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Democracy through War?

WOLFGANG MERKEL

This article brings together three strands of democracy research which have thus far seldom been informed by one another: the empirical research associated with the ‘democratic peace’ thesis, the juridical-normative questions of legality, and moral-philosophical reasoning about just war. Linking the statistical analysis of the democratic peace to the findings of comparative research on democratization and to the normative debates occurring in law and philosophy on just and legitimized wars, there is an inescapable conclusion that: *jus ad bellum* and *jus post bellum* criteria must be closely tied. The protection of people threatened by mass murder and brutal violations of human rights requires not only a short-term military intervention, but also the intensive support to establish sustainable rule of law and democracy. External actors intervening for humanitarian reasons equally have a duty to contribute to long-term sustainable state- and democracy-building. Forced regime change and an international trusteeship protectorate can become legitimate and necessary means to guarantee justice after war and to reconcile *jus ad bellum* principles with duties *post bellum*. A premature withdrawal of intervening forces, for example in Afghanistan or in Iraq, would amount to a flagrant violation of external actors’ post-war duties.

Key words: democratic peace; humanitarian intervention; democratic intervention; hybrid regimes; defective democracy

This article brings together three strands of research on democracy, which have thus far seldom been informed by one another. The first strand is the empirical research associated with the ‘democratic peace’ thesis, which has thus far been addressed almost exclusively by international relations scholars. Although this research uses, at least in part, sophisticated statistical methods, it often relies on a rudimentary understanding of democracy and the interdependent workings of democratic institutions. While these researchers specialize in questions of war and peace, they are hardly democracy scholars.¹ Missing is the intertwining of comparative politics and international relations expertise.² The second strand of research concerns the juridical-normative questions of legality, which belong primarily to the sphere of international law. The third strand belongs to political ethics and concerns moral-philosophical questions about just war. Just as philosophers engaging in questions of just and unjust wars can disregard neither international law nor the empirical results of conflict research, so too those who empirically study war—as long as they do not want to limit themselves to statistical correlations based partly on questionable

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data—must take normative questions seriously. If they do not, they will have little to contribute to the larger political questions—whether war may be waged, and whether it can be successfully waged, in the name of humanity and democracy. Political science would too readily yield this genuinely political terrain to the normative fields of jurisprudence and philosophy. The point, then, is nothing less than to couple the statistical analysis of the democratic peace research with a theoretically substantive comparative democracy research, and to connect these to the normative debates occurring in law and philosophy. Thus, following Immanuel Kant, three questions ought to be posed, answered, and related to one another: (1) Empirics: What do we know? (2) Law: What are we allowed to do? (3) Ethics: What should we do?

Empirics

The Democratic Peace: What do we know?

In his project for peace (1795), Immanuel Kant formulated three ‘definitive articles’ for ‘eternal peace’: the civil constitution of every state should be republican; the law of nations shall be founded on a federation of free states; and national rights should be transformed into a cosmopolitan right of world citizenship, a universal right of humanity. Only when states find themselves ever more closely approaching the realization of these three maxims can we ‘flatter’ ourselves by thinking that we are on the path towards eternal peace.³

The discipline of international relations often takes Kant’s theses as a point of departure to empirically study the following questions about the relationship between war and democracy:

- Do democracies fight fewer wars than autocracies?
- Do democracies wage wars against other democracies?
- Are wars midwives to the birth of democracies?
- Does an increasing quantity and quality of democracies reduce the likelihood of war?

At this point an important caveat must be introduced: democracies are based, arguably predominantly, on internal factors. The most important of these are economic development, education, the easing of class differences, the rise of a middle class, legal traditions, interpersonal trust, and most of all, the willingness of elites to abide by the fundamental rules of a democratic constitutional order.⁴ But the following discussion will not begin with a focus on these issues. The end of the article will return to them in the context of discussing the indispensable cooperation between the intervention and occupation forces and the relevant domestic actors of a democratizing country. First, however, let us turn to clarifying the relationship between war and democracy.

Do Democracies Fight Fewer Wars than Autocracies?

The answer to this question is no. Almost all studies come to the conclusion that democracies hardly fight fewer wars than non-democracies. When we further ask

whether democracies involved in conflict tend more often to be the aggressor or the defender, the statistical results are not flattering—democracies do wage wars of aggression.⁵ But these voter- and cost-sensitive democracies can be comforted by the fact that high-tech foreign wars hardly ever cause the democracy's domestic population to suffer, as Kant had assumed they would.⁶ Statistically, democracies generally win the wars they fight (in the period 1816–1992, 81 per cent won as opposed to 19 per cent lost), create collective war and defence alliances, choose their wars more wisely, tend to win them and suffer fewer casualties, are less likely to initiate crises, and rarely fight preventive wars.⁷

Nevertheless, there are considerable differences among democracies in terms of their willingness to go to war and to be involved in military conflicts. Thus, it was not the small democracies like Switzerland, Sweden, or Austria which waged the post-1945 wars, but the former colonial powers such as France and Great Britain, and especially the hegemonic US.⁸ In the period 1946–2002, the US engaged in 13 military interventions, France in eight, and Great Britain in six. The development of modern high-tech weapons, the strategy of surgical strikes, and the increasing use of private military contractors have made the costs of intervention for democracies easier to calculate and to convey. Given these developments, the Kantian argument that republics would only reluctantly carry the damage and costs of war is proving to be ever less constraining on large democratic states' war willingness. In this light, Johan Galtung's dictum that democracies are especially 'self-righteous and belligerent'⁹ may indeed stand the test of time. This applies, however, almost exclusively to wars between democratic and authoritarian regimes.

The next question, then, is do democracies wage wars against other democracies? What of the thesis that democracies do not fight against other democracies? The Kantian proposition that democracies ('republics' in Kant's terms) do not wage war against one another has shown itself in statistical analyses to be exceptionally robust.¹⁰ Democratic peace research refers to this as the 'dyadic peace phenomenon'¹¹ in order to explicitly emphasize that liberalism is in no way 'inherently peace-loving'.¹² The argument that this result is simply an artefact of the bipolar East–West confrontation has proven untenable since 1989. Even after 1991 there have been no armed conflicts between liberal rule-of-law democracies. There are some occasionally cited examples of post-1945 wars between democracies, but these do not convincingly disprove the democratic peace thesis since the aggressor states were not fully developed rule-of-law democracies, rather belonging to 'defective democracies'.¹³ This is as true of the racist apartheid 'democracies'¹⁴ of South Africa and Rhodesia and their interventions in Botswana, as it is of past military conflict between India and Pakistan. The latter is a case of conflict between the defective democracy of India and the sometimes semi-democratic, sometimes 'soft' authoritarian regime in Pakistan.¹⁵ The only remaining cases are the border skirmishes between Ecuador and Peru (1981, 1984), in which Peru was a defective democracy and Ecuador could just barely be classified as liberal. Freedom House and Polity IV report the following scores for India, Pakistan, Peru, and Ecuador:

The normative argument that war between democracies is incompatible with fundamental democratic values,¹⁶ and the structural argument that democracies

TABLE 1A
FREEDOM HOUSE: POLITICAL RIGHTS AND CIVIL LIBERTIES

			1981		1983–84 / 1984–85		1983–84 / 1984–85		1985–86		1994–95 / 1995–96		1987–88	
	PR	CL	PR	CL	PR	CL	PR	CL	PR	CL	PR	CL	PR	CL
Ecuador	2		2	2	2	2					3			
Peru	2		3	2	3	5					4			
	1965–66		1972		1981		1984–85		1985–86		1986–87		1987–88	
	PR	CL	PR	CL	PR	CL	PR	CL	PR	CL	PR	CL	PR	CL
India	–	–	2	3	2	3	2	3	2	3	2	3	2	3
Pakistan	–	–	3	5	7	5	7	5	4	5	4	5	4	5

Source: Freedom House, *Freedom in the World. Country Ratings 1972–2007*, available at <http://www.freedomhouse.org/uploads/fiw/FIWAAllScores.xls> (accessed 8 October 2007).

