such as Guantanamo Bay or Afghanistan) and domestic territories.  

Finally, a communal distinction dictates that measures be directed at “them” rather than “us.” Gross observes that “the clearer the distinction between ‘us’ and ‘them’ and the greater the threat ‘they’ pose to ‘us,’ the greater in scope become the powers assumed by government (with the cooperation of the legislature and frequent acquiescence of the courts) and tolerated by the public” (Gross 2003a, 1037).  

The observation that one or more of these “assumptions of separation” has typically undergirded anti-democratic or illiberal emergency measures rings true, but scholars have only begun to inquire into the social and political conditions that make these assumptions seem plausible. Gross (2003) has usefully challenged the presumption that these assumptions are

---

28 Yet this literature on the whole warns against overestimating the import of threats, since beliefs about whether a group is threatening are much less predictive than either an individual’s general tendency to see the world as a dangerous place or her standing commitments to tolerance and democracy (Marcus, et al. 1995). Trust in government, moreover, mediates between threat perception and support for further restrictions on civil liberties: those with greater trust in government are more willing to relinquish their freedoms (Davis and Silver 2004).  
29 See also Hussain 2003, 135.  
30 These “assumptions” are reflected in the International Law Association’s definition of “emergency”: see Chowdhury 1989, 24-29.  
31 This distinction has been widely noted in the literature. See, among others, Cole 2002; Cole 2003a; Heymann 2003, 88-90; Hofnung 1996, 75; Stone 2004; Stuntz 2002.
warranted or real: supposedly temporary measures have often become permanent, and the geographic and communal borders meant to contain these measures are at times permeable. However, explaining the long-run consequences of such measures, which will be taken up later, must rest in part on explaining how and when the key distinctions between Here and There, between Us and Them, and between Normal and Crisis Times are effectively established or dissolved. These “assumptions” might be more productively viewed as rhetorical commonplaces deployed to build public support for reducing civil liberties and expanding executive authority. They are established and reproduced through rhetorical work that makes them seem natural, and they are challenged through rhetorical action that reveals their arbitrariness. These categories are deployed by some actors and resisted by others, and the ensuing contestation is critical to whether these labels are successfully attached to people, places, and events. The categories themselves thus must be problematized, and the political process through which the meaning and boundaries of these categories are fixed calls for explanation.\footnote{This is not, however, necessarily to adopt a stance in which everything is collapsed into discourse. One might advance any number of explanations—rooted in institutions, material power, the test of experience, and so on—to account for political outcomes ranging from effective challenge (and the failure to establish discursive hegemony) to silence (and the naturalization of the arbitrary).}

While the literature has usefully drawn attention to these “assumptions of separation,” it has not systematically accounted for variation in the power and applicability of these commonplaces, and explanations in given historical cases are at times unsatisfying. Much is often said to turn on whether targets can plausibly be characterized as the “Other,” but the criteria for plausibility are rarely clear. It may seem obvious that so classifying Whig opponents of the Mexican War and white critics of the occupation of the Philippines would be more challenging than trying to do the same to ethnically identified German-Americans during the First World War and Japanese-Americans during the Second (Graber 2005a). But many cases are more problematic. For
example, Geoffrey Stone maintains that the overt and covert repression of Vietnam protest was relatively mild in historical terms in part because middle-class war protesters could not be easily portrayed as “Other” (Stone 2003, 239). Yet Sixties protest was wrapped up with the “counterculture”: the enduring image is that of the hippie, who consciously sought to distinguish herself from the straight-laced Fifties generation and the “establishment.” There were, therefore, seemingly sufficient grounds on which to classify Vietnam protesters as “Other.” That such efforts either failed or were not even attempted requires explanation. The existing literature has suggested what follows when labels stick, when they become essential to the discourse of the times. But those consequences are predicated upon a prior process that is not nearly as well understood—a process through which meaning is fixed and categories ascribed.

War and Democracy: Long-Run Consequences

If the anti-democratic and illiberal short-run consequences of war were delimited in time and space, if expansions of executive authority and restrictions on civil liberties failed to persist beyond the crisis, if the enlargement of the zone of democratic participation were short-lived, then one might conclude, as many implicitly have, that studying the consequences of war and war mobilization would be of little enduring value. War would then be merely a temporary deviation from normal patterns. Perhaps not surprisingly, those who have devoted attention to the study of the consequences of war and crisis have generally not reached this conclusion.

Participation. War may have long-term effects on democratic participation through a variety of direct and indirect pathways. Findings here tend to be more suggestive than definitive, often derived exclusively from the US experience and often limited to specific historical moments.
1. **Suffrage.** Large-scale wars, and the concomitant pressures for resource extraction, have yielded expansions in democratic participation that are self-reinforcing and thus particularly persistent. The logic is straightforward and intuitive. When the vote is extended to previously excluded populations, they acquire a powerful political resource. Ethnic or religious communities, especially when they vote as a bloc, acquire protectors, have increased access to publicity, and become a force to be reckoned with. It is obviously easier to refuse the political rights of citizenship to the politically weak than to divest the recently empowered of those same rights. Moreover, while liberal discourse can justify denying certain rights to certain groups—e.g. convicted criminals, children—it is not clear how one might justify stripping large classes, identified on ascriptive grounds, of rights of which they had previously been deemed worthy. In this case, big wars do in fact have large and long-standing consequences.

2. **Civil Society.** Theda Skocpol and her collaborators have argued that large-scale wars boost civic engagement, and they imply that such wars have the potential to bring large numbers into the political system. The war’s outcome is seen as playing a crucial mediating role. Victorious societies (or at least those identified with the winners) come away with renewed energy and will for cooperation: civil society becomes more vital, and associational memberships rise dramatically. However, the civic associations of defeated societies, such as the South after the US Civil War, and of groups allied with the adversary, such as German-Americans after World War I, stagnate or even decline after war, as members seek to downplay their unsuccessfully realized identity. In Skocpol’s sophisticated account, the relationship between government and civil society during war also has important implications for the specifics of the postwar relationship, and state structure affects what kinds of organizations thrive and which languish. But the thrust is that the *scale* and *outcome* of war are critical: total, victorious war bolsters civil
society and expands democratic participation (Skocpol 1999; Skocpol et al. 2000; Skocpol et al. 2002). These conclusions are based only on US data, and very preliminary studies of other national contexts suggest that they may not have responded in a similar fashion to the scale and outcome of war (Kage 2005).

An implication of Skocpol’s work is that limited wars exert little impact on democratic participation, but Bartholomew Sparrow has argued that Americans’ experience with limited war since World War II, in Korea and Vietnam, had a large negative effect. Sparrow maintains that these limited wars estranged Americans from government: they led to a decline in the federal government’s legitimacy, in trust of the authorities, and thus in state capacity as well (Sparrow 2002). This is a provocative claim, but it is not fully persuasive as to the generalizable consequences of limited war. As Sparrow himself admits, his indicators of declining political consent may be problematic; some, such as the rising incidence of conscientious objection, may capture legitimacy less than they do other trends, such as a secular increase in youth’s willingness to challenge authority, which may be more closely related to economic prosperity. Even if Sparrow is correct, however, that state legitimacy has suffered since Korea, did the absence of trust in government derive from the wars’ limited natures or from the fact that the military and civilian authorities had in Vietnam sought to mislead the public? This image of duplicitous Washington insiders was reinforced by the Watergate fiasco. Would Americans would have lost faith in government if those in government had behaved more honorably, no matter what the war’s outcome? It would seem difficult to dismiss this critical counterfactual.

Questions might be raised about Skocpol’s interpretation of the data and whether broader long-terms trends, such as industrialization and economic growth, played a greater role in shaping associational life. Moreover, while Skocpol attributes post–Civil War patterns of associational life in the North and South respectively to victory and defeat, the postwar data are perhaps equally well explained by prewar and postwar levels of urbanization and population density. Finally, while Skocpol’s explanation for these effects of war is explicitly psychological, it is not well grounded in actual psychological dynamics. Nevertheless, the research is suggestive and persuasive.
To be fair, Sparrow does not frame his argument in terms of participation, but one might reasonably infer that alienation leads to political disengagement. Yet, even if Sparrow is correct, the effects of the Vietnam War on democratic participation, and on the quality of democracy more broadly, were complex. The war was a disruptive force, shattering the Cold War consensus, and perhaps producing alienation among Americans. But the war also thereby created space for broad-based dissent: it prompted new social movements and allowed new voices into the public arena. In the late 1960s African-Americans were increasingly frustrated and alienated, and they embraced violence, but by the mid-1970s most had again turned to more conventional means of contention, participating within the system. The press grew distrustful of government during Vietnam—with good reason!—but it also became a more independent force. And the 26th Amendment to the Constitution extended the vote to all those over the age of eighteen. Given these cross-cutting effects, it is not at all clear that this limited war was on balance harmful to democratic participation. Nor is it clear that these effects, positive or negative, inhered in the limited nature of these wars (structure), rather than in the choices of political actors (agency).

