

**Three Narratives of Civil War:  
Recurrence, Remembrance and Reform from Sulla to Syria<sup>†</sup>**

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For most of their history, from the ancient world until the nineteenth century, civil wars were a subject primarily for orators, poets, historians and novelists. They have been of pressing concern to lawyers for barely a hundred and fifty years, for social scientists only since the 1960s and for literary scholars mostly during the twenty-first century. Civil wars have accordingly been absent from social theory and from interdisciplinary study more generally: there is as yet no great treatise on civil war to sit alongside Clausewitz's *On War* or Arendt's *On Revolution*, for example.<sup>1</sup> *Civil War and Narrative* is therefore especially welcome for joining fields that have been put asunder and for bringing practitioners and scholars together to examine the centrality of narratives to experiences of civil war from the mid-seventeenth century to contemporary Rwanda and South Sudan, among other locales torn by civil war.

I have argued elsewhere that the experience of civil war—the efforts to understand it, to ameliorate it and even to prevent it—have shaped conceptions of community, authority and sovereignty and continue to inform them to this day. Without the challenge of civil war, I contend, our conceptions of politics, sovereignty, revolution, international law, cosmopolitanism and globalisation would have been very different, even poorer.<sup>2</sup> Indeed, civil war may have done more than war to shape our conceptions of politics—“the continuation of civil war,” in Foucault's teasing revision of Clausewitz—than war itself.<sup>3</sup>

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<sup>†</sup> This essay has benefited from the comments of audiences in London, Berlin, New Haven and Athens. Translations are my own, unless otherwise specified.

<sup>1</sup> As noted by, among others, Giorgio Agamben, *Stasis: Civil War as a Political Paradigm*, trans. Nicholas Heron (Stanford, 2015), p. 2; Bill Kissane, *Nations Torn Asunder: The Challenge of Civil War* (Oxford, 2016), p. 3.

<sup>2</sup> David Armitage, *Civil Wars: A History in Ideas* (New York, 2017). This essay draws on my book, to which I refer readers for more documentation and argumentation.

<sup>3</sup> Michel Foucault, *La Société punitive. Cours au Collège de France 1972–1973*, eds. François Ewald, Alessandro Fontana and Bernard Harcourt (Paris, 2013), p. 34.

And, *pace* Arendt, civil war may have contributed more to the making of our world than revolution, the species of which civil war was the longer-lasting genus.<sup>4</sup>

To illustrate these contentions, I here trace briefly three narratives of civil war told sequentially from republican Rome to the present. I have called these three narratives, in shorthand form, “recurrence,” “remembrance” and “reform.” The first narrative, “recurrence,” tells of the seemingly eternal return of civil war, a narrative first elaborated by Roman historians and poets, then transmitted and transmuted by early modern political thinkers and more recently transformed into a paradigm within the modern social sciences. The second narrative, “remembrance,” arises from the first and relates the role of historical memory, but also of historical amnesia, in shaping the expectation and the experience of civil war up to the present. And the third narrative, “reform,” imagines ways of breaking out of the first two narratives by “civilising” civil war through the application of legal norms, especially the laws of war and international humanitarian law. Taken together, these three narratives can help to illuminate the contribution of civil war to the making of the modern world and to understand deeper patterns in the history of civil war that might otherwise be invisible.

#### First Narrative:

##### Recurrence

Let me begin at the beginning: with the Roman invention of civil war and the enduring narrative of *recurrence* it generated. The Romans were not, of course, the first to experience what we now call civil war but they were the first to experience it *as* civil war. “The Athenians had great discords,” wrote Cicero, “but in our commonwealth there were not only seditions but accursed civil wars [*pestifera bella civilia*].”<sup>5</sup> Cicero provided the earliest Latin attestation of the term civil war—*bellum civile*—but he was not its inventor and it was clearly already in circulation when he dropped it without any fanfare into a

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<sup>4</sup> Hannah Arendt, *On Revolution* (1963) (London, 1990), p. 12; Harry Eckstein, “On the Etiology of Internal Wars,” *History and Theory* 4 (1965), 133.