Notes: PR = political rights; CL = civil liberties. The lowest score is 7, and the highest is 1.

TABLE 1B
POLITY IV: REGIME RANKINGS

	1981		1985			1996	
Ecuador	9		8			9	
Peru	7		7			1	
	1966	1972	1981	1985	1986	1987	1988
India	9	9	8	8	8	8	8
Pakistan	1	4	-7	-4	-4	-4	8

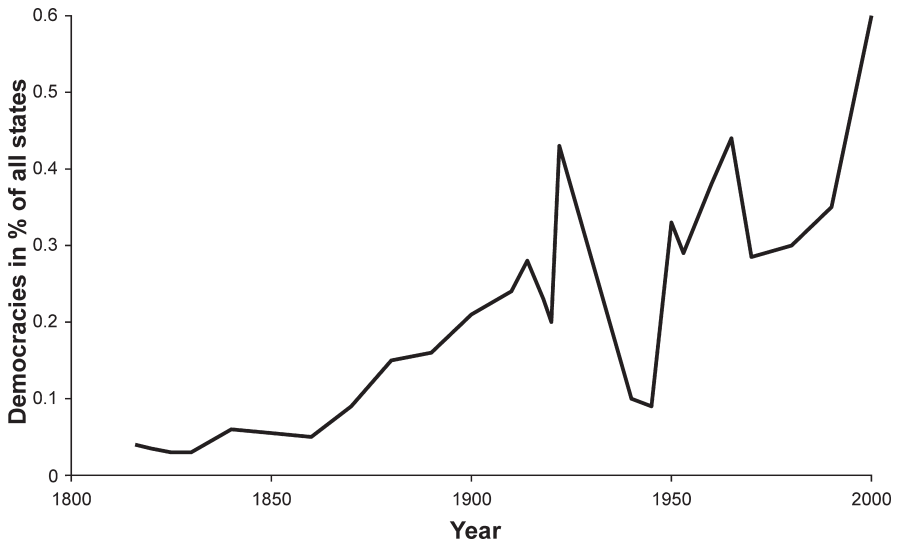
Source: Monty G. Marshall and Keith Jagers, *Polity IV Project. Political Regime Characteristics and Transitions, 1800–2004*, available at <http://www.cidcm.umd.edu/polity/> (accessed 12 April 2006). The values range from -10 (strongly autocratic state) to +10 (fully developed institutionalized democracy). Democratic peace researchers generally consider all regimes with a ranking above +6 or +7 as democracies.

Note: The values refer to the 'Polity 2' indicator from the 'Polity IV' project dataset.

have greater institutional controls and procedural barriers to war initiation,¹⁷ are both compelling. These two arguments merge into an especially persuasive explanation for the absence of purely 'democratic wars' in a sense not so far removed from Kant, when we supplement them with the observations that democracies are generally more inclined to bargain and compromise, that they are economically interdependent and members of the same international organizations, and that they have a common basis of trust.¹⁸ The argument that it is above all the democratic institutions, procedures, and deep-seated democratic values that keep war between democracies off the political agenda, indicates that the democratic peace thesis must apply only to consolidated democracies, because only in these do democratic institutions work in the described war-inhibiting way. Institutions in regimes in transition, in defective and unconsolidated democracies, do not develop a comparable restraining power.¹⁹ For this reason too, the examples of wars between 'democracies' occasionally mentioned as evidence against the democratic peace thesis are misleading and reveal a conceptual misunderstanding of what constitutes democracy. The Polity IV data is on its own theoretically insufficient because it does not reveal the specific details of those democratic institutions and processes (parliament, voting, media) which in established democracies present high hurdles for war participation.²⁰

However, the question about the relationship between democracy and war can also be turned on its head. Are wars midwives to the birth of democracy? The escalating growth of democracy after World Wars I and II suggests an empirical, if not causal, relationship (see Figure 1). The spectacular democratization successes after World War II seem to especially suggest this. The murderous dictatorships of Nazi Germany and Japan were, after war and defeat, rapidly transformed into stable, rule-of-law democracies. The authoritarian regime in fascist Italy and the (even pre-1938) authoritarian-corporatist regime in Austria offer further examples of the possibility to democratize dictatorships after military defeat. The fall of the Greek junta in 1974 after the Cyprus adventure and the defeat of the Argentinian generals in the 1982 war in the South Atlantic (Falklands/Malvinas) also support this thesis. Empirically, it cannot be dismissed that the two world wars contributed to the

FIGURE 1
DEVELOPMENT OF DEMOCRACIES 1816–2000



Sources: Author's own compilation.

diffusion of democracy, even if they were not fought to reach this goal.²¹ At the same time, counter-examples certainly exist: coercive interventions in Panama in 1989, Haiti in 1994, perhaps even Bosnia in 1995,²² Afghanistan, and Iraq. For the identification of causes of successful and failed democratization, these cases are suggestive. But from a statistical perspective, they offer only anecdotal evidence.

More Democracies and Fewer Wars?

Using sophisticated statistical methods, a 2004 Scandinavian study did indeed show that military interventions led by democracies lead to a moderate increase in democracy scores on the Polity IV autocracy-democracy scale.²³ This result can be explained by the fact that democracies tend to win the wars that they fight. Autocratic regimes, however, are more prone to lose. Military defeat, in turn, destabilizes autocratic regimes, which often opens the way for democratic regime change. In contrast, when democracies are defeated in war, they tend to experience a change of government, but not a change in the basic character of the political regime. Thus, the statistical result provides evidence for the proposition that wars successfully fought by democracies against autocracies contribute to an increase in the worldwide level of democracy. When we add to this the fact that democracies do not fight against other democracies, the apparent paradox that an initial increase in wars can later lead to their decline, is resolved.²⁴

But is this really the case or do the statistical results create a 'smoke and mirrors' effect? At least three additional questions must be answered in order to come to a rigorous conclusion.

First, how stable are these imposed democracies? Second, what type of democracy is at stake? And third, are these democracies in fact more peace-loving among one another than other regime types?

Leaving aside the model cases of Japan and Germany, statistically representative studies²⁵ show that democracies that are externally imposed and that follow military defeat are less stable and less durable than those political regimes that experience internal democratization. The so-called new institutionalism can explain this by pointing to the mismatch between the domestic context and the new institutions²⁶ and the dearth of complementary informal social and formal political institutions.²⁷ A swift external overthrow of a government cannot, then, lead to a stable political order if strong domestic actors in the country itself do not support the democratization process. Only an elite settlement that includes the strongest political forces can provide formal democratic institutions with validity.²⁸ Over time, repetitive rule compliance leads to a *de facto* transformation of informal rules into formal institutions. In the positive case, informal institutions and elite and popular attitudes change and adapt themselves to the operating mode of formal institutions. In this respect, democratic elites under international supervision can contribute to the institutionalization of democracy, but democracy is in no way a pre-determined outcome. Democratic interventions often produce only short-lived successes. Over the long term, stable democratic regimes following armed intervention remain the exception rather than the rule.²⁹

Most commonly, post-war-orders shed their openly autocratic character and become hybrid, semi-democratic regimes; only rarely do they become consolidated democracies. Two important implications for the democratic peace thesis follow from this observation. First, institutionally inconsistent hybrid regimes are less stable than autocratic regimes and even less stable than democratic regimes. Second, from a statistical viewpoint, such hybrid regimes are significantly more prone to violence, susceptible to war, and in danger of civil war than mature democracies or stable autocratic systems.³⁰

