

# **Violence of War, Ontology, and the Instrumental and Performative Constitution of the Political Community**

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## **Abstract**

This paper considers a neglected question in International Relations, namely how violence of war contributes to the constitution of the political community at the intersection between war and peace. It exposes limitations of means-ends, instrumental understanding of war violence due to the overlooking of violence's performative attributes stemming from the centrality of bodily injuries in war. The instrumental violence on which the constitution of the political community is grounded finds expression in an order of representation that can be termed ontology, and a pervasive—circular—relationship between ontology and violence insofar as ontology has inspired extreme forms of human behaviour and also been used to justify violence as a means to enact an ontological goal. Yet, recognising the role of bodily injuries in the course of fighting allows for a more complete understanding of war. Crucially it enables an interpretation of the structure of war as a relation between war's interior content—casualties in war—and the exterior, verbal issues standing outside it (pertaining to security, identity, sovereignty, authority, ideology), that lead to a surrogate contest of re-imagining political community in the process of which performative power of violence contributes directly to the emerging post-war peace and laws that justify it.

## **Keywords**

Violence of War; Ontology; *Coup de force*; Political Community

## **Introduction**

Anyone engaged in thought about political affairs cannot escape the enormous impact violence of war has exerted in political life throughout history. Violence is an eternal feature of the human condition although generational expressions of violence and war have varied in intensity and form. The pervasive penetration of war in human affairs raises a critical question

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as to how war may manifest itself in peace.<sup>1</sup> How might war ‘constitute the “I”, the “We”, and the “Other” that provide our everyday sociality?’<sup>2</sup> This everyday sociality finds expression in our community, which is distinctively a political community. Although the discipline of International Relations (IR) is concerned with the understanding of war and conflict in general, there is a habitual neglect of direct considerations of correlations between war and the political community, particularly the production of the latter at the intersection between war and peace. This contribution aims to fill that gap by engaging directly with the question: *How does violence of war contribute to the constitution of the political community?* This is a question that contains within itself a set of significant—yet overlooked—subsidiary questions, namely: (1) how does the understanding of ‘violence of war’ conditions the meaning of war and its structure; (2) what counts for the pervasive instrumental interpretations of conflict analyses and responses pertaining to (re)formation of political communities; and (3) how performative action of violence remains active in the constitution, justification, and contestation of polities after the fact, post-conflict—directly impacting the peace, law, and justice in the aftermath of war. By addressing these questions this paper seeks to contribute above and beyond the existing literature and to open up agendas for future research.

The word ‘community’ conjures an image of people in their everyday lives, but in political theory the concept of political community has been conceived as an enclosure, be it in the form

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<sup>1</sup> Peace is not only difficult to achieve, it is also a complex term that defies an all-encompassing, definition. At a basic level, peace tends to be understood as absence of war or physical violence, a notion which Johan Galtung termed ‘negative peace’ as opposed to ‘positive peace’ which denotes structural conditions conducive to political equality and social and economic justice. Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilisation* (Oslo: PRIO, 1996). However, in analytical terms it is not very helpful to define peace and war as opposites because peace and war carry the seeds of each other. ‘There are pieces of war in peacetime and pieces of peace in war’. Christine Sylvester, ‘Experiencing War: An Introduction’, in Christine Sylvester (ed), *Experiencing War* (London: Routledge, 2011), p. 1. Violence can be present both in peace and war—as will be shown below.

<sup>2</sup> Shane Brighton, ‘Three Propositions on the Phenomenology of War’, *International Political Sociology*, 5:1 (2011), p. 101.

of polis or empire. In Western political philosophy the polis is presented as the enclosure that makes politics possible.<sup>3</sup> For Robert Nisbet the political community is an idea system that emerged forcefully in the nineteenth century, and was realised fully in the twentieth century. For him, political community is a kind of brooding omnipresence that touches the foundation of modern popular democracy and gives substance and appeal to nationalism.<sup>4</sup> People need the state for protection and security, because man is a timid, insecure being apart from his membership in the state. ‘Power is ... brotherhood. It is community’.<sup>5</sup>

The survival of political community owes much to the fact that the social bond between citizen and the state does not extend to aliens. In other words, political communities ‘endure because they are exclusive, and most establish their identities by accentuating the differences between insiders and aliens’.<sup>6</sup> Although state formation processes have traditionally followed exclusionary patterns, the hardening of national boundaries that separate insiders from outsiders is a characteristic of the nineteenth and twentieth century associated with conscious efforts to create political enclosure by means of nationalisation of the political community. The nationalist ideology prescribes that the state is the political embodiment of the nation. However, the modern state is not the offspring of the nation. Rather, it is the state that by conscious efforts creates the nation, the political community that legitimates the state.

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<sup>3</sup> Warren Magnusson, ‘The Reification of Political Community’, in R. B. J. Walker and Saul H. Mendlovitz (eds), *Contending Sovereignties: Redefining Political Community* (Boulder: Lynne Rienner, 1990), pp. 45, 54.

<sup>4</sup> Robert A. Nisbet, *The Quest for Community: A Study in the Ethics of Order and Freedom* (New York: Oxford University Press, 1953), p. 155.

<sup>5</sup> *Ibid.*, pp. 156-7. Nisbet insisted that the state must not be regarded as a repressive force. The benign state that he advocated does not represent all states however, even in the context of states’ interest and duty to protect their respective political community.

<sup>6</sup> Andrew Linklater, *The Transformation of Political Community* (Columbia: University of South Carolina Press, 1998), p. 1.

The exclusive, enclosed, political community—the nation—that justifies the state and makes politics possible, has frequently been forged in war. War has been central to the rise of modern states and to shaping a sense of community.<sup>7</sup> Indeed, the materialisation of the political community is grounded, almost always, on violence. This violence has involved, as Jacques Derrida suggests, an interpretative and performative force, a *coup de force*, in the sense that the founding of the community—‘a nation, state, or nation-state’—consists in a simulacrum ‘that brings to daylight ... that which one claims to reflect ... the unity of a nation, the founding of a state, while one is in the act of producing that event’.<sup>8</sup> According to Derrida, ‘the foundation of all states occurs in a situation that [can be called] revolutionary’:

It inaugurates a new law, it always does so in violence. Always, which is to say even when there haven’t been those spectacular genocides, expulsions or deportations that so often accompany the foundation of states, great or small, old or new, right near us or far away. ... These moments, supposing we can isolate them, are terrifying moments. Because of the sufferings, the crimes, the tortures that rarely fail to accompany them, no doubt, but just as much because they are in themselves, and in their violence, ... indecipherable.<sup>9</sup>

Having stressed the relationship between war and the political community in the context of the state, the question how violence of war contributes to the constitution of that community can now be addressed. This question requires a systematic rethinking of what violence of war means. This task is considered in the following section, which explores the dominant,

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<sup>7</sup> Charles Tilly (ed), *The Formation of National States in Western Europe* (Princeton N.J.: Princeton University Press, 1975). Klejda Mulaj, ‘War and State-Making at the End of Empire: Ottoman Collapse and the Formation of the Balkan States’, *Peace & Change: A Journal of Peace Research*, 41:4 (2016).

<sup>8</sup> Jacques Derrida, ‘The Laws of Reflection: Nelson Mandela, in Admiration’, in Jacques Derrida and Mustapha Tlili (eds), *For Nelson Mandela* (New York: Seaver Books, 1987), p. 18.