<sup>5</sup> Cicero, *On Duties* (I. 85–6) trans. Walter Miller (Cambridge, Mass., 1913), pp. 86–7 (translation adapted).

political speech in 66 BCE.<sup>6</sup> Two features of the idea were novel: that it was *civil* and that it was a *war*. “Civil”—*civile*—meant literally among fellow citizens, or *cives*; that it was a war—*bellum*—indicated that it had the features different from those of other, less organised or smaller-scale, kinds of violence: armies headed by generals, ranged in martial formations, and accompanied by the signs typical of regular forces, such as drums and trumpets.<sup>7</sup> The Romans introduced two elements of civil war that would create a family resemblance among later conceptions. The first was the idea that the war takes place within the boundaries of a single political community. In the Roman case, this community was ever-expanding, from the city of Rome itself, to the Italian peninsula, and then outward into the Mediterranean basin as Roman citizenship itself encompassed more and more peoples. The Romans also knew that there should be at least two contending parties in a civil war, one of which could claim legitimate authority over that community. These elements would be transmitted through the multiple narratives of civil war the Roman historians, both in Latin and in Greek, spun to explain and to understand their commonwealth’s serial calamities.<sup>8</sup>

The Romans were the first to try to understand civil war through narrative. They saw the links between occurrences of civil conflict and likened them to natural phenomena such as volcanoes: they could fall dormant after an eruption but that did not mean they would not explode again. Seen in this light, Rome’s history came to appear as nothing less than a history of civil wars and the brief moments of calm between them. This created a narrative—in fact, a set of narratives—of civilization as prone to civil war, even cursed by it, that would last for centuries and inform later understandings of civil war across early modern and modern Europe.

By general agreement, the narrative sequence of Rome’s civil wars began when the consul Lucius Cornelius Sulla marched on the city at the head of an army in 88 BCE and thereby broke the ultimate taboo for any Roman magistrate or military commander, as Julius Caesar would do, yet more famously, when he crossed the river Rubicon forty years

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<sup>6</sup> Cicero, *De imperio Cn. Pompei* (28), in Cicero, *Political Speeches*, trans. D. H. Berry (Oxford, 2006), p. 119.

<sup>7</sup> Appian, *The Civil Wars* (I. 59–60), trans. John Carter (London, 1993), pp. 32–3.

<sup>8</sup> Brian W. Breed, Cynthia Damon and Andreola Rossi, eds., *Citizens of Discord: Rome and Its Civil Wars* (Oxford, 2010).

later in 49 BCE. Civil war erupted repeatedly over more than a century of Roman history from the 80s BCE to the 60s CE and beyond. Sulla's first civil war against Marius in 88–87 BCE led to a second series of contentions between them five years later in 82–81 BCE. Two decades later, impoverished veterans of Sulla's wars supported the senator Catiline's conspiracy to take control of the city in 63 BCE.

Almost twenty years later still, Caesar started a civil war that inaugurated a cycle of intermittent armed violence that engulfed first Rome, then the Italian peninsula, and ultimately much of the Mediterranean world as far as Egypt. In this cycle, the followers and descendants of Caesar and Pompey continued to fight out their differences in a series of wars that culminated with the victory of Octavian over Mark Antony and Cleopatra at the battle of Actium in 31 BCE. With Octavian's elevation to the emperorship as Augustus in 27 BCE, one sequence of civil wars ended but the seeds for another were laid in the dynamics of succession to imperial authority. The fires of civil war stirred back to life in 69 BCE, the "Year of the Four Emperors" (Galba, Otho, Vitellius and Vespasian). As Tacitus put it at the start of his account of these bitter disputes, "The history on which I am entering is full of disasters, terrible with battles, torn by seditions, savage even in peace. Four emperors fell by the sword; there were three civil wars, more foreign wars, and often both at the same time."<sup>9</sup> The wars over the succession to imperial authority would not be the last Roman civil wars—which, by some accounts, lasted into the fourth century CE—but they did bring to a climax the historical narratives of Rome as a commonwealth peculiarly prone to civil war.

Civil war came to define the history of Roman civilization itself, as a curse the commonwealth could not shake off or even as a purgative that cured the republic of its popular ills and allowed the restoration of monarchy. It became as inescapable as it was unspeakable and it seemed Romans could talk of almost nothing else for centuries because civil war would never disappear. "These sufferings await, again to be endured," laments a character in Lucan's anti-epic poem the *Civil War* (60–65 CE): "this will be the sequence /

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<sup>9</sup> Tacitus, *Histories* (I. 2), in Tacitus, *Histories, Books I–III*, trans. Clifford H. Moore (Cambridge, Mass., 1925), p. 5 (translation adapted).

of the warfare, this will be the outcome fixed for civil strife.”<sup>10</sup> Rome’s heirs in the Latin West then perceived their own internal troubles with the help of the repertoire of examples and images drawn from the Roman corpus of writing on civil war.