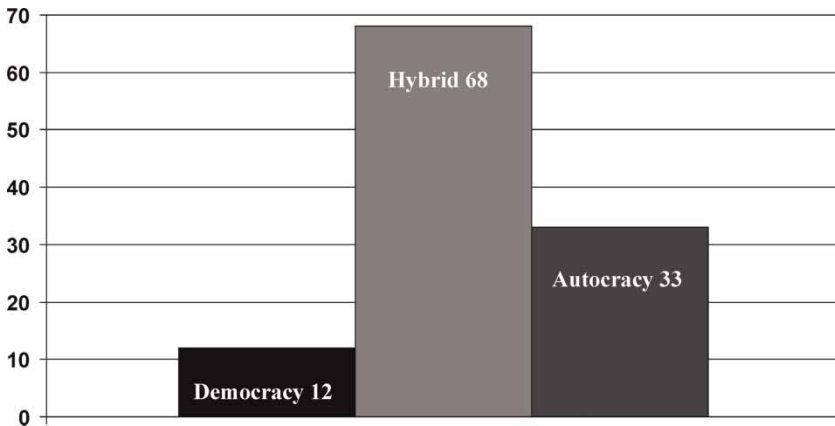
The most important distinction, then, is between consolidated democracies and democratizing states. This distinction is often decisive for war and peace.³¹ In precarious transitional regimes, the threatened former autocratic elite find themselves in a new political game and often seize on political strategies that promise to deliver the quickest electoral victory and the most power. These are typically nationalist and ethnic mobilization or aggressive foreign policies, which are risky but domestically popular.³² Such strategies are hardly moderated by the now obsolete old institutions and the as yet insufficiently influential new institutions. The double-edged sword of increasing social mobilization, on the one hand, and weak political institutions, on the other hand,³³ results not infrequently in short-sighted, reckless, violent political acts. This is made even easier by the fact that the accountability mechanisms that exist between the government and voters are still unfamiliar and ineffective. Overall, democratizing regimes face a 60 per cent higher chance of being involved in war than states that are not undergoing democratic regime change.³⁴ The danger of military conflict is especially pronounced in the first phase of democratization. Transitional regimes that do not rapidly consolidate are not only almost by definition less stable than democracies or

autocracies, but also find themselves much more often involved in civil war than other regimes, as Figure 2 clearly shows.

The central conclusion of Kant's democratic peace argument, then, must be rendered more precisely. *Mature* democracies do not wage war against one another. The mainstream of democratic peace studies neglects this critical analytical differentiation. It concentrates geographically on democracies and autocracies. Democratic regions such as Europe, North America, and increasingly also Latin America, are contrasted against almost purely autocratic regions such as the Arab Islamic belt of the Maghreb, the Middle East, and central Asia. Democracies support democracies, just as authoritarian regimes in regional clusters can better immunize themselves from regime change. In this respect, the democratic domino theory of Paul Wolfowitz and other neoconservatives in the US rests on feet of clay. Even had Iraq rapidly democratized after the 2003 intervention, its chances of surviving as a democracy would have been just as unlikely as the successful spread of a 'democracy virus' throughout the deeply autocratic region of the greater Middle East.

When we take these last observations into consideration together with empirical studies supporting them,³⁵ three relevant consequences must follow for actors engaged in 'democratic intervention'.

FIGURE 2
STATES IN CIVIL WARS (INTRASTATE), 1945 – 1997



Sources: Merideth Reid Sarkees, 'The Correlates of War Data on War: An Update to 1997', *Conflict Management and Peace Science*, Vol. 18, No. 1 (2000), pp. 23–144; Monty G. Marshall and Keith Jagers, *Polity IV Dataset* (College Park, MD: Center for International Development and Conflict Management, University of Maryland, 2002).

Notes: Included are all states that experienced civil war between 1945 and 1997. The data were collected from the Correlates of War (COW) Project (Sarkees). COW defines a civil war as an ongoing violent conflict between central government forces against an insurgent force capable of effective resistance, and resulting in at least 1000 battle deaths per year. The classification of democracy, hybrid, and autocratic regimes is based on Polity IV data (Marshall and Jagers). Polity IV codes states according to different regime characteristics on a scale from 10 to –10. States with scores at or greater than 7 are classified as democracies, states between 6 and –6 are classified as hybrids, and states with scores at or lower than –7 are classified as autocracies.

First, interventions that only set out to force an autocratic leader from power promise near-term success neither for democracy, nor for peace. Such 'democracies' threaten to remain incomplete and unstable and this, in turn, increases the danger of war.

Secondly, the arguments above suggest that intervening democratic powers should support the new regime until it has climbed far enough up on the democracy scale that it is out of the zone of the violence-prone hybrid regime. The extent to which such willingness on the part of the intervener exists should be verified before any armed intervention is undertaken. If this willingness does not exist, then a military intervention cannot legitimately claim liberation and democratization as grounds for just war.

Thirdly, we know that regionally isolated democracies can in some cases survive, but that their average life-span is significantly lower than it would be if they were surrounded by stable democracies. There is no evidence for the idea that establishing a shining example of democracy in a deeply autocratic region will create a domino effect among the other autocracies. The opposite is true; as a general rule, these 'democracies' remain unstable, crisis-prone, violent, and short-lived. It could even be the case that the threat to regional peace and the gravity of human rights violations, which had been the legitimate occasion for intervention in the first place, could actually increase.

One conclusion from the empirically based analysis thus far is that the world will become more democratic when democratization is not only initiated but when its consolidation is successfully set on course. Thus, intervention is not just about toppling the dictator and introducing democracy, but most importantly, it is about supporting processes of democratic consolidation. Only then will both intra-state conflict and inter-state conflict decrease over the long-term. As I argue later, these empirical findings are relevant for the ethical questions of *jus ad bellum* and *jus post bellum*.

Taking into consideration these important qualifications to the democratic peace thesis, could an informed 'democratic *jihad*'³⁶ bring the world closer to Kant's eternal peace? The answer is no. This is because evidence of a moderate but global increase on the democracy scale is not decisive; rather, the critical issue is whether autocratic regimes can transform into stable rule-of-law democracies. As we have seen, small advances towards democracy can move a stable autocracy into the conflict-prone zone of the hybrid regimes. Above all, it would be reasonable to object that good ends (democracy and peace) do not justify bad means (war). Since the writings of David Hume (1711–1776), we know that the unconditional derivation of 'ought' from 'is' presents a naturalistic fallacy, that is, the mistaken identification of moral properties with natural properties. 'Democratic wars of aggression'³⁷ against dictators cannot be legitimated solely on grounds of the vague statistical conclusion that an increase in consolidated democracies leads to a decrease in military violence. Indeed, statistics for the 20th century show that intra-state violence at the hands of murderous regimes has produced more victims than the two world wars put together.³⁸ Even if we do not follow the crude utilitarianism of numbers, the possibility of preventing massive massacres can be an empirical and normative argument to allow military intervention in a sovereign state, notwithstanding the limits imposed

by the Peace of Westphalia (1648). Is a community based on democratic values allowed to do this? And when yes, under what circumstances? What could be the costs of allowing this? These questions need to be examined next at the legal and, finally, at the moral-philosophical levels.

Law

International Law: What Are We Allowed To Do?