These scholars of American political development have suggested that wartime experiences have directly affected the quality of civil society in the United States. Insofar as a vibrant civil society is necessary (but undoubtedly not sufficient) for a healthy democracy, exploring these connections is a vital task. 34 Far more work remains to be done to ascertain what precisely are the ramifications of the scale and outcome (as well as other features) of war for civil society, both in the United States and elsewhere.

3. Gender. The introduction of women into the political system in many countries, most directly by the extension of the vote, has represented the greatest expansion of democratic

34 As Sheri Berman has pointed out, Weimar Germany had a remarkably vibrant civil society, but its anemic democratic institutions failed to weather economic dislocation and easily gave way to Nazi domination (Berman 1997).
participation in the twentieth century in already consolidated democracies. Has this expansion occurred thanks to war, despite war, or completely independent of war?

War has, for much of human history, been the province of men (Goldstein 2001), and it has served to sustain a gendered discourse of masculine warriors and female “beautiful souls” (Elshtain 1987). In ancient Greece and then continually over the ages, the performance of military service has been seen as evidence of civic virtue, and such civic virtue has been proof of one’s worthiness for membership in the political community and thus for the rights of citizenship. But those deemed appropriate for the performance of such communal obligations, and thus deserving of political rights, were men and most often men of “substance.” Where the discourse of citizenship has been dominated by such a militarized republicanism, war has served to reinforce women’s peripheral political status. As Linda Kerber has noted with regard to early America, “The connection between the republic and male patriots—who could enlist—was immediate. The connection between the republic and women—however patriotic they might feel themselves to be—was remote” (Kerber 1998, 240). Women’s claims for political and other rights could be, and were, turned aside as men invoked this citizenship discourse. As a delegate to the 1879 California constitutional convention put it, “What is political sovereignty? It is the fruits of the sword,” and women had not taken up weapons in the nation’s defense (Keyssar 2000, 192-93).36

Women have of course hardly been peripheral to war, even when they have been peripheral to the political system. As Jean Elshtain observes, they have been “drawn into the picture: as occasions for war; as goads to action; as designated weepers over the tragedies war trails in its wake; or, in our own time, as male surrogates mobilized to meet manpower needs for the armed

35 There have of course been many exceptions among members of both sexes, yet they have been discursively marginalized. See Elshtain 1987, 163-225; Goldstein 2001, 59-127.
36 For similar arguments, in the British context, see Harrison 1978, 73-78.
forces” (Elshtain 1987, 58). As industrialized societies came to terms with the realities of total
war in the twentieth century, women were called upon to support the war effort, not in their
traditional roles as camp followers, but as members of the industrial work force. In the United
States and the United Kingdom, women’s contributions in World War I imparted new impetus to
their standing suffrage movements, and French women, denied the vote after the First World
War, gained it after the Second “by means of their heroic actions in the Resistance, [which]
demonstrated that they could no longer legitimately be considered minors on the political scene”
(Jenson 1987, 279). Overall, however, women’s postwar experiences in the United States and
Europe were bitter, as reality fell short of feminists’ grander aspirations regarding women’s place
in the public sphere and the industrial economy (Chafe 1972). Women were discursively once
again confined to the private sphere—handcuffed to maternal and nurturing roles. Their wartime
sacrifices were treated as emergency measures, aberrations from the usual and normatively
desirable path, and thus women were not able to sustain their wartime gains. More often than
not, war has simply reinforced standing gender norms that shape the distribution of public rights
and responsibilities (Higgonet et al. 1987; Ritter 2002).

Historically, war has rarely played a transformative role with regard to gender roles. The
question is whether this is a necessary feature of war or whether war might conceivably act as a
more progressive force. Those who support equality for women in the armed forces often imply
that war and military service can in fact be placed in the service of the feminist cause. Joshua
Goldstein, however, suggests that the masculinization of war has been functional for the creation

---

37 There is much disagreement about the role World War I played in helping American and British women attain the
vote. For the view that the war played a critical role, see Evans 1989, 170-72; Flexner and Fitzpatrick 1996, 278-
319; Keyssar 2000, 215-21. Others argue that this undervalues the suffrage movement, which was increasingly well
organized during the first two decades of the twentieth century; for this view, see Banaszak 1996; DuBois 1998,
272.

38 Wartime and postwar discourses appear to have reinforced existing gender constructs. But that causal effect has
been barely perceptible, because showing that postwar gender roles were more stable or more powerful than prewar
gender roles, as the notion of “reinforcement” suggests, is in practice extraordinarily difficult, if not impossible.
of motivated warriors willing to sacrifice themselves (Goldstein 2001, 251-301). Yet even if Goldstein is correct, it does not foreclose the possibility that the very notion of warriorhood might be reconceptualized in a gender-free fashion. To pacifists of both sexes, this is of course anathema, and they decry the increasingly prominent combat or combat-equivalent roles women are playing in many Western armed forces. Yet discourse changes only very slowly, as the coverage of Private Jessica Lynch’s capture and rescue in Iraq has revealed.

4. The Welfare State, Inequality, and Economic Growth. Large-scale war, thanks to now familiar bargaining dynamics, underpinned the formation of the modern welfare state: the scope of citizenship was extended to new arenas of social life to secure populations’ compliance with state demands on their resources (Titmuss 1969 [1958]). These new institutions took shape in the short run, but they had important long-run effects on participation. Programs to provide public health, public education, and assistance for the impoverished and disabled sought to ensure at least some minimally acceptable standard of living, but they were also a modest way of redistributing wealth and reducing economic inequality. The poor and the uneducated participate less regularly and intensively in democratic politics than do the relatively wealthy and educated (Schlozman et al. 2005), and the welfare state consequently increased populations’ capacity to exercise their political voice: it contributed modestly to leveling the economic and, in the long run, the political playing field. The messages implicit in these programs’ design also had the potential to shape citizens’ conception of their role in the polity, and these “interpretive” effects could boost their will to participate in civic institutions (Hacker et al. 2005, 32-57). These indirect long-run effects appear to be powerful and persuasive, but they depend on the extensiveness of the welfare state and the corresponding redistribution of wealth.
If there is any systematic relationship between war and economic growth, it may also have indirect long-term consequences for participation, for related reasons. If high levels of defense spending (due to arms racing and intensive war preparation) promote growth through spillover effects,\textsuperscript{39} then over the long run it may boost participation. If, however, as many contended later in the Cold War, the cost of defense becomes a net drag on the economy, by crowding out other forms of investment, it may depress participation. Focusing in turn on demand and supply, theoretical models have yielded no clear answer, and the empirical findings have been mixed. One even-handed review concludes that “the net impact of defense on growth is negative, but small” (Sandler and Hartley 1995, 220), and another, while unsure about the direction of the effect, agrees that either way it is “relatively modest” (Payne and Sahu 1993, 14).

Even if this ambiguity is resolved, however, and even if the effects are discovered to be substantively significant, the implications for participation are sure to be marginal. Absolute levels of growth matter less for participation than does the degree of inequality, and defense spending, while perhaps important to the former, has little impact on the latter.\textsuperscript{40} Social policy, however, which shapes (but hardly determines) the distribution of income and wealth, has the capacity to diminish or boost participation. For example, the GI Bill, in part by making vocational training and a college education affordable for millions of middle- and working-class Americans, created a generation that has been hailed for its impressive commitment to civic endeavors (Mettler 2005). Economic inequality underpins political inequality, and rising economic inequality in the United States since the 1970s has undercut the “rights revolution” that

\textsuperscript{39}For a recent important contribution to this continuing debate, see Ruttan 2006.

\textsuperscript{40}A related debate focuses on the relationship between economic performance and democracy. Adam Przeworski and various colleagues have claimed that there is no relationship between economic growth and the emergence of democracy; Carles Boix and others have defended this insight into the effects of modernization. Both, however, measure democracy dichotomously and, at least in part due to the limitations of existing data, eschew more subtle claims about the effect of economic performance on the quality of democratic participation and contestation. See Boix 2003; Boix and Stokes 2003; Przeworski, et al. 2000; Przeworski and Limongi 1997.
promised to level the political playing field. Political participation in the United States continues to be stratified along the lines of race, ethnicity, and gender—in line with patterns of stratification in education, employment, and income (Hacker et al. 2005; Schlozman et al. 2005).

In short, long-term economic growth would not seem a consequential path by which war and war preparations affect democratic participation, even over the long run.

Contestation. Whether wartime expansions of executive authority and restrictions on civil liberties persist beyond the end of the conflict, paving the way for deeper and broader changes in the future, is among the most intensely debated questions in the existing literature. Little agreement has emerged regarding either the empirical patterns or the theoretical logic.

Optimists, comprised largely of legal scholars drawing from the US experience, argue that there is a silver lining to the United States’ history of wartime restrictions on civil liberties: these experiences have contributed to the development of a rights-protective jurisprudence that has constrained government in future conflicts.41 These scholars depict American decision-makers and jurists as undergoing a process of progressive social learning: wartime violations, though excused at the time, have invariably been viewed afterwards with regret and even disdain, and wartime cases have served not as precedents for further violations, but rather as cautionary tales, prime examples of what should not be done (Cole 2004a; Goldsmith and Sunstein 2002; Rehnquist 1998; Stone 2004; Tushnet 2003; Wood 2003).