<sup>9</sup> Jacques Derrida, ‘Force of Law: The “Mystical Foundation of Authority”’, in Drucilla Cornell, Michel Resenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp. 3-67, at p. 35.

instrumental understanding of war violence and reveals the omission in the existing literature of the performative power of violence of war not least because of the overlooking of the human body as a physical, biopolitical fact of war, the ultimate performative arena in war. Consequently, the study of war has been rendered into a predominantly strategic science that emphasises statist and structural factors to the detriment of considerations of war's interior content and the lived experience. Then, the next section accounts for the pervasive instrumental understanding and interpretation of war violence and its grounding on the concept of ontopology. It shows that ontopology has a circular relationship with instrumental violence in the sense that ontopology has inspired extreme, exclusivist forms of human behaviour related to the constitution of the political community and, also, justified use of violence to enact an ontopological goal. In considering the neglected theme of the production of the political community at the intersection between war and peace, the last part of the paper appeals for an understanding of the structure of war as a relation between the interior content of war (injuries of human bodies, casualties that occur within war) and the exterior, verbal issues (pertaining to security, sovereignty, authority, identity, ideology) that stand outside war, verbal issues that in the post-war setting lead to a surrogate contest of re-imagining, re-understanding, re-experiencing political community in the course of which performative power of violence contributes directly to the constitution of that community, of the post-war peace and the law that justifies it.

### **Violence of War**

Arguably, there is no other attribute of human interaction that has had a greater impact upon politics and societies than violence of war. Despite preoccupying many great minds from Heraclitus to Machiavelli, from Clausewitz to Hegel and Arendt, to whose works present writers make continuous reference, when it comes to understanding the phenomenon of war,

or drawing lessons from a war, or contemplating consequences or alternatives therein, the preliminary questions: ‘what is violence?’; ‘what is war?’ remain challenging to address. It is therefore necessary to back up one step and engage meaningfully with the interpretation of key terms, namely, violence and war. At an elementary level, violence may be understood as ‘an *intentional* act designed to cause harm [to an individual or a group] which is direct and physical or psychological’.<sup>10</sup> It bears emphasising that violence comes with intent, the wilful decision to harm another. If someone is hurt in an accident, that accident is not described as violence. Hence, ‘it is the intent ... that defines violence and its relationship to political will’.<sup>11</sup>

War itself is a form of violence in the sense that war belongs to a category of human experience, more specifically human contests, whose activity is intense, reciprocal injuring with the goal of out-injuring the opponent.<sup>12</sup> War is a contest that entails ‘reciprocal activity for nonreciprocal outcomes, with the weight of intention and motive located in the final facts, the nonreciprocal outcome, the unique form of “ending” that, more than any other part of war, makes it what it is and compels people to seek it as a form of arbitration when all else has failed’.<sup>13</sup> As Christine Sylvester argues, ‘war is a politics of injury; everything about war aims to injure people and/or their social surroundings as a way of resolving disagreement or, in some cases, encouraging disagreement if it is profitable to do so’.<sup>14</sup> Like Scarry, Sylvester understands injury to be the content of war, not a regrettable consequence of the ‘normal’

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<sup>10</sup> Clare Thomas, ‘Why don’t we talk about ‘violence’ in International Relations’, *Review of International Studies*, 37:4 (2011), p. 1834. Emphasis added.

<sup>11</sup> Carolyn Nordstrom, *Shadows of War: Violence, Power, and International Profiteering in the Twenty-First Century* (Berkeley: University of California Press, 2004), pp. 60-61.

<sup>12</sup> Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), p. 63. The fact of injuring—injury as a central objective of war and its technologies—is largely absent from strategic and IR descriptions of war. Refer to Sylvester, *Experiencing War*; and Christine Sylvester, *War as Experience: Contributions from International Relations and Feminist Analysis* (London: Routledge, 2013).

<sup>13</sup> Scarry, *The Body in Pain*, p. 85.

<sup>14</sup> Sylvester, *War as Experience*, pp. 3-4.

violence of war.<sup>15</sup> Injury is war's product and its cost, it is what every exhausting piece of strategy and every single weapon is designed to bring into being; it is the relentless object and outcome of all military activity, of all violence of war.<sup>16</sup> 'Violence of war' in the context of this contribution is a broad term that includes collective and individual violence in the course of war, intense and reciprocal fighting in war, asymmetrical violence against civilians—such as genocide, ethnic cleansing, rape and other dehumanising acts of war, and their ensuing effects. It is intentionally a broad term that captures a wide range of violent acts that are constitutive of war.

Forty-eight years ago, Hannah Arendt lamented 'a certain deafness to linguistic meanings' pertaining to the interchangeable use of key terms such as 'power', 'force', and 'violence' which she thought results 'in a kind of blindness to the realities they correspond to'.<sup>17</sup> Although realising that force, power and violence are 'the means by which man rules over man'<sup>18</sup> she was adamant to differentiate amongst these terms. Force, for instance, she suggested, should be reserved for the 'forces of nature', or the 'force of circumstances'<sup>19</sup>—a suggestion which has not been embraced by students of violence and/or war as they indeed continue to use interchangeably 'violence' and 'force'.<sup>20</sup> Arendt insisted—too—on a strict demarcation of 'violence' and 'power'. Unlike C. Wright Mills who, echoing Max Weber, viewed violence as the most flagrant manifestation of power, the ultimate kind of power,<sup>21</sup> Arendt suggested that violence and power are opposites, 'where the one rules absolutely, the other is absent'.<sup>22</sup>

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<sup>15</sup> Ibid., p. 4.

<sup>16</sup> Refer to Scarry, *The Body in Pain*, pp. 73, 80-81.

<sup>17</sup> Hannah Arendt, *On Violence* (London: Allen Lane, 1970), p. 43.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., p. 45.

<sup>20</sup> See, for instance, R. Art and K. Waltz (eds), *The Use of Force: International Politics and Foreign Policy*, 2<sup>nd</sup> edition (London: University Press of America, 1983); Beatrice Hanssen, *Critique of Violence* (London: Routledge, 2014), especially p. 158.

<sup>21</sup> C. Wright Mills, *The Power Elite* (New York: Oxford University Press, 1956/2000), p. 171.

<sup>22</sup> Arendt, *On Violence*, p. 56.

Contrary to Hegel and Marx, who endorsed the dialectical power of negation according to which opposites do not destroy each other but smoothly develop into each other, Arendt stressed that violence cannot be derived from its opposite, which is power. ‘Violence can destroy power’, she wrote, ‘it is utterly incapable of creating it’.<sup>23</sup> Clearly for Arendt boundaries of violence and power are not permeable, a claim that will be questioned in this paper. Power, for Arendt, is like peace—an absolute, an end in itself. But, unlike power and peace, violence ‘always stands in need of guidance and justification through the end it pursues’.<sup>24</sup> The most obvious distinction between power and violence is that ‘power always stands in need of numbers, whereas violence up to a point can manage without them because it [violence] relies on implements’,<sup>25</sup> which ‘like all other tools, increase and multiply human strength’.<sup>26</sup>

In Arendt’s understanding the very substance of violent action is ruled by the means-end category, whose main characteristic is taken to be that the end is in danger of being overwhelmed by means which it justifies. Violence is by nature instrumental.<sup>27</sup> This emphasis on the instrumental aspect of violence is the most illuminating observation Arendt made on how violence may be understood. By viewing violence as instrumental, she shared a common ground with Carl von Clausewitz, who nearly a century and a half before her, came to the

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid., p. 51. There is not enough space here to discuss this point in more detail, but suffice to note that Arendt’s claim that power is an absolute, in the sense that it does not need justification / legitimation is not appealing to everyone. Indeed, the urge for legitimacy is a constant of virtually every aspect of political life. As Inis Claude has pointed out, ‘politics is not merely a struggle for power but also a contest over legitimacy, a competition in which the conferment or denial, the confirmation or revocation, of legitimacy is an important stake’. Therefore, legitimacy is central to power and power relations in so far as it justifies and renders them acceptable. Inis Claude, ‘Collective Legitimation as a Political Function,’ *International Organization*, 20:2 (1966), p. 368.