Defensive War

The modern law of nations, which in contrast to its name originally referred to the domestic law of state,³⁹ underwent a transformation through the influence of Grotius (1625)⁴⁰ and the Peace of Westphalia. Under these influences, the medieval doctrine of *bellum justum* changed into the modern doctrine of *jus ad bellum*. Each sovereign state could decide for itself whether war was an appropriate tool of self-preservation. In the famous words of Clausewitz in *On War* (1832), war is the ‘continuation of politics by other means’.⁴¹ With the 1928 Kellogg-Briand Pact – an international treaty first tabled by the United States and France – ‘recourse to war for the solution of international controversies’ was for the first time renounced by international treaty. But only the traumatic experience of World War II led to a universal proscription of the use of force in Article 2, Number 4 of the United Nations Charter. Using war to continue politics ‘by other means’ was made internationally illegal.⁴² The only exception allowed for was individual and collective self-defence against the aggressions of a third state. As with individual self-defence, collective self-defence was designated as ‘naturally given’ and therefore an inalienable right. As Article 51 of the Charter makes clear, however, the Security Council’s duty is not to vouchsafe this right but to limit it when necessary.⁴³

Humanitarian Intervention

At least since the attacks by the North Atlantic Treaty Organization (NATO) forces on Yugoslavia during the Kosovo war (1999), a new debate has been raging in international law. The ‘humanitarian intervention’ aimed at stopping Serbia’s massacre and ethnic cleansing of the Kosovar population. In the mistaken language of Germany’s then Minister of Defence, Rudolf Scharping, the ‘holocaust-like crimes’ against humanity needed to be stopped. The analogy to the mass murder of European Jews is not only reprehensible but also superfluous. A UN Security Council mandate did not exist. Even without it, *jus ad bellum* – and therefore also NATO’s war involvement – can be justified within narrow normative bounds. Such a justification was provided by, among others, the Hamburg University criminal lawyer and law philosopher, Reinhard Merkel, on the basis of the legal principle of ‘emergency assistance’. Just as self-defence is a natural right, in criminal law emergency assistance on behalf of unlawfully threatened third parties is an undisputed fundamental norm. Article 51 of the UN Charter declares this principle to be applicable to states as well. International law today increasingly recognizes ethnic and religious communities, and even individuals, as ‘bearing legal standing beyond the state’.⁴⁴ This

standing applies to such rights as the right to life, the right to physical inviolability, and the protection from displacement. A state's unlawful attacks on its citizens' core group of negative human rights are breaches not only of objective international law, but also of the internationally recognized subjective rights of those affected. As such, the legal position of victims makes them eligible for emergency assistance. This opens up the 'theoretical possibility of the international community's right to pierce through the sovereign state's legitimating foundations'.⁴⁵

The objection, incidentally, that an intervention so justified always requires the authorization of the Security Council, is misled. This is because 'just as the Security Council cannot establish non-existing state rights, neither can it eliminate existing ones'.⁴⁶ The Security Council lacks the competence to set and deny rights. Emergency assistance rights are self-help rights, and as such they are by definition asserted beyond the international legal order. 'That every resolution of the Security Council can be prevented by a simple, unjustified, purely egoistically motivated veto of each of its five permanent members', Reinhard Merkel argues, 'means that a right whose existence would depend on such a resolution would be made patently worthless and thereby nonexistent'.⁴⁷ Although this might be controversial in the sometimes unclear deductive positivist international law, if we follow the stricter subsumptive logic of legal principles, then no doubt can remain about the so-called right to 'international emergency assistance'.

In extreme cases of grave human rights violations, the third party has a right to emergency assistance. What counts as 'grave human rights violations', however, is admittedly ambiguous in international law. What is clear is that such violations must have both a qualitative and a quantitative dimension of exceptionality and enormity. Qualitative criteria such as the right to life, physical inviolability, and the protection against displacement have been mentioned already. These are universal human rights that enjoy global consensus. It is the dominant view that only the small core of fundamental negative defensive rights can be protected by humanitarian intervention. What remains unclear is the quantitative criterion. Are the historically rather unremarkable number of expulsions and massacres in Kosovo enough? Is it necessary to murder 400,000 citizens, as Iraq's Saddam Hussein is alleged to have done?⁴⁸ Or do we need to think on the scale of Cambodia, Rwanda, or even the Holocaust? It makes sense to argue that the boundary of intervention is there where the state itself harms its primary legitimating function, namely the guarantee of internal peace. When the state undermines internal peace, it shows itself to no longer be *protector* but *hostis populi* (enemy of the people). But even though this argument – reminiscent of the theorising of Thomas Hobbes in the 17th century – is plausible in the abstract, difficult questions regarding the precise details remain. Most importantly, when exactly is the boundary crossed, when the Leviathan itself instigates the violent creation of the state of nature, in this case the *bellum unius contra omnes* (war of all against all)? Where such boundaries can be neither substantially nor arithmetically determined, then they are proceduralized in law and politics and handed over to an arbitrating authority. When, however, this authoritative body (such as the UN Security Council) is occupied by veto players who are themselves flagrant human-rights violators, then such decisions become a normative farce.⁴⁹

In such a situation, wouldn't it be normatively legitimate for a 'coalition of the willing' to intervene without a UN mandate? International law certainly does not forbid it, as I have tried to show with the concept of emergency assistance. There are legally accepted reasons for humanitarian interventions that violate state sovereignty. I consider this, as opposed to the dogmatization of Westphalian sovereignty, to be one—if not the most important—humanitarian advance from an international law of states to a cosmopolitan right of world citizenship.⁵⁰

Democratic Intervention

Humanitarian interventions can be justified by the flagrant violation of core negative human rights. This legitimizing justification is increasingly accepted in international law. Is this also the case for 'democratic intervention'; that is, for intervention aimed at establishing a democratic political order in cases of massive violation of positive human rights? Does it apply for the case in which those subjected to the state are in whole or in part denied the right to vote or other important political, civil, or social rights on the basis of their race, ethnicity, or gender? The answer is no. Positive human rights (that is, participatory rights) do not possess the same legitimating weight as negative rights of protection.⁵¹ I do not know of any legal philosophers or international lawyers worth naming who would defend a different position. Would anyone have seriously thought of marching into Switzerland in 1970 before the introduction of the right to vote for women, or of intervening in Singapore's well-ordered authoritarian regime? Armed intervention in South Africa and Rhodesia at the time of apartheid was never even debated. Even the severe political and civil rights discrimination against women in Saudi Arabia would not be taken as grounds for intervention. Naturally, the threshold for any military intervention must be set very high. This is not just because of the danger of military conflict spreading or the unavoidable 'collateral victims' of such interventions, but more importantly, it is because of the need to preserve individual state sovereignty as a generally war-preventing legal good in international relations. Nevertheless, state sovereignty is not an end in itself, but it must be permanently legitimated by the state's own citizens.

Does this resolve the discussion about the meaning and legitimacy of 'democratic intervention'? In my view, it does not. 'Democratic interventions' can never be justified solely with the argument of establishing democracy. Democratic intervention can only be accepted and legitimated in connection with the (successful) termination of a humanitarian intervention, or after the defeat of a dictatorial regime which initiated a war of aggression (Germany, Japan, and Italy in 1945). The prevention of new massacres or of further wars of aggression is the legitimating legal basis for democratizing protectorates. Democratic intervention in order to secure humanitarian goals following a humanitarian intervention is plausible, legitimate, and—within bounds—also legal. To intervene democratically, then, means being willing to construct a legal system and democracy through something like a protectorate, with or without legitimate and representatives who are not incriminated in violations of human rights. The clearest examples of this in the last ten years are without doubt Bosnia, Afghanistan, and Iraq. In all three interventions democratization is anything but guaranteed. A look at all cases of democratizing protectorates since 1945 is only slightly more optimistic.