In each successive crisis, these scholars argue, US performance with regard to civil liberties and executive authority has improved. Regretted restrictions on freedoms have never been repeated, and arbitrary executive authority has gradually been tamed. In wartime US authorities have increasingly relied on statute rather than unlegislated executive powers, turned to the courts

---

41 It is generally presumed that powerful precedent is normatively desirable. But legal hurdles might also be set too high, and a government careful to observe legal norms would find its hands tied—with potentially disastrous results.
rather than administrative justice, and refrained from overt suppression of criticism and dissent (Rehnquist 1998, 219-21). From this perspective, the Bush administration’s actions since September 11 have been restrained by historical standards. As Jeffrey Rosen concludes, “Perhaps the real story after Sept. 11 is that America hasn’t yet come close to abandoning any immutable principles or its national identity” (Rosen 2001). Post-9/11 measures were not as severe as initially feared, and more ambitious administration initiatives provoked a bipartisan chorus of criticism, rather than the usual acquiescence (Spiro 2005). Some credit evolving social attitudes protective of individual liberty (Goldsmith and Sunstein 2002), others the power of judicial precedent to shape cultures of liberty and support freedom’s organizational advocates (Cole 2004a, 2582-84), and others international constraints (Spiro 2005). But, despite disagreements as to particular causes, there is agreement with regard to the trend lines.

Critics, however, maintain that the United States has made the same mistakes, broadly speaking, in each successive crisis (Bollinger and Stone 2002, 8; Brennan Jr. 1987, 1; Cole 2003b, 5). More cynically, David Cole has argued that past experience has taught governing authorities an important lesson: how to evade future constraints (Cole 2003a, 88-158; Cole and Dempsey 2002, 71-89).42 A quantitative study of US Supreme Court decisions found no evidence for the alleged “ameliorative” trend (Epstein et al. 2005). Moreover, even if this optimistic narrative were true of the United States, it is not clear that the US experience is generalizable.43 The United States has been exceptionally fortunate to have faced no serious home-grown competitors in its hemisphere and to have endured no foreign threats to its survival.

---

42 Oddly, however, Cole has elsewhere hailed the power of judicial precedent as a constraint on government policy and articulated the optimistic narrative. See Cole 2004a; Cole 2004b.
43 In fairness, these scholars have not suggested that the US experience is typical. Since these works are generally light on theory, it is not clear on what basis one could or could not extend their arguments to other countries.
since at least the middle of the nineteenth century. Similar studies regarding other states’ wartime and postwar experiences and jurisprudence are few and far between.

At the theoretical level, many aspects of the optimistic narrative are underdeveloped. First, the optimists display a mysterious attitude toward the power of precedent. On the one hand, they are implicitly unconcerned about pusillanimous wartime judicial rulings, since these will have no long-term negative effect on rights jurisprudence. Justice Robert Jackson famously warned during World War II that wartime opinions would lie about like a loaded gun, waiting to be fired at some unsuspecting and innocent soul. Yet, as the optimists point out, the infamous Korematsu decision upholding the internment of Japanese-Americans, from which Jackson was dissenting, has not been cited as guiding precedent in the over 60 years since it was handed down. On the other hand, their argument is in fact predicated on normatively desirable precedent proving so powerful that it constrains decision-makers confronted with imposing threats.

Second, the optimists claim that rights restrictions are not self-reinforcing but rather can touch off a backlash, but the conditions under which such path-dependent processes occur are left unspecified. In fact it is strongly suggested that such processes always occur, at least in the United States, after war or crisis. Yet the evidence to the contrary, in the United States and elsewhere—as emergency laws remain on the books or are approved as permanent legislation, as new means are found to violate old freedoms—is too great to sustain a case for invariance.

Third, and related, the process by which a postwar consensus emerges critical of wartime policy and protective of the violated rights is never spelled out. Some, true believers in the judicial faith, imply that it is largely the product of judges calmly reflecting upon history in their

---

44 While the optimists do appear to have a point with regard to the well-known Korematsu decision, the more obscure case of Quirin, regarding the dispensation of military justice against Nazi saboteurs during World War II, has been cited in support of the Bush administration’s policy on military tribunals.

45 On such processes in general, see Mahoney 2000, 526-35; Pierson 2000, 85-86.
chambers (Cole 2004a). Yet so apolitical a process ignores the competition waged in the public sphere to impart meaning to events, and it particularly overlooks the role that both an outraged civil society and the state have played in forging social memory. The story of increasing American rights consciousness cannot be told without reference to the American Civil Liberties Union. That example itself suggests the possibility of a backlash against government overreaching, for the ACLU was founded in direct response to World War I and the Red Scare (Murphy 1979). Yet what promotes or inhibits such mobilization against wartime practice? A causal account more sensitive to both variation and politics would seek to address this question, but the optimists do not.

In contrast, pessimists argue that the exception is hardly exceptional, that there is a marked tendency for the “assumptions of separation” to break down and for emergency to “bleed” into normal politics. War and crisis, by this account, cast an exceedingly long shadow. The evidence on behalf of the pessimists’ account, particularly with regard to emergency powers that in many countries have grown nearly permanent, is overwhelming. But such accounts are less satisfying when it comes to explanation in general and to explanation of variation in particular.

Emergency powers are sustained by the distinction between “ordinary” and “crisis” times, yet the reality of protracted crisis has rendered the distinction meaningless (Chowdhury 1989, 43-55; Finn 1991, 134; Gross 2003a). Israel has, since its founding, operated under an effectively permanent state of emergency (Hofnung 1996). In the United Kingdom, the Prevention of Terrorism (Temporary Provisions) Act was rushed through Parliament in 1974 and renewed annually with little controversy until 1998, when permanent legislation of a similar nature was easily passed (Finn 1991; Sim and Thomas 1983). In Sri Lanka, the temporary too has become permanent (Coomaraswamy and Reyes 2004). Even in the United States, the Church
Commission famously warned in 1974 that “emergency government has become the norm,” that citizens were scarcely aware of the nearly continuous emergency regime that had supplied key aspects of governance since 1933 (Relyea 1974). Finally, the bulk of the USA Patriot Act was rendered permanent less than five years later, after the addition of only slight, and by many accounts ineffective, civil liberties protections.

Emergency powers thus seem to display positive feedback (Mahoney 2000, 515-26; Pierson 2004), but explanation requires that we identify the mechanisms through which these institutions are reproduced (Thelen 1999, 390-92). As Amy Bridges suggests, “we need to problematize stability, not assume it. How do institutions or regimes sustain themselves? Some regimes and institutions have more staying power than others” (Bridges 2000, 110). Understanding the mechanisms of reproduction is essential for explaining variation, which is a notable weakness of the existing literature on emergency powers.46

The literature suggests, but does not sufficiently develop, two mechanisms. First, Oren Gross (2003, 1093) has noted that governments rarely willingly part with their new powers and that the temptation to apply emergency regulations and legislation to non-emergency situations is immense. Indeed, in Israel in the 1970s, as legislative deadlock prevented formal legislation to reform the economy or control labor upheaval, emergency provisions were regularly employed, without any legislative involvement and in clear violation of their intent, to manipulate rates of exchange and contain labor disputes (Hofnung 1996). While Gross presents this only as an empirical claim, implicit is that emergency powers often create new institutional interests in their perpetuation. This is certainly consistent with approaches emphasizing that institutions tend toward stability because they mirror the distribution of social and material power (Mahoney

46 An exception here is Laura Donohue’s insightful discussion of how and when temporary emergency powers became permanent with regard to Northern Ireland (Donohue 2001, ch. 7). The discussion of this question is the next section draws in part on Donohue’s analysis, while placing it within a broader analytical framework.
2000, 521). If restrictions on civil liberties tend to fall disproportionately on the politically weak and marginal, it is hardly surprising that such restrictions tend to reproduce themselves. Farsighted politicians might recognize the virtues of sunset clauses in compelling regular reconsideration of such measures, but the pervasiveness of short time horizons and the potential for political pain make it unlikely that politicians will deem it worth their while to conduct a searching review—unless the balance of power changes and the previously marginalized have, against all odds, climbed into positions of relative influence.47

Second, temporary institutions might become permanent if these new institutions came to be seen as legitimate (Mahoney 2000, 523-25). Students of emergency powers have often claimed that the public “renormalizes,” that it grows less critical over time as these powers have a “tranquilizing” effect. Oren Gross thus forecasts increasing “dosages” of emergency power, and Andrew Arato perceives cycles resulting in increasingly authoritarian emergency regimes (Arato 2002; Gross 2003a). Indeed it is clear that “normalizing the extraordinary” is something to which governments eager to extend their reach often aspire. The Bush administration has tried to make new surveillance, intelligence-gathering, and arrest powers appear as just another “mode of governance” (Shapiro 2002, 63). Leading administration figures, including Secretary of Defense Donald Rumsfeld and Vice President Dick Cheney have thus cast the post-9/11 period as “the new normal.”48 It is also clear that sometimes this has in fact worked. During a rare debate in the House of Commons on renewal of the Prevention of Terrorism Act, one MP noted that “the power to detain suspects, which produced a shock on both sides of the House in 1974, now hardly causes an eyelid to flutter” (Sim and Thomas 1983, 75).