<sup>25</sup> Arendt, *On Violence*, pp. 41-2.

<sup>26</sup> Ibid., p. 53.

<sup>27</sup> Ibid., pp. 4, 51.

conclusion that the essence of war is fighting.<sup>28</sup> Indeed, fighting is central to the ontology of war. Fighting and violence of war is that which thematically unifies war in general and in particular—‘war’ with ‘wars’.<sup>29</sup> Violence of war cannot be understood outside its instrumentality.

Even the legislation of a substantial body of international law such as the Hague Conventions on the Laws of War and the Genocide Convention—that aim to prescribe and guide conduct of armed forces in war, how they could treat each-other as well as populations in occupied, enemy territories—has not managed to wrest the centrality of the instrumentality of violence from the common understanding of fighting/war.<sup>30</sup> A snapshot of the literature on war makes clear that instrumentality of violence is the single most pervasive theme in considerations of any war, be it in the form of concerns for security, military necessity, or bureaucratisation of violence. Indeed, violence of war is constantly justified and interpreted through the prism of instrumentality.

It is not unreasonable to suggest that the primacy granted to instrumentality of fighting has led to an understanding of fighting and violence of war as ‘kinetic exchange’, as the test of arms, and at the same time it has rendered the study of war—as a discipline—into a strategic, instrumental, rather than political and social, science preoccupied with how to prevail in war,

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<sup>28</sup> Carl von Clausewitz, *On War*, Edited and Translated by Michael Howard and Peter Paret (Princeton: Princeton University Press), 1976.

<sup>29</sup> Tarak Barkawi and Shane Brighton, ‘Powers of War: Fighting, Knowledge and Critique’, *International Political Sociology*, 5:2 (2011), p. 126.

<sup>30</sup> Concerns with the codification of the laws of war seem to have to do less with challenging violence of war or minimising it than with protection of warring armies from unlawful combatants. Refer, for instance, to Geoffrey Best, *Humanity in Warfare* (New York: Columbia University Press, 1980), pp. 157-215; and Karma Nabulsi, *Traditions of War: Occupation, Resistance, and the Law* (Oxford: Oxford University Press, 1999), especially pp. 80, 175-176.

and how to use implements of violence to attain interests and ends sought.<sup>31</sup> For Hannah Arendt—too—violence is a marginal phenomenon in the political realm, because violence is incapable of speech. What makes a human a political being is the power of speech, and it is due to violence’s speechlessness that, she thinks, political theory has little to say about violence. Because Arendt conceives violence as constituting the limit of silence and spelling the end of power, she opines that violence should be situated outside the arena of political thought.<sup>32</sup>

The interpretation of violence as speechless is however curious. It may even be considered as ‘inexcusable, for it is as if professional political theory is incapable of learning to think in pain or even that it has forgotten the experience of pain...’.<sup>33</sup> Violence of war may produce an immediate, yet temporarily, silencing effect amongst those subjected to its cruelty. But survivors do seek a way of resistance. Speech and writing was forbidden in the concentration camps, ‘yet also withheld, preserved, protected against all ... violent abuse that might have exposed it to the suspicion of playing along with boundless violence...’.<sup>34</sup> Never is physical visibility of violence silent. Violence, always, has signalling effects; it communicates messages. Violent acts carry symbolic and performative effects, which those subjected to violence—unlike some (unaffected) observers—usually do not miss out. So, to the question: what does instrumentality of violence occlude? an immediate answer is: the performative effects of that very violence. Instrumentality overlooks the capacity of violence to transmit messages, to signal effects, to act as a communication tool.

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<sup>31</sup> Barkawi and Brighton, ‘Powers of War’, especially pp. 129, 135. Colin S. Gray, *Modern Strategy* (Oxford: Oxford University Press, 1999).

<sup>32</sup> Hanssen, *Critique of Violence*, p. 163.

<sup>33</sup> John Keane, *Reflections on Violence* (London: Verso, 1996), pp. 6-7.

<sup>34</sup> Sarah Kofman, *Smothered Words* (Northwestern University Press, 1998), p. 41.

There is a continuum of surfaces and spaces through which messages of violence are communicated: from the violence of speech to the bodies of individuals, to territory, to the bodies of (inactive) international organisations that form part of the international community. Ann Norton likens acts of violence to acts of speech and writing in the sense that acts of violence invest the material with meaning. ‘In its inscription of will on the world, violence is a significant act, giving expression and authority to identity and will’.<sup>35</sup> A few examples suffice to contextualise this point. When advancing armies burn houses, kill and rape a group of civilians in a captured village, the message to the survivors is: Leave! Rape is not only intended to assault the body; it also conveys an emotional trauma, ‘an attack against family, dignity, self-worth’.<sup>36</sup> Defrocking of a priest and burning of liturgical books upset a system of symbols that peasants use as a bridge between spirituality and everyday existence.<sup>37</sup> Violent targeting of a church, a mosque, or a synagogue in a multi-ethnic community undermines communal coexistence and politicises inter-ethnic differences. Dehumanisation of the victim/s can be a path to mass killing, legitimisation of violence, or control of a population and territory.

The human body—which is itself a repository of meaning—provides a medium for transmitting a message of hegemony, territorial or otherwise, by acts that offend human dignity, infliction of pain and humiliation, or by draining life out of it sometimes on public display for terror effect. Violence is inscribed in the body. Indeed, the human body fulfils an array of functions. It can be a locus for violence and domination through stigmatisation and/or penetration, a site for the expression of suffering through identification, or a vehicle for the manifestation of the

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<sup>35</sup> Ann Norton, *Reflections on Political Identity* (Baltimore: John Hopkins University Press, 1988), p. 145.

<sup>36</sup> Nordstrom, *Shadows of War*, p. 63.

<sup>37</sup> İpek Yosmaoğlu, *Blood Ties: Religion, Violence, and the Politics of Nationhood in Ottoman Macedonia, 1878-1908* (Ithaca and London: Cornell University Press, 2014), p. 172.

effects of domination.<sup>38</sup> Christine Sylvester has compellingly argued that the human body is a biopolitical and physical fact of war, ‘a performative arena, an imagined presence in war, and a key target and site of collective violence’.<sup>39</sup> War is experienced through the body, ‘a unit that has agency to target and injure others in war and is also a target of war’s capabilities’.<sup>40</sup>

The purpose of violence of war, injuring of human bodies and minds, past its instrumentality to include performative, symbolic and/or communicative effects. The idea of performativity draws attention to the fact that reiterative practices of violence—physical and discursive—contribute to producing the effects that such practices name or vest with higher value, be it: breaking and recasting of existing social/communal relations, acquiring new forms of control over a territory and population, creation of a new nation, or extermination of a dehumanised group. As Emmanuel Levinas opined, violence of war consists in injuring and annihilating persons and also in interrupting their continuity, making them play roles in which they no longer recognise themselves ... [in an] order from which no one can keep his distance’.<sup>41</sup> This is because violence of war makes difficult for one to remain a bystander or avoid taking sides; at the same time it makes one more aware of one’s ties with a larger community outside one’s immediate vicinity. Violence can be viewed as a boundary-creation mechanism; it unmakes an old order to remake a new one. Hence, the generative powers of violence of war, in terms of transforming polities and identities, and even conditioning systems of knowledge about war as will be shown below.