TABLE 2
EXTERNAL SUPERVISION OF DEMOCRATIZATION AFTER MILITARY INTERVENTION, POST-1945

Country	Period	Most important external actors	Type of administration	After 10 years		
				Polity IV ²	Freedom House ³	Democracy ⁴
Germany (West)	1946–48	USA, GB, F	Multilateral administration	10 (10)	(1.1)	Yes
Austria	1945–50	Allies	Multilateral administration	10 (10)	(1.1)	Yes
Japan	1945–50	USA	US administration	10 (10)	(1.2)	Yes
Dominican Republic	1965–66	USA	Local administration under US supervision	–3 (8)	7.7 (2.2)	No
South Vietnam	1964–70	USA	Local administration under US supervision	–7 (–7)	7.6 (7.6)	No
Cambodia	1970–75	USA	Local administration under US supervision	–66 (2)	7.7	No
	1991–92	UN	Local administration under US supervision	2	6.5 (6.5)	No
Grenada	1983	USA	Local administration under US supervision	–	1.2 (1.2)	Yes
Panama	1989	USA	Local administration under US supervision	9 (9)	2.3 (1.2)	Yes
Haiti	1994–96	USA, UN	Local administration under US supervision	–2 (–2)	6.5 (7.6)	No
Bosnia-Herzegovina	1995–?	NATO	NATO/EU/UN administration	–66 (–66)	4.4 (4.3)	?
Kosovo ¹	1999–?	NATO/UN	NATO/EU/UN administration	–	–	?
East Timor	1999–2002	UN	UN administration	6 (6)	3.3 (3.3)	?
Afghanistan	2001–?	USA, allies	Local administration under NATO/UN supervision	–66 (–66)	6.6 (5.6)	?
Iraq	2002–?	USA, Allies	US administration	–66 (–66)	7.5 (7.5)	?

Sources: Monty G. Marshall and Keith Jagers, *Polity IV Country Reports 2003*, available at http://www.cidcm.umd.edu/polity/country_reports/report.htm (accessed 20 July 2005); Freedom House, *Freedom in the World. Country Ratings 1972–2005*, available at <http://www.freedomhouse.org/uploads/fiw/FIWAIScores.xls> (accessed 22 January 2006); own research.

Notes:

¹ The territorial status of Kosovo is not yet determined; therefore it remains unrated by Polity IV and Freedom House.

² Polity IV values 10 years after the end of intervention. The values for Haiti, Bosnia-Herzegovina, Kosovo, East Timor, Afghanistan, and Iraq are from 2002, and from 2003 in parentheses.

³ Freedom House: political rights, civil liberties. Freedom House ratings are available since 1973. Ratings are for 10 years after the end of intervention. The values for Haiti, Bosnia-Herzegovina, Kosovo, East Timor, Afghanistan, and Iraq are from 2004; in parentheses are political rights and civil liberties from 2005.

⁴ Polity IV considers a country to be democratic when it has a score of at least 6 points (out of 10). Freedom House designates a country as ‘free’ when it has an average score of 2.5 or better (with 1 being free and 7 being unfree).

Of the 14 cases of peace and democracy protectorates, the only successes that can be reported in addition to Germany, Japan, and Austria are the relatively insignificant cases of Panama and Grenada. The cases of Bosnia-Herzegovina, Kosovo, and East Timor are still too young to diagnose with any certainty as democratic success or failure. Afghanistan and, even more so, Iraq are far from the goal of being a stable democracy, a rule of law state, or even having secure statehood. But even if historical hindsight cautions firm restraint from ‘democratic crusades’, strict opponents will have to justify why it would be better to *not* protect populations threatened by mass murder and brutal violations of human rights and to *not* secure this protection over the long-run through the establishment of rule-of-law democracy. Beyond nationalistic cynicism and a dogmatic belief in Westphalian sovereignty, it is hardly possible to find consistent reasons.

Ethics

Just Interventions: What Should We Do?

Even if humanitarian intervention can be justified by modern international law, that still does not constitute a *duty* to intervene. Is there such a duty? Can such a duty even exist? And if it exists, does humanitarian intervention demand the fulfilment of specific duties not only *before* and *in* war, but also *after* war? Do duties, then, clearly go beyond what we know to be the commandments of ‘humanitarian international law’? And if our intuition for justice suggests ‘yes’, can this decision be grounded in reasons acceptable to all? International law has thus far not delivered sufficient answers to these questions. Hans Kelsen’s view (1945)⁵² that international law is a ‘primitive law’ seems to still hold; it is primitive because it possesses neither the possibility of enforcement and punishment, nor the completeness and subtlety of national criminal or civil law. Therefore I want to now turn to political ethics to search for arguments which can help fill this gap.

Jus Ad Bellum

To intervene or not to intervene—this is the first question in modern moral theory of just war.⁵³ Massacres, ethnic cleansing, and state terrorism—whether in the former Yugoslavia, in the Caucasus, in the Middle East, or in Africa—justify a moral right, and occasionally even duty, for armed intervention. This is one of the fundamental conclusions of just war theory.⁵⁴ Overall, there are fewer restrictions against humanitarian intervention in most areas of political ethics than in international law, because in political ethics external sovereignty is inextricably linked to internal state sovereignty. Only a state which has not become a *hostis populi*, and therefore possesses a certain amount of internal legitimacy, can also claim external sovereignty for itself.⁵⁵ Because external legitimacy is dependant on internal legitimacy, it follows that fundamental human rights have superiority over the sovereign state as an object of legal protection. In the case of blanket violations against humanity, finding a balance between protection of state sovereignty and protection against genocide or democide usually leads to a clear conclusion: when in doubt, intervene.⁵⁶

In the ethics debate over just war, international, multilateral interventions, ideally mandated by the UN Security Council, are clearly preferred. But the ever present question is what happens when multilateral solutions do not appear or are even prevented by the Security Council? What happens when France sends symbolic but harmless troops to Rwanda; what if Western Europe could not agree to interfere in the former Yugoslavia to end ethnic killings? What if UN troops observe but do not prevent the deportation and eventual execution of 7,000 men, women, and children in Srebrenica? What if China, which violates human rights but is a permanent member of the Security Council, uses its veto? Those who do not interfere, regardless of whether it is out of political calculus, cynical disinterest, or conscientious objection on pacifist grounds, get their hands dirty nevertheless. 'As long as we cannot rely on the ability and willingness of the UN, we must search for one-sided interventions'.⁵⁷ Humanitarian interventions are ethically (and also legally) justifiable even despite a Security Council veto. However, beyond the reason of massive violations against humanity, the ethic of *jus ad bellum* requires two additional legitimating reasons: first, there must be a reasonable prospect of success; and second, there must exist the willingness to stay in the country of intervention for as long as it takes to leave behind a 'well-ordered people',⁵⁸ so that the chances of state sponsored massacres or civil war arising again are made unlikely.⁵⁹ These two legitimating conditions create a number of empirical problems. This morally justifiable duty calls for an intervention that is risk-accepting, blind to costs, and that is enormously patient. In contrast, democratic publics are sensitive to casualties, risk-averse, and cost-sensitive. The citizens and voters of a democratic intervening state tend, therefore, to reject long-term occupations when the costs, in terms of their own resources and lives, are high.⁶⁰ A government that contradicts these preferences runs the danger of being voted out of office. As a result, democracies have a built-in institutional limit on their ability to intervene. Of course, this 'reality check' does not mean that we can disavow the moral norm of what should be done. But every rational democratic government must take this limitation into consideration each time it decides whether to intervene.