47 It is, therefore, possible to explain why rational law-makers might not insert sunset provisions without relying on the psychology of fear—pace Posner and Vermeule (2003, 616-618).
48 For examples, see Lawyers Committee for Human Rights 2003.
What is less clear is the theory underlying such renormalization. Gross’ (2003) reliance on a medicinal metaphor (dosage, tranquilizer) suggests some sort of physiological reaction that is obviously not at work. Even more troubling, he further implies that such efforts work uniformly (which they do not), that efforts to legitimate new powers go uncontested (which is sometimes, but often not, the case), and that the targets of rhetorical appeals are passive and manipulated receivers (which deprives the audience of any meaningful agency). One possible mechanism is psychological: the need to resolve cognitive dissonance suggests that individuals bring their beliefs, expectations, and even desires into accord with their behavior. This would also support the intuitive hypothesis that renormalization is more likely the longer the restrictive legislation and regulations have been on the books. Yet the imperative to reduce cognitive dissonance vastly overpredicts renormalization, and it cannot account for the very real post-crisis revulsion identified by the optimists. Pessimists must persuasively explain why adaptive preference formation is more likely than contrarian preference formation (Posner and Vermeule 2003, 619-20), and the optimists must do the reverse. Without a well-developed theory, neither can. It would be foolish to deny the possibility (or reality) of either renormalization or backlash, and thus what is needed is an analytical framework that allows for both.49

Similar problems bedevil the pessimists’ observation that the promises of authorities—what goes on over there, in the anomalous zone, will not affect the liberties over here, in the national territory; what is done to “them,” at home or abroad, will not be done to “us”—are often broken.

49 It is of course also possible that temporary institutions might become permanent as the product of a rational cost-benefit assessment, yet this possibility is not well explored in the existing literature, perhaps because scholars have (without justification) presumed that the pre-crisis status quo is optimal. However, whenever institutions entail large fixed costs, lead to higher returns from continuing use, exhibit positive network externalities, and produce adaptive expectations, path dependence kicks in (Pierson 2004, 24). Thus the perceived efficacy of counterterrorism legislation in Britain paved the way for its effortless renewal and eventual replacement by parallel permanent law. The legislation’s conformity with existing legal norms—it generally imposed increased penalties, based on motive, for crimes already prohibited—implied increased benefits at little additional cost (Donohue 2001, 308-16). In Israel, emergency provisions have become so intertwined with primary legislation and are so essential to the everyday legal system that dispensing with them would invite legal chaos (Hofnung 1996, 49-50).
Specific violations of non-citizens’ freedoms have a tendency to travel across physical boundaries and, sooner or later, are applied to citizens as well (Cole 2003a, 85-179; Gross 2003a, 1085). What is done to resident aliens or peripheral citizens today is a dangerous precedent for what can and will be done to the core citizenry tomorrow (Cole 2002; Gross 2003a). Examples include the application of the 1798 Enemy Aliens Act to US citizens of Japanese descent during World War II, of techniques used against alien radicals during the first Red Scare to victims of McCarthyite witch-hunts, and of military tribunals in the current war on terror to US citizens as well. The right to silence, of which residents of Northern Ireland alone were initially deprived in terrorist cases, was eventually lost to citizens in mainland Britain as well. Along similar lines, an Arab Knesset member warned, in protesting the mistreatment of Israel’s Arab citizens, “Restrictions on the rights of a national minority will come to harm the democracy and the freedom of the state’s residents. It is impossible to divide democracy and freedom” (Osatsky-Lazar 2002, 116).

Bleeding across spatial and communal boundaries has clearly occurred in the past and is of much concern for the future. Yet the literature does not go nearly far enough to specify the conditions under which such spillover occurs. Certainly US authorities had many opportunities between 1798 and 1942 to apply the Enemy Aliens Act to citizens, but they did not. For the causal claim to be persuasive, such lags and the many opportunities foregone must be explained.

A Research Agenda: Or, What Political Scientists Can Teach Lawyers—and Vice Versa

In part, simply more empirical research is needed on the effects of war on democracy in particular countries: the existing literature focuses excessively on the US, British, and, to a lesser extent, Israeli cases. That literature also does not take sufficient note of variation among even

---

50 For a skeptical view, however, see Tushnet 2003, 297-98.
these countries, and thus more empirical research of a truly comparative nature is also required.

Finally, as the preceding discussion has emphasized, the legal literature also suffers from inadequate theorization and specification. This portion of the essay advances possible answers to many of the questions raised in the preceding sections and thus seeks to guide future empirical research. The discussion proceeds in four parts, each focusing on a set of variables or processes that has not received sufficient attention in the existing literature.

1. *Features of the War: Scale, Duration, Nature, Meaning*

   a) **Scale and Duration.** The existing literature does of course consider one critical feature of the war: scale. Large-scale, or total, wars are expected to lead to more liberty-restrictive policies, and such wars are at the same time expected to produce the most pronounced progressive effects on participation. More limited wars entail less extraction and thus less democracy-promoting bargaining, but they also generate less pressure on governments to limit freedoms.

   These claims seem intuitive when limited to the short run, but in the long run, the effects of scale point in different directions. Increases in democratic participation tend to be self-reinforcing, and thus the pro-democratic impact of total wars tends toward lock-in. However, because total wars are also explicitly framed as deviations from the norm, their discourse accentuates the boundaries between wartime and peacetime, delivering an advantage to those who would, upon war’s conclusion, demand a return to prewar norms. Their case is further strengthened by the fact that high levels of mobilization are not indefinitely sustainable and are markedly distinct from peacetime levels, imparting a relative clarity to the end of war and the return of peace. Total wars thus entail substantial long-run benefits for participation and fewer long-run costs for contestation. It is, therefore, not accidental that the optimistic narrative is most compelling with regard to America’s total wars: the Civil War and World War II. After the
cannons had fallen silent, the response to wartime restrictions, within the legal community and
society at large, was swift and overwhelmingly critical.

In limited wars, in contrast, the line dividing wartime from peacetime is not nearly as bright. Because these wars entail more limited mobilization, restrictions on civil liberties may not be as extensive as under conditions of total war, but they are more likely to persist. Advocates of civil liberties will find it harder to mobilize potential supporters to roll back violations, and, facilitated by a discourse that blurs the boundaries between war and peace, government authorities can more credibly argue that the conditions that gave rise to these measures continue to hold. Less extensive societal mobilization can be sustained for longer periods, and the end of war, along with the return of peace, can be dated with less certainty. The often protracted nature of limited war makes possible a society in which wartime civil-liberties standards become the new norm. The US experience during the “cold war”—a protracted period of mobilization—is certainly illustrative of this dynamic. If limited war is necessary for the “normalization” of the exception, it is certainly not sufficient. The decade-long US involvement in Vietnam had exactly the opposite effect on regnant norms of executive authority and civil liberties, as the government’s conduct yielded a backlash against the “imperial presidency,” limits on intelligence agencies, and the emergence of a more rights-protective legal and normative regime. As the example of Vietnam suggests, other variables and processes figure as well.

This suggestion runs counter to the view, expressed notably by former US Supreme Court Justice William Brennan, that sees great virtue in protracted conflict. Episodic crises, Brennan argued, came too infrequently to call forth sustained attention. In contrast, the Israeli experience taught, in Brennan’s view, that “prolonged and sustained exposure to the asserted security claims may be the only way in which a country can gain both the discipline necessary to examine
asserted security risk critically and the expertise necessary to distinguish the bona fide from the bogus” (Brennan Jr. 1987, 7). Baruch Kimmerling has similarly concluded that Israel’s protracted state of war has had little impact, positive or negative, on social change: conflict has become routinized, and war has become merely a “social interruption,” regulated through institutional mechanisms (Kimmerling 1985). In short, “adversity,” Brennan maintained, “may yet be the handmaiden [of] liberty” (Brennan Jr. 1987, 8).