Three major narratives emerged from that canon. The first was what might be called the republican story, told by Sallust and Tacitus, among others. This narrative was sympathetic to the supposedly selfless civic values of the Roman republic, which portrayed the endlessly repeated civil wars that sprang from the very roots of Rome itself. On this account of Roman history, to be “civilized” at all was to be prone to civil war: to suffer only one civil war seemed impossible, as others would inevitably follow so long as Roman civilization itself lasted. Then there was an imperial narrative which followed much the same trajectory but towards a very different conclusion. Civil war was a persistent disease of the body politic and it had only one cure: the restoration of monarchy or the exaltation of an emperor. This was a story that culminated in the creation of the Roman Empire under Augustus Caesar: “In this way,” wrote the Greek-speaking historian Appian, “the Roman polity survived all kinds of civil disturbances to reach unity and monarchy”; “an evident demonstration,” agreed his late sixteenth-century English translator, “That peoples rule must give place, and Princes power prevayle.”<sup>11</sup>

Finally, there was a Christian narrative in which civil war was the besetting sin of a city or commonwealth dedicated to the things of this world rather than to the glory of God, a narrative that provided the backbone of Augustine’s monumental—and monumentally influential—*City of God*. Augustine’s account of Rome’s pagan history was a catalogue of “those evils which were more infernal because internal,” a series of “civil, or rather uncivilized, discords.” This worldliness was the source of its self-destruction and ensured it could not be an appropriate vehicle for salvation: “How much Roman blood was shed, and how much of Italy was destroyed and devastated,” Augustine lamented, “by the Social War, Servile Wars and Civil Wars!” The first civil wars, of Marius and Sulla, led inexorably to all Rome’s other internal wars until the advent of

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<sup>10</sup> Lucan, *Bellum Civile* (I, 223–4), in Lucan, *Civil War*, trans. Susan H. Braund (Oxford, 1992), p. 27

<sup>11</sup> Appian, *The Civil Wars* (I. 6), trans. Carter, 4; [Appian,] *An Auncient Historie and exquisite Chronicle of the Romane warres, both Civile and Foren* (London, 1578), title-page.

Augustus, the civil warrior (according to Augustine) in whose reign Jesus was born: “But those wars began long before the advent of Christ, and a chain of causes linked one crime to another.”<sup>12</sup>

The Romans and their heirs discovered what contemporary political scientists have more recently rediscovered: that civil wars are much more prone to recur than any others. As the development economist Sir Paul Collier has put it, “the most likely legacy of a civil war is further civil war.”<sup>13</sup> Every civil war in the last decade was the resumption of an earlier conflict. Civil wars are rarely terminated by peace treaties and the emotional and physical wounds they leave heal slowly and can easily be re-opened.<sup>14</sup> The result is that wars within states tend to last longer—some four times longer—than wars between them and that in the second half of the twentieth century they have generally lasted three times longer than they did in the first half.<sup>15</sup> The inescapability and interminability of civil war may seem like contemporary problems. In fact, they form one of the most enduring narratives of civil war, as the narrative of recurrence became a narrative of remembrance and a story of forgetting, even the repression, of civil war.

Second Narrative:  
Remembrance (and Forgetting)

“Forgetting is the best defense against civil war.” So thought the Roman orator and historian Titus Labienus, according to the philosopher Seneca the Elder who preserved his

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<sup>12</sup> Augustine, *The City of God against the Pagans*, ed. R. W. Dyson (Cambridge, 1998), pp. 132 (III. 23), 137 (III. 28), 139 (III. 30).

<sup>13</sup> Paul Collier, *Wars, Guns, and Votes: Democracy in Dangerous Places* (New York, 2009), p. 139.

<sup>14</sup> David Armitage, et al., “AHR Roundtable: Ending Civil Wars,” *American Historical Review* 120 (2015), 1682–1837.