Jus in Bello

As in international law, in political ethics there are two categorical conditions for the 'law in war': the distinction between combatants and non-combatants and the use of proportional means. Just as these principles are consented to in theory, they are ignored in practice. The most obvious breach occurs with the deliberate or—in the case of high-tech warfare—unintended, but unavoidable 'collateral deaths' of civilians. The law's own binary distinction between legal and illegal is of limited help in clarifying whether a humanitarian intervention is completely impermissible because of a breach of *jus in bello*. The legal norm that no innocent actors may be killed is beyond question and must remain so. As a norm, it is untouchable. But if the norm were to be elevated to an absolute command in every situation, it would lead to a virtual prohibition against any humanitarian intervention. Such a legal absolutism would, in a way similar to irresponsible pacifism, annul the moral duty to eliminate mass murder and mass forced displacement.

Utilitarians argue differently. They succumb to the temptation to weigh human life. The collateral death of hundreds of civilians is acceptable when it can save hundreds of thousands. This would apply to the bombing of Serbia during the Kosovo war, just as it would justify the targeted bombing of Baghdad during the second Iraq war. But does this reasoning convince us? I think it does not. Machiavelli's (1469–1527) strategic formula in *The Prince* (1532) 'where the deed incriminates, the result forgives', does not allow itself to be legitimated as a humanitarian-utilitarian maxim.

Is there a middle way between the 'absolutism of the theory of rights' and the 'radical flexibility of utilitarianism'?⁶¹ In 2003, Michael Walzer attempted to find such a path. 'How can we,' he writes, 'with our principles and proscriptions, stand aside and watch as the moral world in which these principles and proscriptions have their foothold is destroyed? How can we, the opponents of murder, not oppose mass murder—even when opposition means that we ... get our hands dirty.'⁶² Walzer calls such situations moments of 'supreme emergency', a term he borrowed from Britain's Prime Minister Winston Churchill. 'Supreme emergencies' are situations in which an imminent catastrophe threatens the foundations of humanity and devalues morality itself; situations in which immoral acts are necessary, even if that includes the killing of innocents. The Holocaust would have been such an emergency. Walzer and his contemporary John Rawls also argue, incidentally, that the bombing of German cities up until 1943 was not justified, but could be morally defended as long as a victory of the immoral Nazi-regime could not be ruled out. The bombing of German cities in 1944 and 1945, at the end of an already decided war, can neither be justified, nor morally defended.

What also must be rejected, and here I follow Walzer, is the manner in which the wars in Kosovo and Iraq were conducted. The risk-free use of force—namely, dropping bombs from a safe height and accepting collateral deaths in order to spare one's own soldiers—is politically understandable but morally reconcilable with neither Walzer nor *jus in bello*. In addition, from Kosovo we know that the air strikes led to the intensification of the Serbian massacres and expulsions. The Milosevic regime is unquestionably responsible for these victims. But the way in which NATO chose to conduct the war drove the number of victims higher. This is the kind of humanitarian intervention that threatens to renounce its own rightful grounds of intervention.

Jus Post Bellum

Humanitarian interventions demand a different ending than defensive wars. The *jus ad bellum* must be more closely tied to the *jus post bellum*. This has consequences, especially for the duties of the intervener and the international community at large. And it is here that democracy comes back into the picture. In contrast to international law, I view forced regime change to rule of law and democracy as not only permissible, but also as necessary after humanitarian interventions. This is because the law of just war, namely, the elimination of grave violations against humanity, is only fully complete when it is complemented by 'justice after war'. This means that the intervening forces are obligated to ensure that the prevention of grave human-rights

violations will be enduring. As we have seen from the empirical findings of the democratic peace literature, this is most likely to occur when the rule of law and democracy are established. In humanitarian interventions, *jus ad* and *jus post bellum* are normatively and logically inextricably linked.⁶³ Humanitarian interventions must be complemented by democratic interventions so that they can thereby be brought to their final conclusion.⁶⁴ Hybrid regimes do not fulfil this goal because, as we have already seen, they have the greatest tendency towards war and violence.

This maxim is not covered by prevailing international law. Even the mainstream of just war theory would reject this as too deep an interference with national sovereignty and a population's right to self-determination. Precisely, but conservatively, Brian Orend has named five conditions for a moral *jus post bellum*: an end to the war when its goals have been achieved; just intentions, meaning above all no revenge; cooperation with a legitimate local authority, at least one which respects human rights; no collective punishment and the proportional use of means.⁶⁵

From Rawls to Walzer, the same precept applies: victorious forces should leave the country as soon as possible. The defeated country's right to political self-determination requires it. Thus, according to the principle of assistance, the victor has a duty to the defeated 'that the burdened societies may arrange their own affairs in a reasonable and rational manner so that they can ultimately join the society of well-ordered peoples'.⁶⁶ This can hardly be contradicted. However, Rawls' and Orend's remarks are insufficient. What happens when such a *demos* does not exist, but only peoples, ethnicities, or religious communities; that is, only fragments of a nation-state, who are deeply inimical towards one another and who, in the absence of an occupying force, would sink into civil war? What happens when the dominant culture in a country is inclined to the gross suppression of minority ethnicities, religious communities, or women? Is one then not allowed to, in Rawls' words, 'reconstruct' the society? Was 're-education' appropriate in post-Nazi Germany, while external involvement in other countries or civilizations with culturally based suppression is illegal? What would be the arguments?

According to Walzer, Rawls and others, it is not legitimate to force regime change on a 'normal' dictatorship. Exceptions apply only to cases of genocide.⁶⁷ In those cases, political and even social reforms are considered to be legitimate acts of humanitarian intervention. On this basis, Walzer holds the externally forced and supervised democratization was justified in Germany, but unjustified in post-1945 Japan. Even if the cruelties of the Japanese occupation of Nanjing (1937–1938) cannot be compared to the murderous depravity of the Holocaust, Japan's barbarous massacre of the Chinese is also beyond all reason. In general, connecting the legitimate restructuring of a political system almost solely to the cruelties of a violent regime misses the point; namely, the prevention of *future* human-rights violations and the outbreak of civil war, and the prospect of leaving behind a peaceful society and a fair political system. Understood in this way, *jus post bellum* is an integral part of the grounds for just war.⁶⁸ Since democratic societies and elected regimes often shy away from such long-term costs, the criterion of *jus post bellum* raises the threshold for just

wars and lowers their number. In closing, I will discuss this *problematique* through the example of the Iraq war.

Conclusion

The US government's official reason for war against Iraq, the presence of weapons of mass destruction, proved to be self-deceptive, even if (and much supports this view) the hegemonic power did not intend to practise fraudulent deceit of the world from the start. If there had been an ethically durable reason for the second Iraq war, then it would have had to be the fact that Saddam Hussein was one of the bloodiest dictators of the 20th century, and that future victims must be prevented. Four hundred thousand Iraqi citizens, according to Amnesty International estimates, were murdered by their own government – Kurds, Shiites, political and also personal enemies. About one million deaths resulted from Saddam Hussein's attack against Iran, which was waged with support from the US government. These facts weigh heavily. At the same time, one could argue that this was the past and that after the massacre of Marsh Arab Shiites (1991), Saddam Hussein's actions were contained by the imposition of an international air campaign in the north and south of Iraq, and therefore his ability to repress his people was limited. Nevertheless, every easing of the air containment regime gave rise to the fear and the opportunity for renewed repression, torture, and – when politically opportune – mass murder. An easing of the air containment regime would have breached the *jus post bellum* of the first Gulf War.

The *jus ad bellum* for the attack against Iraq remains, from the perspective of just war theory, contested. The *jus in bello*, however, was clearly violated by the style of bombardments. But this does not excuse us from having to reflect on the post-war situation – not least because the Iraq war can serve as a paradigmatic case of the victor's duties for a 'just occupation' after humanitarian intervention.