Even on empirical grounds, however, the opposite position seems more persuasive. If the constant threat of war permitted Israel to “preserv[e] its openness, flexibility, and democratic rules of the game” (Kimmerling 1985, 191), that applied only to the state’s Jewish citizens—not to Arab citizens, at least for several decades, and not to the Arab residents of the Occupied Territories. Moreover, Israeli society was deeply shaped by the ever-looming interstate menace, and Israel’s democracy was highly confined: the rhetoric of national security operated as a trump, the Israel Defense Forces were rarely questioned, freedom of the press was (informally) restricted, decision-makers had little patience for the rule of law, and, until recently, even Israeli jurists excused violations of the law in light of harsh realities. The terrorist threat, which intensified in the 1970s even as the interstate threat declined, fueled this fire (Dowty 1998; Kimmerling 2001; Lahav 1988-1989). Nor is the Israeli experience unusual: Sri Lanka’s efforts to combat the long-standing Tamil insurgency have by no means had the liberalizing effects that Brennan might have predicted (Coomaraswamy and Reyes 2004).

b) Nature. Wars are distinguished not only by their scale and duration but by their fundamental nature. Most critical to democratic contestation is how particular types of war challenge or reproduce the statist discourse that underpins the international order (Gottmann 1951). This discourse draws clear distinctions between inside and outside, between domestic and

51 For this argument, see also Tribe and Guthridge 2004, 1815-16.
international politics, between a hierarchical zone of order and peace and an anarchic zone of chaos and conflict (Walker 1993). Perhaps paradoxically, the more a given war challenges statist discourse, the greater the imperative for state authorities to reimpose a state-based geography premised on identity and difference (Gottmann 1952, 516). Interstate wars, regardless of the level of mobilization they entail, not only do not challenge the regnant statist discourse but in fact reproduce it—by granting legitimate combatant status only to uniformed soldiers from recognized states and refusing to accord others legitimacy. Such wars offer opportunities and even generate pressure to reduce contestation, but there is no corresponding pressure to emphasize anew the territorial basis of international life.

In contrast, insurgents and terrorists threaten the very distinction between inside and outside that sustains the modern nation-state. Terrorism, writes James Der Derian, implies a feudal world system, “a post-modern simulacrum of the Middle Ages,” and thus challenges the legitimacy of the statist international order (Der Derian 1992, 117, 80-81). States undertaking counterinsurgent and counterterrorist campaigns on their own territory respond in part by asserting their territorial identity, reflected in policies that tighten borders and clamp down on domestic threats (Coleman 2004, 88-93). Regardless of the level of “objective” menace, COIN and CT wars are constituted by a statist logic that swings the needle from individual liberty toward national security. Such wars also have an unfortunate tendency to become entrenched and protracted, and the combination of their inherent nature with a lengthy duration is one that is particularly deadly for democratic contestation.

Finally, wars may also be imperial in nature—Algeria (France), Vietnam (United States), Lebanon and the Occupied Territories (Israel), Afghanistan (USSR), arguably Iraq today (United States). In all of these examples, and perhaps in imperial wars in general, states are engaged in

---

52 For this view of terrorism, see also Keohane 2002.
COIN and CT campaigns on foreign ground.\textsuperscript{53} Their adversaries are typically nationalist insurgents, not the representatives of internationally recognized state units. As such, they threaten the Westphalian order, but they do so abroad, exerting less pressure on the imperial power to reassert its territorial identity by imposing restrictions on contestation at home.

Yet, in the long run, imperial wars tend to produce a backlash that strengthens and even extends contestation. The objects of imperial projects are typically represented as uncivilized or immature, and the imperial power legitimates its domination by promising to educate and enlighten the savage, debased, infantile, or even inhuman subject population—the familiar \textit{mission civilatrice}, white man’s burden, modernization, and, in today’s idiom, spread of democracy. Civilization is equated with the values of the imperial power, and thus this instructional project seeks to transform the inferior Other into a copy of the superior Self.\textsuperscript{54} Imperial war follows when the target population resists these refined values. Its insurgency not only suggests that the educative efforts have failed, but, more importantly, challenges the metropole’s identity as a superior state embodying more advanced values, institutions, and practices—and all the more so when the insurgency achieves some success. This in part explains why imperial powers often expend extensive resources on areas seemingly of secondary interest: resistance calls forth redoubled efforts to inscribe the metropole’s identity on the recalcitrant population as a way of reaffirming the former’s status.

Combating insurgency, however, is often quite costly and requires brutal methods. As the imperial power turns to barbaric tactics in the effort to save civilization, it only deepens the contradiction. The mounting cruelty and costs of the imperial war typically provoke domestic

\textsuperscript{53} However, the boundaries between metropole and periphery, between home and foreign, are contested and flexible. See Lustick 1993.

\textsuperscript{54} The seminal work on such representational practices is Said 1978. The literature on colonialism, racism, and the civilizing mission is immense. For examples, see, among many others, Doty 1996; Hunt 1987; Karnow 1989.
Imperial powers have then generally embraced the expedient measure of limiting contestation, but this only adds to the escalating contradictions, in the long run lending strength to political forces that seek to end the imperial war and to save democracy at home. Thus the Vietnam War led to restraints on executive authority and intelligence agencies and to a less pliant news media; the Afghan War ultimately contributed to the fall of the authoritarian Soviet regime; and Israel’s occupation of Lebanon and of the Occupied Territories ushered in a more liberal political culture protective of individual freedoms.

c) Meaning. Separate of the scale, duration, and even inherent nature of the war is the more contingent question of war’s cultural meaning—of how a given conflict is publicly represented. This process is critical to both democratic participation and contestation in the short run and in the long run. The United States fought the First World War in racialized terms, against the vicious Huns, and thus the effort did not require a substantial rethinking of the racial lines dividing American society. Although the discourse of the Pacific theater during World War II remained deeply racialized, Allied leaders regularly contrasted their liberal values with the racist values of the Axis (Gerstle 2001, 192-201). This wartime rhetoric created opportunities for African-Americans to trap US statesmen in their own liberal commitments. Whether gains can be wrung from authorities after war also depends on the construction of that conflict in the social memory and the consequent postwar rhetorical possibilities (Krebs 2006).

Similarly, not all and not everyone’s civil liberties have been abridged in wartime. The way in which, during wartime, leading figures frame the adversary has had substantial implications for contestation, yielding both the extent of wartime restrictions and the identity of its targets.

---

55 Such dissent has often led to the imperial power’s eventual withdrawal. See Merom 2003.
56 Of course even “the inherent nature of the war” must be publicly represented, and thus no war can be separated from the process of representation.
57 This point is also made by Graber 2005a; Graber 2005b; Tushnet 2003, 278; Wood 2003, 460-61.
Wartime rhetoric may generate the spirit of an “aversive” constitutionalism that drives authorities to protect certain values and certain populations, even contrary to realist considerations (Scheppele 2003). The fascistic oppressiveness and nationalism of the Nazi regime led to protections even for those who refused to salute the flag, and the Nazis’ open religious bigotry led to increased calls for religious tolerance. The due process revolution in the United States, expanding the rights of the accused, took shape in explicit reference to the communist Soviet adversary (Graber 2005a, 103-09). In sum, when wartime rhetoric is in line with social realities and practices, it serves to reproduce them. But when it sits in tension with social realities and practices, it creates space for reform.

If the cultural meaning imparted to war is of signal importance for democratic participation and contestation, that raises the question of who is imparting such meaning and how. Because the public representation of war has implications for actors’ concrete interests, the process is inherently political and typically contested. While the existing literature has not ignored the import of wartime and postwar discourse, it has not drawn attention to, nor has it theorized, how such discourses takes shape. The framing of the war is treated as exogenous. Problematizing representation is essential, however, and it will be taken up at the end of this section.

2. Features of Rights-Restrictive Policies: Formal vs. Informal

Among the central puzzles which demand explanation is why some rights-restrictive wartime policies persist into peacetime and others provoke a backlash. Given the prevalence of collective action problems and the relative power of the governing authorities, mobilization is often problematic. It depends in the first place on the presence and power of individuals and groups whose interests have been harmed: if such groups or individuals do not exist, or if they lack any substantial political resources, mobilization against the status quo is highly unlikely. In contrast, 

58 For a related argument, see Klinkner and Smith 2000.
when such individuals and groups acquire unusually substantial political power, revision of the status quo proceeds unusually smoothly.

The more problematic cases involve groups that can draw on some political resources but face barriers to mobilization. The “political opportunity structure” has been invoked as a loose way of summarizing the several features of the political environment that enter into group and individual calculations (McAdam et al. 2001). Thus I have already argued that how war is framed, as total or limited, promotes or stifles mobilization. All else being equal, it also seems reasonable to hypothesize that the form that the rights-restrictive policy takes is important.

Restrictions that are more formal—such as those that are passed as legislation or reside in published regulation—are more ripe targets for protest than are restrictions that are more informal—such as those that are embedded in bureaucratic culture or unpublished regulations. Formality fosters visibility: rallying potential opponents and attracting media attention is easier when the sources of grievance are relatively visible than when the measures are hidden from public view. Consider, as an example, the US rules, during World War II, authorizing the Patent Office to withhold certification from inventions that might harm US national security, seize the invention for the government’s use, and impose severe penalties on violators. These rules, which persisted well beyond the end of the war, were formalized for peacetime in the 1951 Invention Secrecy Act, but that act did not really come into force until 1979, when the state of national emergency declared by Truman finally came to an end. The heavy annual use of the secrecy orders provoked little public outcry between 1951 and 1991 because the public, and even experts, were hardly aware of the extent of their use. When, however, in response to a Freedom of Information Act request, this information became public, a brouhaha erupted. But there has predictably been little complaint about the various informal measures designed to prevent
technologies with national-security implications from reaching the public sphere. Similarly, in the United Kingdom, where measures to restrict speech and the transmission of information have tended to be informal, they have operated without much dispute.\(^{59}\)

3. **Features of the Democratic Regime: Presidential vs. Parliamentary**

The existing literature takes surprisingly little note of how the dynamics of crisis and emergency may function differently in different kinds of democratic regimes. Students of comparative politics have vigorously debated the relative merits of presidentialism and parliamentarism and even whether these categories are analytically meaningful. Siding with those who maintain their utility, I argue that these distinctions between democratic regimes affect: (a) who participates in defining a crisis as such; and (b) levels of democratic contestation.