<sup>15</sup> Paul Collier, Anke Hoeffler, and Måns Söderbom, “On the Duration of Civil War,” *Journal of Peace Research* 41 (2004), 253–73; James D. Fearon, “Why Do Some Civil Wars Last So Much Longer Than Others?,” *Journal of Peace Research* 41 (2004), 275–301; Barbara F. Walter, “Does Conflict Beget Conflict? Explaining Recurring Civil War,” *Journal of Peace Research* 41 (2004), 371–88.

words.<sup>16</sup> Yet civil war would not—could not—be forgotten for as long as its writers, from Cicero and Caesar to Lucan and Augustine, continued to be read and imitated. Rome’s orators, poets and historians aided the *remembrance* of civil war, for their own people and for centuries to come. They struggled to make sense of the collapse of the commonwealth, not only by narrating the destructive cascade of events but by trying to account for them. They chewed over the question of blame for the civil wars, because surely they explained something about Rome’s moral health or debility. They were transfixed by the possibility that civil war would repeat itself after periods of apparent calm.

The Romans bequeathed to later readers a vision of history structured around an ethically challenging, appallingly recurrent narrative of civil war as the paradoxical mark of civility, even (to take a much later term for it) of civilization itself. The European inheritors of Rome’s traditions would see their own internal troubles as the culmination, or the repetition, of a narrative cycle that followed the pattern of the Roman civil wars and that played out across Europe since the fall of the Roman Empire. Italy had had its civil wars in the fifteenth century, followed by the French Wars of Religion and the Dutch Revolt against the Spanish Monarchy in the late sixteenth century. England alone had been through the Barons’ Wars of the thirteenth century, the Wars of the Roses in the fifteenth century and then the civil wars of the mid-seventeenth century.<sup>17</sup>

If the Roman writers on civil war had taught anything, it was that the cycles of civil war, once begun, were likely to remain unbroken. “’Tis in vain to seek a Government in all points free from a possibility of Civil Wars, Tumults, and Seditions,” warned the seventeenth-century aristocratic English republican, Algernon Sidney: “that is a Blessing denied to this life, and reserved to compleat the Felicity of the next.” Sidney showed this distinction by a detailed breakdown of all the violent disturbances across history: in Israel under its kings, in the Persian monarchy, in Rome, France and Spain, and concluded with a litany of the civil wars that had ravaged England since the Norman Conquest: “the Miseries of *England* on like occasions,” he wrote, “surpass all.” From the contested

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<sup>16</sup> “Optima civilis belli defensio oblivio est”: Seneca, *Controversiae* (10. 3. 5), quoted in Alain M. Gowing, *Empire and Memory: The Representation of the Roman Republic in Imperial Culture* (Cambridge, 2005), p. 82.

<sup>17</sup> Paul Seaward, “Clarendon, Tacitism, and the Civil Wars of Europe,” *Huntington Library Quarterly* 68 (2005), 298–311.

succession after the death of William the Conqueror to the troubles of the Tudors, English history appeared to have been an almost continuous time of troubles for five centuries.<sup>18</sup>

The most famous version of this narrative appeared in Thomas Paine's *Common Sense* (1776), a pivotal pamphlet in the American Revolution. Paine tried to shake the colonists out of their complacent attachment to the British monarchy by reminding them that it had not brought peace and stability, as its defenders claimed, but only civil wars over the succession to the throne: "Thirty kings and two minors have reigned in that distracted kingdom since the [Norman] conquest, in which time there have been ... no less than eight civil wars and nineteen Rebellions. Wherefore instead of making for peace, it makes against it, and destroys the very foundation it seems to stand on. ... In short, monarchy and succession have laid (not this or that kingdom only) but the world in blood and ashes." Paine used this narrative to argue positively in favour of non-monarchical government, or republicanism in an early version of the democratic peace argument later expressed classically by Immanuel Kant in his "Toward Perpetual Peace."<sup>19</sup>

The Romans and their descendants had joined specific internal struggles into collective narratives that, for the most part, assumed that civil wars would form a destructive sequence of events; only monarchists and writers in favor of empire could put a positive face on that cumulative horror by depicting it as the disease for which autocratic rule would be the cure. Yet the historical story of a series of violent upheavals leading to fundamental changes in authority and sovereignty was never abandoned; it was only transformed. It endured as a history of revolutions stretching across the centuries while leaving behind a past marked by civil wars.