I argue that an early withdrawal of American, British, and the other more symbolic partners of the war coalition would amount to a flagrant violation of the victors' post-war duties. Iraq is a deeply divided country. Kurds mistrust Arabs, Shiites mistrust the Sunnis, moderates mistrust radicals, clerics mistrust secularists, followers of the Baath regime mistrust everyone. The violations of the past, primarily begun by the Sunnis, now predestine their entire group to be the target of revenge, discrimination, and repression. The Kurds have already begun to build their parastate. All three (according to the German constitutionalist Jellinek) fundamental elements of a state are contested in current day Iraq: the state's population, territory, and power. The creation of a centralized monopoly on force, which is the beginning of every state, lies beyond reach. The same is true of nation-building. By comparison, the re-democratization of Germany after 1945 was easy, since there was at least a nation and a state. Both are missing in post-war Iraq. In the absence of a trusteeship protectorate, Iraq is more likely to face Thomas Hobbes' notion of a state of nature than it is John Rawls' 'well-ordered peoples'. An American withdrawal would not put an end to an unjust war. To the contrary, it would make a war that was already hardly justified even more unjust. If there is any other humanitarian significance beyond the toppling of a human rights-violating dictatorship, then it is that one

cannot abandon Iraq to a Shiite–Sunni civil war. This thesis is also based on the robust empirical finding of Mansfield and Snyder⁶⁹ that political regimes undergoing democratization are particularly vulnerable to war when the central state institutions are weak. Iraq seems to be a model example of this thesis.

What is needed, as always in humanitarian interventions, is a neutral occupying force, a ‘moral agent’ in Walzer’s terms. The US can no longer fill this role. But without the power and deployment readiness of the US army, the outbreak of civil war will be difficult to avoid. The US, which from the beginning was faced with only limited acceptance, if not open cultural and political animosity from the people of Iraq and the international community, completely lost its role as moral agent after the torture and sexual humiliation at Abu Ghraib. The US must now face the departure of its allies from post-war Iraq. It was a mistake that the US did not try to build a solid multilateral alliance on the basis of facts (massacre and human-rights abuses), but on the basis of the bugaboo that Saddam Hussein was threatening world peace. For a successful alliance for humanitarian-democratic intervention, the US should not have imperially dictated, and some of the European states should not have comfortably stayed on the sidelines.⁷⁰ Attempts should have been made to persuade Arab and Islamic states to help in a multilateral effort to rebuild the country. Only then could the inimical US occupation have turned into a multilateral trusteeship occupation. The trusteeship occupation, then, should have insisted on the implementation of a fair, religiously inclusive constitution. Only then would there have been a chance of sustainable democratization.

This sounds like the squaring of a circle; and this is indeed what the effort has become. It indicates the many mistakes that have been committed primarily, but not only, by the main intervening power, the US. It points too, to the violation of one of the categorical conditions for just war—the probability of an intervention’s success. When this condition is not met, under the classic just war doctrine, a war is not justifiable. This might console both pacifists and realists, but they will still not be able to claim a clear conscience. This point is made not only in Walzer’s moral philosophy, but also in Goethe’s biting critique of the cultural philistines of his time, which can be applied to today’s realists, pacifists, and national-isolationist egoists:

On holidays there’s nothing I like better
 Than talking about war and war’s display,
 When in Turkey far away,
 People one another batter.
 You sit by the window: have a glass:
 See the bright boats glide down the river,
 Then you walk back home and bless
 Its peacefulness, and peace, forever.

–Faust Part One, ‘Outside the Town Gate’, A. S. Kline (translation).

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NOTES

1. Mansfield and Snyder are a notable exception. Edward D. Mansfield and Jack Snyder, 'Democratic Transitions, Institutional Strength, and War', *International Organization*, Vol. 56, No. 2 (2002), pp. 297–337.
2. This is even more so when we take into account that in the past three decades most wars have been internal conflicts rather than intra-state conflicts. These, in turn, are more likely to be understood by political regime research than international relations research.
3. Immanuel Kant, *Zum ewigen Frieden* (Stuttgart: Reclam, [1795] 2005), p. 24.
4. See Wolfgang Merkel, *Systemtransformation*, 2. erw. Aufl. (Wiesbaden: VS Verlag für Sozialwissenschaften, 2008) (forthcoming).
5. Melvin Small and J. David Singer, 'The War-proneness of Democratic Regimes, 1816–1965', *The Jerusalem Journal of International Relations*, No. 1 (April 1976), pp. 50–69; Bruce M. Russett and John Oneal, *Triangulating Peace: Democracy, Interdependence, and International Organizations* (New York: W. W. Norton, 2001); Andreas Hasenclever and Wolfgang Wagner, 'From the Analysis of a Separate Democratic Peace to the Liberal Study of International Conflict', *International Politics*, Vol. 41, No. 4 (2004), pp. 465–71.
6. Kant (note 3), p. 12 f.
7. Mansfield and Snyder (note 1), p. 300.
8. Lothar Brock, Anna Geis, and Harald Müller, *Democratic Wars. Looking at the Dark Side of Democratic Peace* (Houndmills: Palgrave Macmillan, 2006), p. 6.
9. Johan Galtung, 'Democracy: Dictatorship = Peace: War?', in Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilisation* (London: Sage, 1996), pp. 49–59.
10. See for example Rudolph J. Rummel, 'Libertarianism and International Violence', *Journal of Conflict Resolution*, Vol. 27, No. 1 (1983), pp. 27–71; Michael W. Doyle, 'Liberalism and World Politics', *American Political Science Review*, Vol. 80, No. 4 (1986), pp. 1151–69; Michael W. Doyle, 'Three Pillars of the Liberal Peace', *American Political Science Review*, Vol. 99, No. 3 (2005), pp. 463–66; Bruce M. Russett, *Grasping the Democratic Peace: Principles for a Post-Cold-War* (Princeton, NJ: Princeton University Press, 1993); Russett and Oneal (note 5).
11. David Kinsella, 'No Rest for the Democratic Peace', *American Political Science Review*, Vol. 99, No. 3 (2005), pp. 453–8.
12. See for example Michael W. Doyle, 'Kant, Liberal Legacies, and Foreign Affairs, Part I', *Philosophy and Public Affairs*, Vol. 12, No. 3 (June 1983), pp. 205–35, here p. 206.
13. Wolfgang Merkel, 'Embedded and Defective Democracies', *Democratization*, Vol. 11, No. 5 (2004), pp. 33–58.
14. Linz calls South Africa and Rhodesia 'racist democracies'. Juan Linz, 'Totalitarian and Authoritarian Regimes', in Fred Greenstein and Nelson Polsby (eds), *Handbook of Political Science, Vol.3, Macropolitical Theory* (Reading, MA: Addison-Wesley, 1975), pp. 175–411.
15. Compare the Indian interventions in Pakistan in 1965–1966, 1971–1972, 1981, and 1984–1987.
16. Harald Müller and Jonas Wolff, 'Democratic Peace: Many Data, Little Explanation?' in Lothar Brock (ed.), *Democratic Wars. Looking at the Dark Side of Democratic Peace* (London: Palgrave, 2006), pp. 41–73, here p. 68.
17. Mansfield and Snyder (note 1); p. 300.
18. Doyle argues that this fact – that democracies trust other democracies and not autocracies – above all, makes war unlikely between democracies but not between democracies and dictatorships. Michael W. Doyle, *Ways of War and Peace* (New York: Norton, 1997).
19. Merkel (note 13).
20. Rosato offers a notable example of an oversimplified understanding of democracy. Based on inconsistent sources and without further ado, he declares 19th-century Great Britain, Belgium at the end of the 19th century, Iran in 1953, Indonesia in 1957, and Nicaragua in 1984 to be democracies. Sebastian Rosato, 'The Flawed Logic of Democratic Peace Theory', *American Political Science Review*, Vol. 97, No. 4 (2003), pp. 585–602, here pp. 589 f.
21. Nevertheless, both Wilson and Roosevelt based their justifications for US entry into the two world wars on democracy arguments.
22. On the cases of Somalia, Haiti, Bosnia, and Afghanistan, see Bernhard Zangl and Michael Zürn, *Frieden und Krieg* (Frankfurt a. M.: Suhrkamp, 2003), pp. 224–45.
23. Nils Petter Gleditsch, Lene Siljeholm Christiansen, and Håvard Hegre, *Democratic Jihad? Military Intervention and Democracy*, Ms. Oslo (2004), pp. 26 f. Paper prepared for the Workshop on