Democratic regimes vary enormously in their structures and provisions. The degree of constitutional authority granted executives varies so widely that, by one account, “some systems give the president so little power relative to the assembly that they are effectively parliamentary” (Shugart and Carey 1992, 1-2). Indeed, most democracies established in recent years have been designed on the semi-presidential (or premier-presidential) model of France, rather than on the relatively pure models epitomized by Britain and the United States. Nevertheless, presidential systems are marked by: (1) separation of origin and survival; (2) constitutionally granted executive authority to execute laws and to check the legislature; (3) composition and appointment of government/cabinet by the elected executive. Parliamentary systems are characterized by: (1) fusion of origin and survival; (2) no meaningful executive check on the legislature; (3) composition and appointment of the government by the assembly (Shugart and Carey 1992). While real presidential and parliamentary democracies depart from these ideal types, the very fact of the separation of powers has real consequences: presidential regimes tend

\(^{59}\) For the empirical details, but without this interpretation, see Donohue 2005b, 274-79.
to be less decisive and more resolute, the executive and the legislative majority are marked by
greater inherent “separation of purpose,” and coalitions are costlier to maintain and are less
stable (Samuels 2006).

(a) Defining Crisis. The existing literature has rightly observed that democratic contestation
suffers during wars and national-security crises, but it has failed to question how, when, and by
whom crises are identified. When only executives are “securitizing actors”—that is, when only
they can legitimately participate in the national conversation over what constitutes a security
threat—the path to the declaration of emergency is relatively unimpeded. When, however,
other leading figures, especially legislators, can and do participate in this conversation,
executives are at least somewhat constrained. Features of democratic regimes, notably the
separation of powers and the design of electoral rules, can help explain when legislators have the
capacity and the (potential) will to oppose executives on their march to emergency.

Executives’ declarations of emergency can be challenged only by political actors who can
themselves lay claim to expertise on national security. This may of course derive from personal
experience, such as service in the armed forces or academic training, but electoral rules can also
give politicians incentives to develop such expertise. Systems marked especially by large district
magnitude and less frequent elections are most conducive to “national” debate, and thus
legislators elected under such rules have the greatest incentives to develop expertise and to make
contact with experts in civil society. In contrast, systems with low district magnitude and
frequent elections give politicians incentives to focus on more parochial concerns, allowing
executives to operate with a freer hand (Cox and McCubbins 2001, 37-39; Shugart and Haggard

60 Debates over emergency provisions devote much attention to this question, with some arguing for a substantive
definition and others calling for a processual definition of emergency. But this literature does not seek to explain
when this process is more or less contested.
Electoral rules shape the capacity of legislators to challenge an executive’s assertion of a crisis.

Whether regimes are marked by the separation or fusion of powers shapes not only the capacity but especially the will of legislators to resist the executive. In parliamentary systems, governments and legislators rise and fall together: as a consequence, party discipline tends to be tighter. In presidential systems, in which legislators’ political fates do not hinge on the government, party discipline tends to be weaker, and even majority legislators have the capacity to defy the executive. With party discipline weak, legislators also have distinct institutional prerogatives to resist the executive’s accretions of authority. The separation of origins and survival is an important source of separation of purpose, regardless of party control over the branches of government (Shugart and Haggard 2001). The relative independence of the assembly also gives legislators a separate institutional base in which to conduct hearings, investigate government practices, and raise questions about the framing of a crisis. Independent legislators are also more open to interest group involvement in national debate and in public policymaking, providing those who might oppose the declaration of emergency with a point of access.

These two dimensions can be combined to yield expectations about when resistance to the executive’s declaration of emergency is possible (see Table 1). In presidential regimes, marked

---

62 See Linz 1994. Others contend that parliamentary regimes are not marked by particularly high levels of partisan discipline because minority governments are prevalent and governments often dissolve without early elections (Cheibub and Limongi 2002, 157-62). Nevertheless, presidential democracies have generally seemed to suffer from a lack of party cohesion and from multiple veto players, even when a single party controls all branches of government (Eaton 2000, 361-62).

63 If ballots were fused in presidential systems, then the electoral fates of presidents and members of the president’s party in the assembly would be tightly linked, and separation of purpose would be reduced. But such fused ballots are rare in presidential regimes (Samuels and Eaton 2002). Variation in party discipline in presidential systems has, however, not been insignificant, and a key explanation appears to lie in party control over nominations (ballot access) and campaign funds (Wilson 1986). Nevertheless, there appears to be a distinct tradeoff between executive strength and party strength, and democratic regime type is theoretically and empirically linked to levels of party discipline (Shugart 1998).

64 Eaton (2000, 369) notes, however, that this insight may be particularly true of the United States, where reforms in the 1970s decentralized power in Congress, and less true of other presidential regimes.
by the separation of origins and survival, and in electoral systems that encourage a national orientation, the combination of legislative independence and incentives to expertise imparts the capacity and potentially even the will to contest executive assertions of emergency. When separation is combined with electoral rules that encourage legislator parochialism, the result is legislators who may have the will but have little capacity: resistance is highly unlikely. When electoral rules that yield incentives to develop expertise with regard to national matters, including security, are joined to the fusion of powers, legislators have the capacity to resist but no will, unless the parliamentary regime is governed by a minority party: resistance is then more occasional. Finally, when fusion is married to electoral rules that sustain parochialism, legislators will evince neither the will nor the capacity to resist.

The separation of origins and survival may create a base for resistance, but such regimes are also characterized by a competitive institutional dynamic. Legislators have certain common interests across party lines, and they vie with the executive *qua* executive for power. Executives, in turn, have incentives to manufacture and exploit crises so as to augment their branch’s relative position (Arato 2002; Lowi 1969). In parliamentary regimes, characterized by the fusion of institutional origins and survival, this competitive dynamic is absent, and one might therefore expect that prime ministers would less often assert crisis, international or otherwise.

(b) **Long-Run Effects on Contestation.** Once an emergency has been effectively established, neither parliamentary nor presidential regimes function particularly effectively to constrain the expansion of executive authority. The more important question is whether a particular democratic regime type is more likely *in the long run* to preserve liberal values. It would seem relevant to distinguish between cases when wartime expansions of executive authority have sunset clauses, in which case executives later seek to render wartime measures permanent, and
when they have no expiration date, in which case preventing increased arbitrariness would require undoing the status quo in the wake of the conflict.

One view would straightforwardly argue that policy stability is in part a function of the number of veto players, both institutional and partisan (Tsebelis 2002). All else being equal, presidential regimes tend toward “indecisiveness” and “resoluteness”: policy change is less frequent and tends to be gradual (Cox and McCubbins 2001; Samuels 2006). One might therefore expect that extending wartime powers set to expire would be particularly difficult in presidential regimes, as would undoing wartime patterns of executive authority.

However, this argument applies most persuasively with regard to issues without inherent institutional significance. The accretion of greater executive authority, however, is not equivalent to other “major policies”: it occupies a place of unusual importance, for it threatens to redefine the very essence of the regime. Efforts by presidents to arrogate power permanently can call forth cross-party legislative coalitions to defend their branch’s prerogatives: the separation of origins and survival fosters the separation of purpose that underpins legislative resistance.

Consequently, undoing wartime patterns of executive authority remains possible in presidential regimes, contrary to what the conventional logic might suggest. It is also possible in parliamentary regimes, though it is highly unlikely in the case of majority government: those in power are rarely likely to wish to roll back executive authority, and the prevalence of strong party discipline makes initiatives in the assembly unlikely. Rendering wartime executive powers permanent is not likely in presidential systems, but it is possible in parliamentary regimes,

---

65 Tsebelis (2002) would add that major policy change is also less likely when major institutional and partisan veto players are separated by greater ideological distance and marked by greater internal cohesion.

66 There is a large literature on the alleged tendency of presidential regimes to policy deadlock and regime breakdown. See Cheibub and Limongi 2002; Cheibub, et al. 2004; Haggard and McCubbins 2001; Linz 1994; Mainwaring and Shugart 1997; Shugart and Carey 1992, chap. 3.
especially in the case of majority government. If these hypotheses are correct, presidential regimes are in fact more conducive to preserving liberal values in the long run.