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<sup>38</sup> See various chapters in Veena Das, Arthur Kleinman, Mamphela Ramphele, and Pamela Reynolds, *Violence and Subjectivity* (Berkeley: University of California Press, 2000).

<sup>39</sup> Sylvester, *War as Experience*, pp. 66. Also p. 5.

<sup>40</sup> *Ibid.*, p. 65.

<sup>41</sup> Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, Translated from French by Alphonso Lingis (Pittsburgh: Duquesne University Press, 1961), p. 21.

This section has considered how violence of war may be best understood. Hannah Arendt (and Carl von Clausewitz) suggested that central to the understanding of violence of war is its instrumentality. But instrumentality is not all that violence of war is about. An insistence on the understanding of violence as exclusively a relation between means and ends overlooks the performative aspect of violence, its capacity for communication and for being a generative force—a mechanism for unmaking and remaking of socio-political orders, a mechanism for change. Instrumentality, with its focus on the instrumental function of violence, is an elitist intellectualisation of war that excludes and silences the lived experience.<sup>42</sup> With Sylvester, I understand experience as ‘the physical and emotional connections with war that people live’.<sup>43</sup> And it is through the human body that war is experienced. Bodily injury is the interior content of war not merely its unfortunate consequence.<sup>44</sup>

Making explicit the centrality of the body in the war experience helps offset the elitist intellectualisation of war with its disproportional focus on statist and structural factors. Moreover, the body provides a potential venue for linking levels of analysis in ways that offer a more complete picture of the war phenomenon, not least because war, body, state, and political community—the nation—are all interwoven. In times of peace—and frequently in times of war—human bodies reside, have a physical presence, within the boundaries of their respective state (this is what one’s citizenship entails). In addition, the nation is—ordinarily—registered in the human body and speech—the native language, music, dance, a particular kind of handshake or salutation. In the course of war, the body is the site and target of violence. Bodies kill and die motivated by care for the nation and duty of service to the state. Yet, despite bodily injuries constituting war’s content, and the interweaving of war, body, nation, and state,

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<sup>42</sup> I thank an anonymous reviewer for suggesting this point.

<sup>43</sup> Sylvester, *War as Experience*, p. 5.

<sup>44</sup> *Ibid.*, p. 11. Scarry, *The Body in Pain*, p. 63.

IR interpretations of war—and violent conflict<sup>45</sup> in general—are virtually devoid of direct considerations of performative aspects of violence of war. The ensuing analysis aims to explain what counts for this neglect.

### **Ontological Formulations of Conflict Analyses and Responses**

In the prevailing interpretations of conflict and war there is a limited realisation that violence of war, on which construction of the political community is grounded, is enabled by a settled, modern norm of international society, namely the norm of territorial and cultural alignment with its nexus between sovereignty, security, and identity.<sup>46</sup> The congruity of territorial boundaries of modern states with the cultural identity of their population is an attribute of the ideology of nationalism. Progressively consolidating its dominant position in Western Europe since the French and American revolutions, this ideology has swept the globe injecting into politics a profoundly significant ideal, the principle that national and state boundaries should coincide, i.e., that the state should be nationally homogenous, and the nation should be politically united.<sup>47</sup>

What needs emphasising is that the ultimate goal of nationalism—the establishment of a nation-state—requires political and social processes that cannot easily be detached from violence. This

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<sup>45</sup> In the context of this paper ‘violent conflict’, ‘armed conflict, and ‘conflict’ are used interchangeably to mean a contested incompatibility between two or more parties—one at least being a government of a state—where the use of armed force results in at least 25 battle related deaths per year. The threshold for an armed conflict to qualify as war is, usually, 1000 battle related deaths per year. Refer, for instance, to Uppsala University’s Department of Peace and Conflict Research, ‘Definition of Armed Conflict’, [http://www.pcr.uu.se/research/ucdp/definitions/definition\\_of\\_armed\\_conflict/](http://www.pcr.uu.se/research/ucdp/definitions/definition_of_armed_conflict/); and International Committee of the Red Cross (ICRC), ‘How is the Term “Armed Conflict” defined in International Humanitarian Law?’, <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>.

<sup>46</sup> For a rare endorsement of this point in the context of the Bosnian War refer to David Campbell, *National Deconstruction: Violence, Identity, and Justice in Bosnia* (Minneapolis: University of Minnesota Press, 1998), especially p. 84.

<sup>47</sup> Inis L. Claude, Jr., *National Minorities: An International Problem* (Cambridge, 1955), p. 1. Ernest Gellner, *Nations and Nationalism* (Ithaca, New York: Cornell University Press, 1983), p. 1. See also, Hans Kohn, *The Idea of Nationalism* (New York: Macmillan, 1944).

is because instituting the primacy and will of the nation as a source of political legitimacy requires social homogenisation—cultural, linguistic and frequently religious unity—which can be attained only by violent means, physical and/or symbolic.<sup>48</sup> The naturalisation of the nexus of territory and identity requires a great deal of work and necessitates the worst violence. David Campbell rightly notes that the idea that the national community requires the nexus of demarcated territory and fixed identity has been complicit in, and necessary for, the conduct of war. The reason for this is that ‘inscribing the boundaries that make the installation of the nationalist imaginary possible requires the expulsion from the resultant “domestic” space of all that comes to be regarded as alien, foreign, and dangerous. The nationalist imaginary thus demands a violent relationship with the other’.<sup>49</sup> It is this conjunction of territory with population identification that gives rise to an order of representation that—with Jacques Derrida—Campbell understands in terms of *ontology*.<sup>50</sup>

Reflecting on the violence ensuing the end of the Cold War, Derrida opined that:

Inter-ethnic wars ... are proliferating, driven by an *archaic* phantasm and concept, by a *primitive conceptual phantasm* of community, the nation-State, sovereignty, borders, native soil and blood. Archaism is not a bad thing in itself, it doubtless keeps some irreducible resource. But how can one deny that this conceptual phantasm is, so to speak, made more outdated than ever, in the very *ontology* it supposes, by tele-technic dis-location? (By *ontology* we mean an axiomatic linking indissociably the

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<sup>48</sup> Yosmaoğlu, *Blood Ties*, p. 8.

<sup>49</sup> Campbell, *National Deconstruction*, p. 13.