Starting in the late eighteenth century, a new narrative began to emerge, also composed of a succession of political upheavals, also linking past and future, yet now ripe with utopian possibilities. This would be the vision of history in which a sequence of revolutions rather than a series of civil wars formed the central story of modern liberation, starting with the American and French Revolutions and unfolding throughout history. The nascent category of revolution was designed, in part, to suppress previous narratives of

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<sup>18</sup> Algernon Sidney, *Discourses Concerning Government* (London, 1698), pp. 187–9, 193, 196–9.

<sup>19</sup> Thomas Paine, *Common Sense* (1776), in Paine, *Collected Writings*, ed. Eric Foner (New York, 1995), pp. 18–19.

civil war and to replace them with something more positive, more hopeful, and more oriented towards the future.<sup>20</sup>

The accumulating prestige of narratives of revolution helped to suppress, even repress, older narratives of civil war, lending very different evaluations to each. Civil wars have generally been assumed to be sterile, bringing only misery and disaster, while revolutions have often been seen as fertile with innovation and transformative possibilities. Civil wars hearken back to ancient grievances and deep-dyed divisions, while revolutions point the way toward an open and expansive future. Likewise, civil wars are local and time-bound, taking place within particular, usually, national communities. By contrast, revolutions occurred across the world—at least, across the modern world, defined as “modern” along the very timeline of revolutions—in an unfolding sequence of human liberation. Civil wars, the conventional understanding might imply, reveal the blighting and collapse of the human spirit, while revolutions display its revelation and self-realization. Revolutions were definitively modern, novel, and forward-looking; civil wars were archaic, traditional and backward-facing, as Arendt and others would argue.<sup>21</sup>

These preconceptions, prejudices even, about civil war would render it abnormal, even an abuse of the noble name of war itself. In this regard, it is notable that Clausewitz, like every other major modern theorist of war, hardly mentions civil war, even in his writings on “small war” (*kleiner Krieg*).<sup>22</sup> His contemporary and rival, the Belgian baron Antoine Henri Jomini, wrote of civil wars, that “[t]o want to give maxims for these sorts of war would be absurd.”<sup>23</sup> Such attitudes prevented the extension of the original Geneva Convention (1864) to civil wars: “international laws are not applicable to them,” asserted

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<sup>20</sup> David Armitage, “Every Great Revolution Is a Civil War,” in Keith Michael Baker and Dan Edelstein, eds., *Scripting Revolution: A Historical Approach to the Comparative Study of Revolutions* (Stanford, 2015), pp. 57–68.

<sup>21</sup> Reinhart Koselleck, “Historical Criteria of the Modern Concept of Revolution,” in Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (New York, 2004), pp. 47, 49.

<sup>22</sup> Carl von Clausewitz, *On War* (1832), ed. and trans. Michael Howard and Peter Paret (Princeton, N.J., 1984); Clausewitz, *Clausewitz on Small War*, trans. Christopher Dawse and James W. Davis (Oxford, 2015), pp. 121, 131, 163

<sup>23</sup> Antoine Henri Jomini, *Précis de l’art de la guerre, ou Nouveau tableau analytique des principales combinaisons de la stratégie, de la grande tactique et de la politique militaire*, 2 vols. (Paris, 1838), I, p. 85.

one of the Convention's original drafters, Gustave Moynier in 1870.<sup>24</sup> And yet, as the narrative in which revolution replaced civil war among humanity's serial political transformation gradually unfolded, another started to emerge. This was a progressive narrative in which civil war could be gradually ameliorated by the restraining force of law.

### Third Narrative:

#### Reform

Narratives of recurrence and remembrance had brought with them the apprehension that it was impossible ever to escape civil war and that its horrors would always be unlimited. For example, in his "Perpetual Peace," Kant wryly observed that a Dutch innkeeper had painted just those words on his tavern-sign alongside a picture of a graveyard: this implied that the only truly lasting peace would be the eternal sleep of death. Yet Kant was more optimistic that peace among states was not "just an empty idea" but "a task that, gradually solved, comes steadily closer to its goal." Cosmopolitan law (the *ius cosmopolitanum*) would be one means Kant recommended for taming war, and the dream of using law to *reform* civil war has endured in the history of the laws of war and international humanitarian law.<sup>25</sup>