Presidential systems also tend to render policy decisions in a more transparent fashion (Eaton 2000, 363-65; Tsebelis 2002, 74). Simply the friction between the branches will produce public information about actors’ policy positions, and, if the assembly has well-developed watchdog institutions for investigating and publicizing executive wrongdoing, they can be a powerful force constraining executive authority. The separation of powers also provides lobbyists and interest groups with greater access into the system. In presidential regimes, aggrieved outside actors may be encouraged to mobilize and may act more effectively, and legislators can more aggressively court them without risk of the fall of the government (Samuels and Eaton 2002). In parliamentary regimes, in contrast, outside actors have fewer access points through which to challenge illiberal developments. Moreover, in parliamentary systems, bureaucracies tend to have broader portfolios and greater independence; because designing monitoring systems is more difficult under the separation of powers, presidential systems tend to have more elaborate and intrusive oversight mechanisms (Moe and Caldwell 1994). Thus in parliamentary systems, policy is more often made hidden from public view (Ceaser 1986; Eaton 2000, 370-71). The greater transparency and access typical of presidential regimes provides outside actors with more information and with greater opportunities for overturning illiberal policies driven by war and threat.

4. The Dynamics of Rhetorical Contestation

67 The strength of the president’s legislative powers is an important countervailing factor, however. The more extensive his executive decree authority, the less transparent the policymaking. See Carey and Shugart 1998; Shugart and Carey 1992, chap. 7.

68 Thus in the United States speech has, on the whole, received greater protection than in Britain, where a culture of secrecy has historically prevailed. Where the United States has done a poorer job protecting speech, the reason has much to do either with bureaucratization (e.g. scientific information, or “knowledge-based speech”) or with an inherent lack of transparency (e.g. measures with a secondary effect on speech) (Donohue 2005b).
Explaining the dynamics and outcomes of rhetorical competition lies at the heart of critical unanswered questions about the effects of war on democracy, yet this process has not figured in the explanations offered in the existing literature. For example, the introduction of “national security” into public debate can powerfully shape who may participate in that conversation and what policy measures seem warranted. It has, most importantly, facilitated public tolerance of extraordinary measures, for the very existence of the crisis or emergency is made possible through rhetorical action that identifies an existential threat (Buzan et al. 1998, 21-24). In some contexts, national security discourse operates as a trump, in others it is dismissed as a red herring. In some contexts, only a limited few may participate in the debate on security; in others, the range of legitimate “securitizing actors” is large.

Several other mechanisms also hinge on the process by which actors effectively set the terms of debate, particularly in the face of alternative frames and narratives. These include the public representation of the war’s nature, of the extent of mobilization that is warranted, of the war’s meaning (and hence of what features of the adversary must be averted), and of women’s contributions to the war effort. Rhetorical contestation, or the lack thereof, regarding all these critical factors—which, I have argued above, have implications for how deeply democratic contestation is undermined, whether these wartime extensions of executive authority and restrictions on civil liberties survive the war, and whose freedoms and which freedoms are abridged and expanded during war—must be problematized. Even the characterization of the war’s outcome, as victory or defeat (which, by some accounts, has ramifications for the vibrancy of postwar civil society), is often not obvious: although Israel won the 1973 war with its Arab neighbors, the initial setbacks and unusually high casualty rates led Israelis to view this victory as a failure, and the war touched off dramatic social and political upheaval.
Similar questions might be raised about “renormalization,” which occurs when new social conventions emerge enshrining as the norm wartime standards on executive authority and civil liberties. The important mechanism here would appear to be less psychological than rhetorical. The key lies in reframing the very purpose of the regulations or legislation, in shifting the terms of political debate onto grounds that compel their retention. In the United Kingdom, for example, legislation to deal with the Troubles in Northern Ireland was recast as “anti-terrorist,” rather than “emergency,” legislation. To fail to renew the laws would have signaled surrender to terrorism, and thus the burden of proof was transferred to those seeking the laws’ repeal. Opponents of Britain’s counterterrorist legislation consequently had to demonstrate that the threat of terrorism no longer existed—and that was something they could not do (Donohue 2001, 316-22).

Who wins such rhetorical competitions? Why do actors whom one might expect to raise their voices in protest remain silent? Space constraints prevent me from advancing a fully-specified theory of rhetorical contestation, but it is worth exploring what insights such an approach might yield. Many political scientists, particularly those of a realist bent, adopt strictly materialist answers to these questions, rendering meaning production epiphenomenal. Extreme postmodernists, in contrast, adopt fully discursive positions in which the production of meaning is utterly unconstrained. A more balanced position takes inspiration from critical literature that strikes for a middle ground. Stuart Hall insists, in his reading of Gramsci, that material forces do not have immediate or necessary consequences, but they do “define the terrain on which historical forces move – they define the horizon of possibilities” (Hall 1996 422). Articulations gain mass traction, Hall suggests, when they touch upon the everyday experiences of mass publics: Margaret Thatcher’s law-and-order rhetoric tapped into “the direct experience, the

69 For some not-fully-specified steps in that direction, however, see Krebs 2006; Krebs and Jackson 2006; Krebs and Lobasz 2006.
anxieties and uncertainties of ordinary people” who had lived through the upheaval of the late 1960s (Hall 1988, 137). Pierre Bourdieu rightly warns that “legitimating discourses” are not sufficient as an explanation for domination, for they must be institutionally sustained (Bourdieu 1977, 188).

The production of meaning is located in the conjunction of material factors, institutional design and position, discursive formations, and experience. To fit the analysis (perhaps somewhat awkwardly) to causal language, these may be jointly necessary and sufficient.

**Discursive Formations.** Articulations cannot but draw upon existing discursive formations. Thus students of transnational activism and social movements have concluded that ways of framing claims cannot be fabricated out of whole cloth but can at most evolve through “grafting” (Price 1998). How mass publics and elites respond to the introduction into public debate of the “national security” commonplace, for example, consequently depends on historical and cultural narratives that are continually rescripted. In Israel a national narrative crafted around continual persecution has rendered themes of insecurity particularly resonant (Dowty 1990, 2-3). Yet, very often, those who oppose the declaration of crisis or emergency will have access to equally familiar and well rooted commonplaces with very different implications. When that happens, the terms of the frame will likely not be determinative.

**Material and Institutional Factors.** The design of institutions is hardly irrelevant to rhetorical contestation. Executives, and especially presidents, enjoy advantages in rhetorical competition by virtue of their position, particularly with respect to foreign policy: often the first to speak, they dominate media coverage, and others must respond to their framings. Yet their victory is not assured. Even motivated presidents have many times failed to mobilize publics for their

---

70 On positionality, and particularly state elites, in “securitization,” see Buzan, et al. 1998, 31-33; Weldes 1999.
foreign policy goals, instead encountering substantial opposition (Edwards III 2003). The earlier discussion, highlighting the interaction of democratic regime type with electoral rules, suggests the power of institutions to shape political actors’ will and capacity to resist.\footnote{The identification of an emergency circumstance is ultimately a political, not a legal, question. Yet the law also can bolster particular institutional roles and strengthen them in political contest. In the United States, for example, the Supreme Court has ruled that, under the authority of the 1795 Militia Act, the declaration of crisis (as the first step toward the imposition of martial law) is the exclusive right of the executive and is not reviewable (Vladeck 2004, 171-72).} Rhetorical mode matters as well: when policy is justified on pragmatic grounds, opponents can more effectively counter the executive’s preferred policies than they can when policies are framed in identity-laden terms (Murphy 1992).\footnote{I allude here to, respectively, the deliberative and epideictic rhetorical genres. For brief useful discussions of the Aristotelian genres, see the relevant entries in Sloane 2001. On epideictic rhetoric, see also Condit 1985.}

Experience.\footnote{On experience and ideational change, see Legro 2005.} The everyday experiences of mass publics also differentially empower political actors and bound sustainable rhetoric. Perceived military fiascoes, such as that of the Israel Defense Forces in the 1973 war and that of the US armed forces in Vietnam, have often reworked narratives so as to undermine officials’ claims to expertise. These wars served to highlight the presence of expertise in civil society and to broaden the range of legitimate participants in national-security debate. Experience may also prompt speech in a particular rhetorical mode. The September 11 attacks, for example, called forth a rhetoric that would place these horrific events in an interpretive context (Murphy 2003). In this epideictic form, dissent violates audience expectations and is dismissed. In contrast, had President Bush sought to \textit{generate} a sense of crisis—rather than respond to events that the mass public, apparently with little guidance, assimilated into the crisis frame—he would have relied more heavily on pragmatic argumentation. Such rhetoric in principle permits for a more vocal opposition.
At the core of much of the preceding discussion lies a single critical issue: under what conditions do elites and mass publics accept new baselines with regard to democratic contestation, and under what conditions do they resist them? When is the outcome renormalization (adaptive preference formation), and when is there a backlash (contrarian preference formation)? Table 2 summarizes the hypotheses elaborated in this section.