<sup>50</sup> *Ibid.*, p. 80.

ontological value of present-being [on] to its *situation*, to the stable and presentable determination of a locality, the *topos* of territory, native soil, city, body in general).<sup>51</sup>

This section emphasises the circular nature of the relationship between ontopology and the instrumental aspect of violence, in the sense that not only has ontopology inspired some of the most exclusivist and instrumentally violent forms of human behaviour, but ontopology has been applied—too—to justify use of violence to enact an ontopological goal. For example, ethnic cleansing—forced expulsion of minorities, even genocide—intentional extermination of targeted ‘others’—have been a result of the above logic, i.e., the ontopological conjunction of territory and identity driven by the conceptual phantasm of national community, in most cases justified on the grounds of securing security of the state and the nation that provides its [i.e., state’s] source of political legitimacy. The twentieth century may be characterised as an ethnic cleansing century given the massive forced movement of peoples, and genocides from that of the Armenians, to the Holocaust, to the Tutsis, to the Bosnian Muslims—virtually all rationalised by ontopological interpretations that essentialise congruence of territory with identity of population that control it, interpretations that are justified by a conception of security that prioritises the nation state as the referent of security.<sup>52</sup> What is even more perplexing is the fact that the privileging of the nation state in terms of the provision of security has not only been embraced as a policy option, but has found the backing also of international legal experts. For example, according to International Law Professor Ian Brownlie, the expulsion of fourteen million Germans in the aftermath of the Second World War ‘may be justified as a part of the

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<sup>51</sup> Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*, Translated from the French by Peggy Kamuf (New York and London: Routledge, 1993), pp. 102-3. Italics in original.

<sup>52</sup> This paper suggests that ontopological interpretations form a common denominator in explanations of violence of modern warfare. However, it is not implied here that there are no other factors of explanation. War itself is conducive to violence. Quality of political leaders is another important variable. So are structural and strategic considerations. The focus of this analysis however pertains to ontopology.

sanctions and measures of security imposed by the principal members of a coalition which had fought a lawful war of collective defence against Nazi Germany'.<sup>53</sup> In his view, the act of expulsion was justified because the Allied Powers sought to prevent future threats to peace and security.<sup>54</sup>

The ontological rationale of violence has permeated both the structures of intelligibility and response strategies that are supposed to contain violence. In point of fact, adherence to ontological assumptions has frequently underlined international community's responses to violent conflicts which, in turn, have either been conducive to more violence or have strengthened the nationalists' imagery of phantasm of national community, borders, native soil, blood, body in general—as Derrida noticed<sup>55</sup>—and its (implied) nexus between territory and identity. International diplomacy and Great Powers' foreign policies have been amongst the most important sites via which nationalised conceptions of political community have affirmed and materialised. Suffice it to mention two representative categories of policy responses, namely the so-called population exchanges/transfers, and partition of territory.

Mass uprooting of peoples, and consequently mass refugee movements, as a strategy of political control is a very old policy practice.<sup>56</sup> But, it is in the nineteenth century, with the advent of nationalism, that it became imperative for governments to 'bond together disparate sections of restless peoples' and an effective approach to achieving this was to 'unite them against outsiders'. The largest mass migration within and between states in recorded history

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<sup>53</sup> Ian Brownlie, *Principles of Public International Law*, fourth edition (Oxford: Clarendon Press, 1990), p. 561.

<sup>54</sup> Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), p. 409.

<sup>55</sup> Derrida, *Specters of Marx*, pp. 102-103.

<sup>56</sup> The term 'refugee' originated in the sixteenth century in the context of expulsion of religious minorities in Europe. In the eighteenth century the term referred to the expulsion of political dissidents. Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, 'International Factors in the Formation of Refugee Movements', *International Migration Review*, 20:2 (1986), pp. 151-69, at pp. 161-3.

took place between 1880 and 1914.<sup>57</sup> The idea of a population exchange—as a matter of policy—featured for the first time in a protocol annexed to the peace treaty between Bulgaria and Turkey at the end of the Second Balkan War signed at Constantinople in September 1913.<sup>58</sup> This idea was endorsed—too—at the Paris Peace Conference following the end of the First World War.<sup>a</sup> A special Convention concerning Reciprocal Emigration between Greece and Bulgaria was ratified in August 1920.<sup>59</sup> Furthermore, the 1923 Lausanne peace treaty that ended the Greco-Turkish War provided for a compulsory exchange of Turkish and Greek minorities, a brutal practice that affected more than two million people who under duress crossed national frontiers.<sup>60</sup> These policies of population ‘transfers’ set a dangerous precedent for the future. Adolf Hitler himself embraced with zeal this idea and became one of its leading advocates and practitioners, seeking to populate the occupied territories with German kin.<sup>61</sup> The notion of population transfers resurfaced in Bosnia and Croatia during World War II and also in the early 1990s following the disintegration of the former Federation of Yugoslavia with further untold suffering and bloodshed.<sup>62</sup> This brief historic overview shows that the logic of ontopology has been used consistently to rationalise violence as a means to enacting an ontopological goal.

Not only ontopological understanding and explanation of violent conflict—and, generally, war—have informed international policy responses, but ontopological assumptions have

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<sup>57</sup> Citations and figures from E. J. Hobsbawm, *Nations and Nationalism since 1780* (Cambridge, 1990), p. 91. In this time span that marked destabilisation and disintegration of the Ottoman Empire a number of historic wars took place: the Russo-Turkish War (1877-78), the Turco-Italian War (1911-1912, known also as the Libyan War), and the Balkan Wars (1912-1913) in the course of which there were large scale uprooting of civilians.

<sup>58</sup> Stephen P. Ladas, *The Exchange of Minorities: Bulgaria, Greece and Turkey* (New York: Macmillan, 1932), p. 19.

<sup>59</sup> *Ibid.*, pp. 13, 38, 43.

<sup>60</sup> *Ibid.*, pp. 338, 340. Macartney, *National States and National Minorities*, pp. 440, 721.

<sup>61</sup> Refer to Hedwig Wachenheim, ‘Hitler’s Transfers of Populations in Eastern Europe’, *Foreign Affairs*, 20:4 (1942).

<sup>62</sup> Campbell, *National Deconstruction*, Chapter 5.

underpinned—too—certain academic propositions about (so-called best) responses to war. One such proposition was postulated in relation to the Bosnian War by two Professors of International Relations—John Mearsheimer and Robert Pape—who argued that saving Bosnia required shrinking i.e., partitioning it.<sup>63</sup> An ardent advocate of partition, Mearsheimer extended his partition thesis also to the case of Kosovo, as his response to the heightened conflict between the Albanians and the Serbs in late 1990s.<sup>64</sup> Furthermore, with his colleague Stephen van Evera, Mearsheimer extended this prescription to the conflict in the Republic of Macedonia in the light of the clashes there between Macedonian and Albanian communities in 1999.<sup>65</sup> Moreover, partitions in the former Yugoslavia appear to have influenced the possibility that Iraq would be divided too by shaping international attitudes therein.<sup>66</sup> At the height of the Iraqi civil war (2006-7), faced with intensifying violence against civilians, distrust among Sunni, Shiite, and Kurdish groups, and feeble progress with state building, policymakers and analysts turned to ideas about partitioning the country.<sup>67</sup> In addition, interpretation of the ongoing Syrian War as an intractable conflict—not related to the national interest of the Western Powers—has led not only to lack of meaningful intervention but also to calls for partition. The former US Secretary of State—John Kerry—stated on 23 February 2016 in the US Senate Committee on

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<sup>63</sup> John J. Mearsheimer, 'Shrink Bosnia to Save It', *New York Times*, 31 March 1993. John J. Mearsheimer and Robert A. Pape, 'The Answer: A Partition Plan for Bosnia', *The New Republic*, 14 June 1993. This logic underpinned a partition plan designed by the European Community's Special Envoy, David Owen, and the UN Secretary-General's Special Envoy, Cyrus Vance, known as the Vance-Owen Plan negotiated with the warring parties in Bosnia in the first half of 1993.

<sup>64</sup> John Mearsheimer, 'The Case for Partitioning Kosovo', in T. Carpenter (ed), *NATO's Empty Victory: A Postmortem on the Balkan War* (Washington: CATO Institute, 2000).