The reform narrative of civil war has its roots in the mid-eighteenth century but flourished a century later, during the U.S. Civil War. The modern tradition of natural law, beginning with the writings of Hugo Grotius in the early seventeenth century, paid only intermittent attention to civil war as an object of legal definition and regulation rather than as a specifically *political* problem to be overcome or diminished. It was only in the work of the Swiss jurist Emer de Vattel, writing in the 1750s, that civil war became the subject of specifically legal attention. Vattel wrote of the state as splitting into two distinct bodies, each with a claim to autonomy and sovereignty, even if they occupied or claimed the same territorial space. The distinguishing feature of this conception of civil war was the elevated status of both sides in a civil war—the former sovereign, whether a monarch or a

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<sup>24</sup> Gustave Moynier, *Étude sur la Convention de Genève pour l'amélioration du sort des militaires blessés dans les armées en campagne (1864 et 1868)* (Paris, 1870), p. 304.

<sup>25</sup> Immanuel Kant, "Toward Perpetual Peace" (1795), in Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor (Cambridge, 1996), pp. 317, 351.

republican assembly, for instance, and the former rebels—“constitut[ed], at least for a time, two separate bodies, two distinct societies”—or, as Vattel put it, two distinct “nations.”<sup>26</sup> This conception was a matter of law, not fact.

Vattel’s construction of civil war in this fashion was original and would shape arguments about civil war in the context of international law well into the nineteenth century. His great breakthrough in the juridification of civil war was his argument that it fell under the law of nations rather than domestic law, and that its prosecution could be regulated by international law rather than simply suppressed by internal police action. The applicable rules were those of the law of nations, including the laws of war. This raised the possibility of civilizing civil war by treating both parties as equally possessing belligerent rights and each equally entitled to legal protections as well as liable for infractions of the laws of war.

Even a century after Vattel broke new ground in this way, his account of civil war as the functional equivalent to interstate conflict met with resistance. For example, Henry Wager Halleck, an American international lawyer and general in the Union Army, agreed that both parties in a civil war should be subject to the laws of war but not that this fact allowed external powers to recognise or aid both parties as if they were independent states. Halleck also sought to distinguish mere “rebellions” from civil wars, in order that they would be subject to municipal rather than international law. To accord every rebel group the full panoply of protections guaranteed by international law to legitimate sovereigns “would be both unjust and insulting to the government of the state against which the rebellion or revolution is attempted.” Writing in 1861, the belligerent status of the secessionist states of the Confederacy was clearly very much on his mind as he refuted Vattel in the context of what Abraham Lincoln would later call “a great civil war.”<sup>27</sup>

That conflict—the U.S. Civil War—would be a forcing-house of innovation in the laws of war and Halleck would be the agent of the reformist impulse to bring the conduct

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<sup>26</sup> Emer de Vattel, *The Law of Nations* (1758), ed. Béla Kapossy and Richard Whatmore (Indianapolis, 2008), p. 645 (III. 18. 293).

<sup>27</sup> H. W. Halleck, *International Law; or, Rules Regulating the Intercourse of States in Peace and War* (San Francisco, 1861), pp. 73–5; Abraham Lincoln, “Address Delivered at the Dedication of the Cemetery at Gettysburg” (19 November 1863), in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 11 vols. (New Brunswick, NJ, 1953–5), VII, p. 23.

of the conflict firmly under the laws of war. It was Halleck who formally commissioned the Prussian-born lawyer and American political science professor Francis Lieber to produce the first code of the laws of war in 1863 for the Union Army. *General Orders no. 100*, better known as the Lieber Code, which became the lineal ancestor of the Hague and Geneva Conventions and therefore the foundation of the modern laws of war. The Code systematically specified for the first time such matters as the treatment of prisoners and the measures that could be used against guerrilla warfare. That it did so in the context of a civil war that was also a rebellion helped to mainstream civil war as war while also sharpening a line between the two kinds of warfare that would become brighter across the course of the nineteenth and twentieth centuries.

Lieber attempted to define civil war at the very end of his Code and came up with a definition that was at once traditional and novel.

Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government.<sup>28</sup>

The first—“war between two or more portions of a country or state, each contending for mastery of the whole”—could be traced back to the Roman tradition. The second conception—“sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government”—was unprecedented, both legally or historically. Lieber had made it up out of whole cloth tailored to the circumstances of the North American conflict, in which the “rebellious provinces” were indeed contiguous with the seat of sovereignty. In fact, by Lieber’s own reckoning, the Civil War was not a civil war at all: it was in fact a rebellion. This accorded with the wording of the U.S. Constitution, which provided for the means to “suppress Insurrections” and permitted the suspension of habeas corpus “in Cases of Rebellion,” as

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<sup>28</sup> [Francis Lieber,] *Instructions for the Government of Armies of the United States in the Field* (New York, 1863), p. 34.

Lincoln had done in 1861.<sup>29</sup> Lieber’s conception of civil war nonetheless had an afterlife. Later U. S. Army field manuals made no attempt to replace Lieber’s definition of civil war and only updated their approach after the Geneva Conventions of 1949 to cover “armed conflicts not of an international character.”<sup>30</sup>

The 1949 discussions leading to Common Article 3 built on proposals set forth by the International Committee of the Red Cross in 1948 in Stockholm to make application of the existing Geneva Conventions “obligatory on each of the adversaries” in “cases of an armed conflict which are not of an international character, especially cases of civil war, colonial conflicts, or wars of religion.” After much discussion, the revised draft presented in Geneva in 1949 omitted the last qualifying clause, and specified only “armed conflict not of an international character.” That became the preferred form of words thereafter among international lawyers and international organizations, despite early objections that it could cover too wide a range of violent acts within the frontiers of a single state: not just “civil” wars, but the deeds of any enemies of the state, whether legitimate freedom fighters, brigands, or even common criminals—in fact anyone engaged in riots or coups d’état rather than actions recognizable as “wars.” Did they all deserve the protection of the Geneva Conventions, even if their actions were illegal according to domestic law? All civil wars were wars “not of an international character” but only some wars “not of an international character” were civil wars.<sup>31</sup>

When Common Article 3 was drafted and approved in 1949, much of its work was retrospective, responding to concerns raised by the inadequacy of the existing Geneva Conventions to conflicts such as the Spanish Civil War (1936–39). In the decades after World War Two, the proliferation of “non-international” conflicts demanded greater

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<sup>29</sup> U. S. Constitution, article I, secs. 8–9; Fourteenth Amendment (1866), sec. 3.

<sup>30</sup> See, for example, George B. Davis, ed., *The Military Laws of the United States* (Washington, D.C., 1897), p. 798; United States. War Department. General Staff, *Rules of Land Warfare* (Washington, D.C., 1914); United States. War Department, *Basic Field Manual: Rules of Land Warfare* (Washington, D.C., 1940); United States. Department of the Army, *The Law of Land Warfare/Department of the Army, July 1956* (Washington, D.C., 1976), p. 9.

<sup>31</sup> International Committee of the Red Cross, *Seventeenth International Red Cross Conference, Stockholm August 1948: Report* (Stockholm, 1948), p. 71; Jean S. Pictet, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: Commentary* (Geneva, 1952), pp. 39–48.

precision in the application of the Conventions. Amid the proxy wars of the Cold War, and the wreckage of dissolving empires around the globe, intervention into internal conflicts became more common and tarnished the luster of the Long Peace then emerging in Europe. Between 1974 and 1977, the Geneva Conventions were further updated. The outcome was a set of additional protocols, of which the second—Additional Protocol II (1977)—applied to conflicts of a non-international character. Additional Protocol II excluded riots and also wars of decolonization, which were covered instead by Additional Protocol I, which brought international humanitarian law to bear directly on anti-imperial struggles for the first time. This second Additional Protocol expanded the range of protections and prohibitions relevant to civil wars and remains in force today as the major component of humanitarian law relevant to such struggles.<sup>32</sup>

The application of those protections depends on the judgment that a conflict “not of an international character” is in progress. If the conflict is held to be “international”—that is, between two independent sovereign communities—then the full force of the Geneva Conventions applies. If it is “non-international” then it will be covered by Common Article 3 and Additional Protocol II. But if the violence has not been deemed a conflict of either kind—perhaps because it is a riot or an insurgency—it remains within the scope of the domestic jurisdiction of the state concerned. In these cases, a great deal hangs on the determination of whether or not a conflict is “not of an international character”: or, in general speech, whether it is a civil war or not.