Conclusion

The relationship between democracy and war has been much studied in international relations. Some would say too much, as scholars continue to buzz around the carcass of the democratic peace. Yet the reverse of that relationship—the effects of war on democracy—though much debated in times of crisis, has received little systematic attention in either international relations or comparative politics. In general, we know far more about war’s causes than its consequences, and that is especially true with regard to democracy. “Pothole” topics—that is, questions about which scholars have written little—are sometimes potholes for good reason: the answers may be obvious, trivial, or unknowable. Studying the effects of war on democracy is methodologically challenging, but it is of unquestionable theoretical and practical import, and there is certainly a large enough proving ground on which to evaluate hypotheses.

Answering these questions would seem furthermore to be of particular relevance today. We do not live in a post-Schmittian world in which arguments based on “the exception” are no longer sustainable (Scheppele 2004, 1069-82): Americans have not become exercised over the Bush administration’s excesses with regard to domestic eavesdropping, with 54% in February 2006 endorsing the view that it is “generally right” for the government, without first obtaining court permission, to monitor communications of Americans suspected of having terrorist ties
Polls have shown that the public would support even more extensive government intrusion as long as national security was deemed to be at stake. Despite the development and spread of international law and human rights norms, we continue to live in an all-too-often conflictual world of nation-states, and when national security is seen to be threatened, publics tolerate the suspension of the rule of law.

The penultimate section of the paper advanced a series of claims regarding how and when features of different wars, rights-restrictive policies, democratic regimes, and processes of rhetorical competition would affect democratic participation and contestation. Judge Learned Hand, however, famously warned that such factors may matter only at the margins, for it is the “spirit of liberty” that saves polities from the dangers of dictatorship. “I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts,” he wrote. “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it” (Hand 1977, 190). Much the same might be said about democratic regimes. “No constitutional framework,” writes Bruce Ackerman, “will suffice to compel the President to be a statesman if he is determined to play the part of demagogue” (Ackerman 2004b, 1902). Political culture and leaders’ normative commitments to individual freedoms may very well matter more than the scope and duration of war, regime type, and the dynamics of framing in explaining the severity and persistence of war’s effects on liberal democracy. But the survival of liberal democracy in rough times may be determined precisely on the margins. It is on the margins that the difference lies between a democracy that limps along, compromised yet intact,
and one that utterly abandons its heritage. The fate of liberal societies undoubtedly resides in the hearts of men. But when the love of liberty has taken root, it still needs a nurturing institutional environment if it is to thrive.

The relationship between institutional and constitutional design, on the one hand, and the preservation of liberal-democracy in times of emergency, on the other, has been much debated anew since September 11. Much ink has been spilled on the relative merits of the judicial and legislative branches in constraining the executive in presidential regimes and on the virtues or irrelevance of explicit emergency provisions. With regard to the first question, neither judges nor legislators have done particularly well, at least in the United States, as checks on executive power in times of crisis. Most acknowledge that “historically, the judiciary has been so deferential to the executive in wartime as to provide virtually no meaningful check… [I]t would be a terrible mistake for those who worry about civil rights and liberties to pin too much hope on the judiciary in times of crisis” (Tribe 2001, 18). In the United States, the courts have generally protected rights only once the war has ended or the crisis has passed, or at best as it has waned. They have sought to preserve a congressional oversight, but they have generally followed Congress’ lead, bolstering it when it has sought to exercise its prerogatives and saying little when Congress has shown little resistance (Issacharoff and Pildes 2005). The courts have thereby implicitly acknowledged that only the legislature can resist an ambitious executive. Legislatures sadly have not done much better in defending civil liberties or even their own prerogatives. They have tended to overreact in times of crisis, swiftly and without debate passing intrusive and over-

---


77 As David Cole (2004, 2591) points out, however, the courts are sometimes the only forum realistically available for publicizing grievances, particularly for the politically weak.
reaching legislation (Cole 2004a, 2589-91). If legislators lack the willpower to resist the executive, it is typically because they sense little concern among their constituents, as Learned Hand would have feared.

The explicit provision of constitutional emergency powers may, however, bolster legislators, and this may be the strongest argument on their behalf. Some maintain that war should be waged within standard constitutional limits and with conventional democratic oversight (Breyer 2003; Cole 2004a); others argue that wartime measures must be explicitly extraconstitutional so as to avoid tainting law in ordinary times (Gross 2003a; Tushnet 2003); still others have proposed various models of accommodation (Gross 2003a, 1058-69), among them a set of constitutional procedures for the effective, but legally constrained, employment of emergency powers (Rossiter 1948). The legal constraints on emergency powers rarely prove binding, for they are violated when necessity seemingly calls. But this fact of political life does not mean that emergency powers are irrelevant. Their greater virtue may lie less in their specific provisions than simply in their existence. Explicit emergency powers provide both government and public with a set of legal standards to which adherence is expected. Deviations from those norms require explanation, thus undercutting the executive’s potential for arbitrariness and hence despotism (Finn 1991). If the legislature wishes to be a rubber stamp, no formal provisions can compel it to be something more. But if the legislature wishes to be a meaningful check on the executive, a formal oversight process, which is essential to even the most minimal regulated emergency powers, can serve as the springboard for resistance.80

---

78 For a more optimistic view of the congressional role since 9/11, however, see Rosen 2004, ch. 4.
79 For recent variations on Rossiter’s theme, see Ackerman 2004a; Arato 2002; Ferejohn and Pasquino 2004; Scheuerman 2006.
80 Empirical studies of the efficacy of explicit constitutional provisions are rare. This is a major theme in Rossiter’s classic work (1948). One study has found that most specific features of emergency powers have no statistically significant impact on the levels of human rights abuse (Keith and Poe 2004). On the variety of constitutional emergency provisions, see Gross 2003b.
The heated contemporary debates over the necessity and costs of post-9/11 measures often make grand claims based on limited empirical data and weak theoretical foundations. Citizens must indeed be ever vigilant against assertions of state power, but research that identifies the circumstances in which executive authority is expanded most greatly and civil liberties restricted most severely, and in which these wartime measures tended to permanence and other forms of “bleeding,” could help civil libertarians pick their battles more carefully. It could help leaders committed to liberal democracy understand better the ramifications of expanding executive authority. It could help identify the institutions and constitutions conducive to the procurement and preservation of both security and the rule of law. Such research is, in short, vital if we are to balance security and liberty in an anxious age.

### Table 1. Presidentialism, Parliamentarism, and National Security Debate

<table>
<thead>
<tr>
<th>Electoral Rules And Political Debate</th>
<th>Separation</th>
<th>Fusion</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National Orientation</strong></td>
<td>• legislative independence (little discipline)</td>
<td>• legislative dependence (discipline)</td>
</tr>
<tr>
<td></td>
<td>• incentives to expertise</td>
<td>• incentives to expertise</td>
</tr>
<tr>
<td></td>
<td><strong>Will</strong> (potential)</td>
<td><strong>No will</strong> (caveat: minority government)</td>
</tr>
<tr>
<td></td>
<td><strong>Capacity</strong></td>
<td><strong>Capacity</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Resistance Possible</strong></td>
<td><strong>Resistance Rare</strong></td>
</tr>
<tr>
<td><strong>Parochial Orientation</strong></td>
<td>• legislative independence (little discipline)</td>
<td>• legislative dependence (discipline)</td>
</tr>
<tr>
<td></td>
<td>• no incentive to expertise</td>
<td>• no incentive to expertise</td>
</tr>
<tr>
<td></td>
<td><strong>Will</strong> (potential)</td>
<td><strong>No will</strong></td>
</tr>
<tr>
<td></td>
<td><strong>No capacity</strong></td>
<td><strong>No capacity</strong></td>
</tr>
<tr>
<td></td>
<td><strong>No Resistance</strong></td>
<td><strong>No Resistance</strong></td>
</tr>
</tbody>
</table>
Table 2. Democratic Contestation, Normalization, and Backlash

<table>
<thead>
<tr>
<th>Relevant Factors</th>
<th>Normalization</th>
<th>Backlash</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scale and Duration of War</td>
<td>limited &amp; protracted war</td>
<td>total &amp; short war</td>
</tr>
<tr>
<td>Nature of War</td>
<td>counterinsurgency/counterterrorist</td>
<td>imperial</td>
</tr>
<tr>
<td>Meaning of War</td>
<td>wartime rhetoric in line with reality/social practices</td>
<td>wartime rhetoric in tension with reality/social practices</td>
</tr>
<tr>
<td>Rights-Restrictive Policies</td>
<td>informal</td>
<td>formal</td>
</tr>
<tr>
<td>Democratic Regime</td>
<td>a) fusion of powers; b) separation of powers &amp; electoral rules fostering national orientation (see Table 1)</td>
<td>separation of powers &amp; electoral rules fostering national orientation (see Table 1)</td>
</tr>
<tr>
<td>Rhetorical Mode</td>
<td>epideictic</td>
<td>deliberative</td>
</tr>
<tr>
<td>Experience</td>
<td>victory</td>
<td>defeat</td>
</tr>
</tbody>
</table>
References