<sup>65</sup> John J Mearsheimer and Stephen Van Evera, 'Redraw the Map, Stop the Killing', *New York Times*, 19 April 1999.

<sup>66</sup> Nicholas Sambanis and Jonah Schulhofer-Wohl, 'What's in a Line? Is Partition a Solution to Civil War?', *International Security*, 34:2 (2009), pp. 82-118, at p. 113.

<sup>67</sup> See Edward P. Joseph and Michael E. O'Hanlon, 'The Case for Soft Partition in Iraq', Brookings Analysis Paper, No. 12 (Washington, D.C.: Saban Center for Middle East Policy, Brookings Institution, June 2007); Chaim Kaufmann, 'Living Together after Ethnic Killing: In Theory, in History, and in Iraq Today', in Mia Bloom and Roy Licklider (eds), *Living Together after Ethnic Killing: Exploring the Chaim Kaufmann Argument* (London: Routledge, 2006), pp. 277-320; and Ivan Eland, *Partitioning for Peace: An Exit Strategy for Iraq* (Oakland, California: Independent Institute, 2009).

Foreign Relations: ‘it may be too late to keep Syria whole’ and suggested that ‘Washington would support partition if ceasefire is unsuccessful’.<sup>68</sup>

The problem with the scholarly and diplomatic partitionist logic that adhere to ontological assumptions is that they enforce the nationalist and extremist imaginary of the nexus between identity, body, territory. Partitioning countries and redrawing maps are not likely to put a break to violence; rather they are conducive to it. Redrawing borders rarely resolves conflict.<sup>69</sup> Even when partitions resolve one particular source of conflict, they create several others. In particular, partitions always leave behind residual members of the rival ethnic group within boundaries of the new state which in numerous cases has led to further resistance, violence, and ethnic cleansing.<sup>70</sup> This indeed is the case with partitions following disintegration of empires or federal states.<sup>71</sup> The ontological academic and policy prescriptions for redrawing boundaries misrepresent a world characterised by cultural heterogeneity. At the same time, in their elusive drive toward the fleeting dream of ethnic purity, such prescriptions miss the fact that maps are more than the territory they purport to represent. The notion of an objective map, especially one that claims to represent ethnic groups *in situ*, is pure fiction. The maps are depictions and, by implication, assertions of territoriality.<sup>72</sup>

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<sup>68</sup> Cited in Patrick Wintour, ‘John Kerry Says Partition of Syria Could Be Part of “Plan B” if Peace Talks Fail’, *The Guardian*, 23 February 2016. See, also, James Stavridis, ‘It’s Time to Seriously Consider Partitioning Syria’, *Foreign Affairs*, 9 March 2016.

<sup>69</sup> In a thorough and systematic study that assesses the risks and benefits of partition, Nicholas Sambanis and Jonah Schulhofer-Wohl found that partition does not work in general and that civil wars terminated through partition are likely to re-occur. Sambanis and Schulhofer-Wohl, ‘What’s in a Line?’. See also, Nicholas Sambanis, ‘Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature’, *World Politics*, 52:4 (2000), pp. 437-483.

<sup>70</sup> Adam R. Alexander, ‘The Myth that Partition will Save the Middle East’, *The National Interest*, 23 March 2016.

<sup>71</sup> See, for instance, Radha Kumar, ‘The Troubled History of Partition’, *Foreign Affairs*, 76:1 (1997); Philipp Ther and Ana Siljak (eds), *Redrawing Nations: Ethnic Cleansing in East-Central Europe, 1944-1948* (Lanham, Md.: Rowman & Littlefield, 2001).

<sup>72</sup> Yosmaoğlu, *Blood Ties*, p. 83.

A map, as an apparatus of territoriality, when applied to the principle of national determination, creates nothing less than the spatial definition of a nation—its ‘geo-body’—not necessarily its current shape but the territory it should occupy. As Tongchai Winichakul convincingly argues maps do not follow the social reality of a nation dispersed across delimited domains; they are not depictions of something that already exists but *predictions* of it.<sup>73</sup> The boundaries on a map—drawn through the destruction of human bodies they incur in the process—are constitutive of the reality they purport to represent. Styled in the image of an unfortunate but necessary realism—that advocates the (fictitious) view that partition will resolve conflict permanently—the partitionist logic embodies instead a dangerous idealism that is likely to produce the very outcomes it seeks to avoid, namely more disputes, bloodshed, destruction of bodies.

Instrumentality of violence is embedded in ontopological understanding and interpretations of violent conflict that reify the congruence of national identity, state security, territory, and human bodies that inhabit it. Ontopology has both inspired some of the most exclusivist practices of human behaviour and justified violence to enact an ontopological goal. In particular, ontopology has naturalised instrumental violence as a means of constitution of the political community defined in national terms. At the same time, ontopological interpretations of war and ontopological rendering of policy responses have occluded the role that violence has played—as an independent variable—in the constitution of the political community, in particular obscuring the performative aspect of violence in the creation of the most pre-eminent community—the nation / state. It is not implied here that the ontopological narrative can be easily dismissed, but that its foundation, its ground, is performatively constructed through

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<sup>73</sup> Tongchai Winichakul, *Siam Mapped: A History of the Geo-body of a Nation* (Honolulu: University of Hawaii Press, 1994), p. 17. Emphasis added.

reiterative violence and constative declarations that render violence central to policy and diplomacy.<sup>74</sup>

### **The Body and Violence of War, Peace, Law**

The overlooking of violence's performative power can be traced to an important omission within the hegemonic IR interpretations of war, namely the human body and the role of bodily injury in war and its aftermath. In point of fact, for many scholars bodily experience seems as a 'distinctly unIR-like place' to begin contemplating about war 'despite the many hints across the IR canon that war is peopled and not just an abstract politics and technology of extreme disagreement'.<sup>75</sup> Indeed, that IR canon in general has not been interested in the human and its body 'is evident in ... habitual exclusion of the ... corporeal from most of its theories'.<sup>76</sup> This is a consequential omission which directly undermines the very understanding of the essential structure of war, namely the juxtaposition of the extreme facts of body and voice, or said differently, the relation between the interior content of war, the collective casualties that occur within war, on the one hand, and, on the other hand, the verbal issues (claims pertaining to

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<sup>74</sup> The debate on how to respond to the problems of ontopology remains open. Campbell has proposed a non-ontological multiculturalism as a radical critique of ontopology. Campbell, *National Deconstruction*, p. 169. Dan Bulley, however, has suggested that non-ontological multiculturalism is impossible because it always retains elements of ontopology within itself. Bulley stresses the need for an 'at-home' as a basis for any hospitality. 'In terms of Bosnian identity ... a negotiating de-essentialised ontological conception "at-home" would allow possibilities of articulating what it "is" to "be" "Bosnian"; of what "Bosnia" "is" ... It would permit the possibility of a hospitality, a welcoming of others... [A] negotiating de-essentialised ontology allows the Bosnian "at-home" to enact an ethical relation to the other [Serbian and Croat] as host (*hôte*)'. Dan Bulley, 'Negotiating Ethics: Campbell, Ontology and Hospitality', *Review of International Studies*, 32:4 (2006), pp. 645-663, citation at p. 661. Bulley's argument is sophisticated but not entirely convincing. For one the referents of 'topos' (Whose topos?) and hospitality (Whose hospitality?) are not clear. Can war victims and their communities realistically be expected to show the hospitality Bulley advocates? And what exactly is 'at-home' in Bosnia, or Palestine, or Kurdish territories? Dangers of ontological primacy manifested in genocide, ethnic cleansing, and other war crimes remain an ongoing challenge that may not be possible to overcome by theoretical negotiating between the poles of mono-cultural ontopology and non-ontological multiculturalism.