- 'Resources, Governance Structures, and Civil War', ECPR Joint Sessions of Workshops, Uppsala, Sweden, 13–18 April 2004.
24. That this is in no way a legitimization for 'democratic wars of aggression', wars intended to bring about democracy, will become clear during the course of this article.
 25. Scott Gates and Harvard Strand, *Military Intervention, Democratization, and Post-conflict Political Stability*, Ms. Montreal (2004). Paper presented at the annual meeting of the International Studies Association, Le Centre Sheraton Hotel, Montreal, Quebec, Canada, 17 March 2004.
 26. On the 'logic of appropriateness' see James G. March and Johan P. Olson, 'The New Institutionalism: Organizational Factors in Political Life', *American Political Science Review*, Vol. 78, No. 3 (1984), pp. 738–49.
 27. Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); Hans-Joachim Lauth, *Demokratie und Demokratiemessung, eine konzeptionelle Grundlegung für den interkulturellen Vergleich* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004).
 28. Michael Burton, Richard Gunther, and John Higley, 'Introduction: Elite Transformations and Democratic Regimes', in John Higley and Richard Gunther (eds), *Elites and Democratic Consolidation in Latin America and Southern Europe* (Cambridge: Cambridge University Press, 1992), pp. 1–37, here pp. 13 ff.
 29. Gleditsch *et al.* (note 23), p. 33.
 30. Edward D. Mansfield and Jack Snyder, 'Democratization and the Danger of War', *International Security*, Vol. 20, No. 1 (1995), pp. 5–38; Mansfield and Snyder (note 1); Edward D. Mansfield and Jack Snyder, *Electing to Fight. Why Emerging Democracies Go to War* (Cambridge, MA: MIT Press, 2005).
 31. Thus another reason why a brief glance at the Polity IV and Freedom House democracy scores is insufficient is because these indices do not reveal anything about the unfolding of the democratization process over time.
 32. The Greek junta's occupation of Cyprus in 1973 and the Argentinean generals' war in the South Atlantic Falklands/Malvinas make clear the hazards of using foreign policy as a strategy of legitimization. The Balkan wars of the 1990s and the religious sectarian power struggle in Iraq show the perils of mobilising people on the basis of primordial beliefs.
 33. Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968).
 34. Mansfield and Snyder (note 30), p. 13.
 35. See for example Mansfield and Snyder (note 30); Gates and Strand (note 25); Gleditsch *et al.* (note 23).
 36. Gleditsch *et al.* (note 23).
 37. 'Democratic wars of aggression' here refers to wars initiated by democracies with the goal of democratizing an autocratic regime.
 38. Rudolph Rummel, 'Focus on: Power, Genocide, and Mass Murder', *Journal of Peace Research*, Vol. 31, No. 1 (1994), pp. 1–10; Gleditsch *et al.* (note 23), p. 13.
 39. Ulrich K. Preuss, 'Der Kosovo-Krieg, das Völkerrecht und die Moral', in Reinhard Merkel (ed.), *Der Kosovo-Krieg und das Völkerrecht* (Frankfurt a. M.: Suhrkamp, 2000), pp. 115–37.
 40. Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres (Drei Bücher vom Recht des Krieges und des Friedens)*, Paris 1625, New German and Introduction by Walter Schätzel (Tübingen: Verlag J. C. B. Mohr (Paul Siebeck), 1950), pp. 47–82.
 41. Quoted from Preuss (note 39), p. 118.
 42. Preuss (note 39), p. 118.
 43. See Reinhard Merkel in this collection.
 44. Kay Hailbronner, 'Der Staat und der Einzelne als Völkerrechtssubjekte', in Wolfgang Graf Vitzthum (ed.), *Völkerrecht*, 4th ed. (Berlin: deGruyter Lehrbuch, 2007), pp. 169 ff.
 45. Reinhard Merkel, 'Das Elend der Beschützten. Rechtsethische Grundlagen und Grenzen der sog. Humanitären Intervention und die Verwerflichkeit der NATO-Aktion im Kosovo-Krieg', in Reinhard Merkel (ed.), *Der Kosovo-Krieg und das Völkerrecht* (Frankfurt a. M.: Suhrkamp, 2000), pp. 66–98, here p. 81.
 46. *Ibid.*, p. 79.
 47. *Ibid.*
 48. Not counted here are the approximately one million deaths that followed from Saddam Hussein's illegal attack on Iran.
 49. This applies especially to China, but also to Russia and occasionally even to the democratic US.
 50. Otfried Höffe, *Demokratie im Zeitalter der Globalisierung* (München: C. H. Beck, 1999), pp. 352 ff.
 51. See for example Höffe (note 50), p. 79.
 52. Hans Kelsen, *General Theory of Law and State* (Cambridge: Cambridge University Press, 1945).

53. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Harmondsworth: Penguin, 1977); Michael Walzer, *Erklärte Kriege – Kriegserklärungen* (Hamburg: Europäische Verlagsanstalt, 2003); Michael Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2005).
54. *Ibid.*
55. This position is not recognized by international law positivists. State sovereignty is a sufficient end in itself. According to this legal positivist view, even murderous totalitarian regimes do not lose their sovereignty.
56. Walzer, *Erklärte Kriege* (note 53); Otfried Höffe, 'Humanitäre Intervention? Rechtsethische Überlegungen', in Reinhard Merkel (ed.), *Der Kosovo-Krieg und das Völkerrecht* (Frankfurt a. M.: Suhrkamp, 2000), pp. 167–86, here p. 169; Gary J. Bass, 'Jus post bellum', *Philosophy and Public Affairs*, Vol. 32, No. 4 (2004), pp. 384–412.
57. Walzer, *Erklärte Kriege* (note 53), p. 96.
58. John Rawls, *Das Recht der Völker* (Berlin: deGruyter, 2002).
59. Bass (note 56), pp. 386, 406.
60. This has been the situation in the US since at least 2006 after the number of casualties as a result of the American occupation in Iraq increased. *A fortiori*, the same occurred during the last years of the Vietnam War.
61. Walzer, *Erklärte Kriege* (note 53).
62. *Ibid.*, p. 66.
63. Walzer, *Just and Unjust Wars* (note 53), p. 123, 'The theory of ends in war is shaped by the same rights that justify the fighting in the first place.'
64. Robert O. Keohane, 'Political Authority after Interventions: Gradations in Sovereignty', in Jeff L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), pp. 275–98, here pp. 275 ff.
65. Brian Orend, *War and International Justice: A Kantian Perspective* (Waterloo, Ontario: Wilfried Laurier UP, 2000), pp. 217–63.
66. Rawls (note 58), p. 137.
67. Walzer, *Just and Unjust Wars* (note 53), p. 107.
68. Bass (note 56), p. 412.
69. Mansfield and Snyder (note 1), p. 334.
70. Only Britain's Prime Minister Tony Blair made a notable contribution. The governments of Italy and Poland would have gladly stood on the side of the victors with symbolic troop contributions. The conservative Spanish President José María Aznar wanted to prove his loyalty to the Bush administration. Italy and Spain have already left the 'alliance of the willing'; Poland will do so in the near future.

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