Take the recent case of the Syrian civil war. Ordinary Syrians knew very well throughout 2011 and the first half of 2012 that what they were experiencing amid contention with the regime of Bashar al-Assad was civil war. Outside Syria, interested parties across the globe debating whether or not Syria has descended into civil war. In December 2011, U.S. White House deputy spokesperson Mark Toner demurred when asked if he agreed with a U.N. official that Syria was experiencing civil war: “We think violence needs to end in Syria. And that includes among the opposition elements,” he said. “But there’s no way to equate the two, which, in my view, is implied in using the term

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<sup>32</sup> Lindsay Moir, *The Law of Internal Armed Conflict* (Cambridge, 2002), pp. 89–132; Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford, 2012), pp. 49–92, 182–92.

‘civil war.’”<sup>33</sup> The Syrian regime saw only rebellion. The opposition said they were engaged in resistance. And powers like Russia and the United States held the threat of civil war over each other’s head as they jostled over intervention and non-intervention.<sup>34</sup>

It took the International Committee of the Red Cross until July 2012—more than a year into the conflict, and after as many as 17,000 people may have already perished—to confirm that what was taking place in Syria was, in fact, an “armed conflict not of an international character.”<sup>35</sup> Only when it had made that determination would it be possible for the relevant parties to be covered by the relevant provisions of the Geneva Conventions.<sup>36</sup> The reluctance to call the conflict a civil war has become typical of international organizations in the twenty-first century because so much—politically, militarily, legally, and ethically—now hangs on the use or withholding of the term. A set of legal protocols designed to humanize the conduct of civil war—to bring to bear humanitarian constraints on its practice, and to minimize some of the terrible human cost of civil conflict—served only to constrain international actors in their attitudes towards the conflict in Syria.

Controversy over the meaning of civil war could be illustrated from other recent conflicts, most notably the Second Gulf War and its aftermath in Iraq.<sup>37</sup> Our present

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<sup>33</sup> U. S. Department Of State, The Office of Electronic Information, Bureau of Public Affairs, “Daily Press Briefing—December 2, 2011”:

<http://www.state.gov/r/pa/prs/dpb/2011/12/178090.htm>; Jeremy Pressman, “Why Deny Syria Is in a Civil War?,” *Mideast Matrix* (16 January 2012): <http://mideastmatrix.wordpress.com/2012/01/16/syria-civil-war>.

<sup>34</sup> Erica Chenoweth, “The Syrian Conflict Is Already a Civil War,” *The American Prospect* (15 January 2012): <http://prospect.org/article/syrian-conflict-already-civil-war>; Dan Murphy, “Why It’s Time to Call Syria a Civil War,” *The Christian Science Monitor* (5 June 2012): <http://www.csmonitor.com/World/Backchannels/2012/0605/Why-it-s-time-to-call-Syria-a-civil-war>.

<sup>35</sup> “Syria Crisis: Death Toll Tops 17,000, Says Opposition Group,” *The Huffington Post* (9 July 2012): [http://www.huffingtonpost.com/2012/07/09/syria-crisis-death-toll-17000\\_n\\_1658708.html](http://www.huffingtonpost.com/2012/07/09/syria-crisis-death-toll-17000_n_1658708.html); “Syria in Civil War, Red Cross Says,” *BBC News, Middle East*, (15 July 2012): <http://www.bbc.com/news/world-middle-east-18849362>.

<sup>36</sup> “Internal Conflicts or Other Situations of Violence—What is the Difference for Victims?,” International Committee of the Red Cross, Resource Centre (12 December 2012): <http://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>.

<sup>37</sup> Armitage, *Civil Wars*, pp. 219–26.

discontents are, as always, the produce of many contested histories. Layered into contemporary conceptions of civil war are narratives from the past as well as the surrounding discourses—of history and politics, law and literature, for example—that laid down its various strata of significance. From history and from literature, especially from the Roman canon, came a narrative of civil war as recurrent and sequential. From history politics, sprang narratives of civil war's links with civilization and sovereignty, rebellion and revolution. From law arose a new reformist narrative designed to overcome the effects of the first two through the effort to regulate civil war according to legal protocols. Narrative gave shape to each of these understandings and carried them forward into the present. Accounts based on recurrence, remembrance and reform continue to shape contemporary conceptions of civil war as enduring evidence of its arduously accumulated and ultimately competing narratives.

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