<sup>75</sup> Sylvester, *War as Experience*, p. 65.

<sup>76</sup> *Ibid.*

sovereignty, security, authority, identity, ideology) that stand outside war, that exist before the act of war begins and after it ends.<sup>77</sup>

Any dispute that leads to war involves a process wherein each side seeks to question the legitimacy—and erode the reality—of the opponents’ beliefs, self-worth, and self-conception. War is not only an intensification of dispute, it is also a correction and/or reversal of it. This is so because the injuring ‘provides, by its massive opening of human bodies, a way of reconnecting the derealised and disembodied beliefs with the force and power of the material world’.<sup>78</sup> Put differently, at the end of the war the injured bodies provide the material base for the winning, or dominant, construct until there is time for war parties to consent and enact that winning construct, make it real. Scarry is right to note that injuries-as-signs point backward and forward in time: in the first instance, they make visible an activity that is past and hence have a memorialisation function; in the second instance, they refer to the future, to what has yet to come and therefore have a reality-conferring function.<sup>79</sup> Injuring, thus, can be thought to rely on a form of legitimisation because wounding is ‘able to open up a source of reality that can give the issue force and holding power’. In other words, the outcome of war has its substantiation in ‘a process of perception that allows extreme attributes of the body to be translated into another language, to be broken away from the body and relocated elsewhere at the very moment that the body itself is disowned, made to disappear...’.<sup>80</sup>

In the course of war, violence destroys material culture, bodies, and (elements of) consciousness—a destruction that facilitates a perceptual reversal of (some) claims, issues, or

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<sup>77</sup> On the structure of war refer to Scarry, *The Body in Pain*, p. 63.

<sup>78</sup> Scarry, *The Body in Pain*, p. 128.

<sup>79</sup> *Ibid.*, p. 121.

<sup>80</sup> *Ibid.*, p. 124.

elements of self-understanding that had previously grounded comprehension of national identity. This surrogate form of contest—surrogate because it differs from violence of war as there is no injuries to bodies or their surroundings—enables the work of war to be accomplished in the interior of human consciousness. In the aftermath of war, warring populations—via this surrogate contest—begin to re-imagine, re-understand, re-experience themselves, re-believe in themselves. Therefore, the performative violence of war remains active in moulding the political community even after guns fall silent. If in the course of war violence deconstructs, unmakes an old order, in the aftermath of war effects of violence—particularly as manifested in the surrogate contest of re-imagining community—become part of a constitutive process that remakes and/or justifies the new post-war order. This is the mark of the generative force of war, its capacity to confront those who experience it with ‘the need to create—and contest—its meaning in ways that do not terminate with cessation of physical violence’.<sup>81</sup> It is through the creation of meaning of war, for instance via commemorations of suffering as well as narratives of crimes and other conduct in the course of fighting, that war violence continues to contribute to the constitution of political community in the post-war setting.

Numerous works have emphasised the power of commemorations to draw upon the sacrifice and loss occasioned by war as a means of shaping national identity and preserving, or challenging dominant elites and ideologies within a given state.<sup>82</sup> Suffering caused by violence of war can be central to the identity and symbolic continuity of a nation. A nation ensures its symbolic continuity by construing its members as forming an imagined community that

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<sup>81</sup> Shane Brighton, ‘Three Propositions on the Phenomenology of War’, *International Political Sociology*, 5:1 (2011), p. 104.

<sup>82</sup> E. Hobsbawm, ‘Inventing Traditions’, in E. Hobsbawm and T. Ranger (eds), *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983); Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London: Verso, 1983); J. Winter and E. Sivan (eds), *War and Remembrance in the Twentieth Century* (Cambridge: Cambridge University Press, 1999); T.G. Ashplant, G. Dawson, and M. Roper, ‘The Politics of War Memory and Commemoration: Contexts, Structures and Dynamics’, in T.G. Ashplant, G. Dawson and M. Roper (eds), *The Politics of War Memory and Commemoration* (London: Routledge, 2000).

surpasses death and suffering of war, whereby the living generations feel their connection with the dead co-patriots thus securing the nation's imagined continuity and transcendence of time.<sup>83</sup> Memory and commemoration are crucial to the production of this context. The ceremonies and heroes they venerate are the embodiment of values that constitute the post-war order.<sup>84</sup> Narratives of war generate knowledge that can play an essential role for the survival, or contestation, of the polity. The narrativisation of war events is central to the performative constitution of identity, community, polity. As post-war Bosnia and Rwanda show the political order emerging in the aftermath of war is grounded on nationalist narratives pertaining to violence of war, narratives that are conditioned by both the tragedy of opening of human bodies in war, and political circumstances of the present, i.e., current power relations.<sup>85</sup>

The narrativisation of violence of war is not done only via nationalist discourse. A distinct—yet overlooked—arena in which bodily injury enters the language of constitution of the political community is the courtroom. Indeed, in recent times, one of the most decisive production of knowledge about violence of war has taken place in court proceedings of criminal tribunals established by the international community to account for atrocities. Proceedings at fora such as the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Court of Justice (ICJ) provide perceptive examples of *coup de force* in a legal setting. The establishment of a new political order in the aftermath of war is always accompanied by enactment of a new legal structure and new laws. As Jacques Derrida notes:

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<sup>83</sup> Refer to Anderson, *Imagined Communities*, pp. 6-7, 9-10.

<sup>84</sup> Jenny Edkins, *Trauma and the Memory of Politics* (Cambridge: Cambridge University Press, 2003), p. 229.

<sup>85</sup> Klejda Mulaj, 'Genocide and the Ending of War: Meaning, Remembrance and Denial in Srebrenica, Bosnia', *Crime, Law and Social Change*, (2017, forthcoming, doi:10.1007/s10611-017-9690-6). Scott Straus and Lars Waldorf (eds), *Remaking Rwanda: State Building and Human Rights after Mass Violence* (Madison: University of Wisconsin Press, 2011).

The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is always an interpretative force: this time not in the sense of law in the service of force ... but rather in the sense of law that would maintain a more internal, more complex relation with what one calls force, power or violence. ... [T]he operation that amounts to founding, inaugurating, justifying law (*droit*), making law, would consist of a *coup de force*, of a performative and therefore interpretative violence that in itself is neither just nor unjust and that no justice and no previous law with its founding anterior moment could guarantee or contradict or invalidate. ... Since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without ground.<sup>86</sup>

It is necessary to recall at this juncture that law and justice are not synonymous. Law is enabled by justice. As John Finnis—a leading legal theorist—notes, the authority of law depends on justice, on its [law's] ability to secure justice.<sup>87</sup> But law is not justice. Because justice is an aporetic experience that cannot be experienced; justice is an experience of impossible. Another element of differentiation between law and justice pertains to calculation, in Derrida's sense that: 'Law is the element of calculation ... but justice is incalculable'.<sup>88</sup> In other words, justice surpasses law and calculation; it is beyond the possible and calculable.

The inauguration of a new law occurs always in interpretative, performative violence. Derrida: 'In these situations said to found law or state, the grammatical category of the future anterior all too well resembles a modification of the present to describe the violence in progress. It

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<sup>86</sup> Derrida, 'Force of Law', pp. 13-14.

<sup>87</sup> John Finnis, *Natural Law and Natural Rights*, Second Edition (Oxford: Oxford University Press, 2011), p. 260.

<sup>88</sup> Derrida, 'Force of Law', p. 16.

consists, precisely, in feigning the presence or simple modalisation of presence'.<sup>89</sup> The founding moment of law is the moment in which the foundation of law remains suspended by a pure performative act that would not have to answer to or before anyone. The supposed subject of this pure performative would no longer be before the law, or rather he would be before a law not yet determined, before the law as before a law not yet existing, a law yet to come ... And the being 'before the law' ... resembles [the] situation ... of the man who cannot manage to see or above all to touch, to catch up to the law: because it is transcendent in the very measure that it is he who must found it, as yet to come, in violence. Here we 'touch' without touching this extraordinary paradox: the inaccessible transcendence of the law before which and prior to which 'man' stands fast only appears infinitely transcendent and thus theological to the extent that, so near him, it depends only on him, on the performative act by which he institutes it: the law is transcendent, violent and non-violent, because it depends only on who is before it...<sup>90</sup>

Crucial, therefore, is the issue of interpretation of the law, the performative act of legal interpretation. Many of the paradoxes of law are a function of (mis)interpretation of its provisions, or lack of provisions thereof. Let us refer to (the interpretation of) one of the most important laws related to the violence of war, the Genocide Convention, with regard to two particular aspects, namely, the limited assertion of genocidal intent and state responsibility for this heinous crime, in order to provide two concrete examples of the link between the performative role of war violence and law—violence of law.<sup>91</sup> The Convention provides that

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<sup>89</sup> *Ibid.*, p. 35.

<sup>90</sup> *Ibid.*, p. 36.

• <sup>91</sup> There are many interpretative issues in the Genocide Convention that can be challenged. Space does not allow here to engage fully with the merits of the Convention. I refer briefly to two interpretative aspects—namely that of the limited assertion of genocidal intent and state

genocide is an international crime against groups (as opposed to individuals) that are defined on national, ethnical, racial, or religious terms; a crime that perpetrators commit with the intent to destroy the targeted group in whole or in part.<sup>92</sup> What sets genocide apart from any other crime is the perpetrators' intent to destroy the targeted group as such. In the two most recent cases of genocide, namely Rwanda (1994) and Srebrenica (1995) the ICTR found that fifty-two cases and the ICTY found five cases of accused persons—respectively—acted with the intent to commit genocide. This at a time when genocide in Rwanda brought about the death of over 800,000 Tutsi lives in just over three months and genocide in Srebrenica claimed more than 7,000 lives of Bosnian Muslim men and boys in just a few days.<sup>93</sup> If we recall—with John Finnis—that the authority of law depends on its ability to secure justice,<sup>94</sup> given the record of genocide convictions, it is reasonable to surmise that the authority of genocide law has been compromised by its inability to secure at least a modicum of justice for the victims. While the legal findings that genocide occurred—in both cases—recognises violence of war and concomitant human suffering—in its most severe form—judicial decisions have been structurally finite. Punishment meted out has been completely disproportionate to the harm and suffering incurred by victims and their communities.

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responsibility for genocide—to give expression to Derrida's point that interpretation, performative function, of law is violence without ground that depends entirely on who interprets the law. Unresolved, 'violent', matters of interpretation in the Genocide Convention can be raised also about meaning of 'group' (which in the Convention's terms depend on ethnic formulations), and the expression 'in whole or in part'. These are treated in Kevin Aquilina and Klejda Mulaj, 'Limitations in Attributing State Responsibility under the Genocide Convention', *Journal of Human Rights*, 16, (2017) doi: [10.1080/14754835.2017.1300521](https://doi.org/10.1080/14754835.2017.1300521)). The legal definition of genocide is cited in the following footnote.

<sup>92</sup> Article II of the Genocide Convention defines genocide as: 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group'.

<sup>93</sup> Figures from <http://unictr.unmict.org/en/cases> and <http://www.icty.org/specials/srebrenica20/?q=srebrenica20> respectively.

<sup>94</sup> Finnis, *Natural Law and Natural Rights*, p. 260.

It may seem an elementary notion that responsibility for genocide be vested not only with individuals but also with states—understood in institutional terms—given that virtually always genocide occurs with direct or indirect state involvement. The Convention, however, does not provide for this; it does not state explicitly that states may commit, or may be responsible for, genocide. The importance of this matter resurfaced with full force in a case filed in 1993 in the International Court of Justice (ICJ) by the Bosnian government against the Federal Republic of Yugoslavia (then comprising Serbia and Montenegro), asserting that Serbia was responsible for violating the Genocide Convention. In drawing up its judgement, the ICJ relied heavily on ICTY evidence which shows the very large extent of financial and military assistance that the Serbian government offered to its ethnic kin in Bosnia during the entire war, including July 1995 when genocide in Srebrenica took place. The ICJ acknowledged the massive Serbian assistance offered to Bosnian Serbs but decided that Serbia had only breached the Convention's obligation to prevent genocide rather commit, or be complicit in, genocide.<sup>95</sup> The ICTY—on whose evidence the ICJ relied—had worked with the concept of joint criminal enterprise (JCE) to establish genocidal intent of individual perpetrators who operated as part of a(n *official*) group sharing such intent.<sup>96</sup> Although JCE—in ICTY setting—provided evidence of *official* (group) criminal intent to commit war crimes, the ICJ did not make reference to the ICTY's JCE concept and evidence that could have paved the way to establish the Serbian government's

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<sup>95</sup> International Court of Justice, *Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, I.C.J. Reports 2007 (I).

<sup>96</sup> The ICTY has referred to the concept of Joint Criminal Enterprise (JCE) in several of its judgements. See, in particular, ICTY, *Prosecutor v. Duško Tadić*, Appeal Judgement, Case No. IT-94-1-A, 1999, paragraphs 195-226, <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>. The ICTY returned to the JCE concept, most recently, in its Karadžić's judgement. ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, 2016, paragraphs 560-570, 3237, 3524, 5680, 5731, 5737, 5821, 5831, 5849, and 5998. Paragraph 560: 'When two or more persons act together to further a common criminal purpose, the jurisprudence of the Tribunal recognises three forms of criminal responsibility which may accrue to all members of the group. The first, "basic" category of JCE encompasses situations where all participants, acting pursuant to a common purpose, possess the same criminal intention to effectuate that purpose. The second, "systemic" form of JCE pertains to organised systems of ill-treatment. The third, "extended" type of JCE involves the liability of a JCE participant for a crime which falls outside the common purpose or design, but which is nevertheless a natural and foreseeable consequence of effectuating that common purpose'. [http://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf).

intent and involvement in the perpetration of genocide in Srebrenica and war crimes in Bosnia. Nor did the ICJ rule on commission of lesser crimes than genocide—such as ethnic cleansing and rape—despite abundant ICTY evidence, due to the fact that the Genocide Convention does not allow for such determination.

These paradoxical interpretations of law give expression to Derrida's elucidation that the performative function of law—that depends on who interprets the law—can be viewed as violence without ground. Moreover, paradoxes of legal interpretation make clear that for victims of violence of war, justice remains an unpenetratable (hence aporetic) experience of impossible. Legal interpretation is always an interpretative force, a *coup de force*, that maintains a complex relation with violence and power. The two examples considered above show that readability of law, in our case of genocide law, is as little neutral as it is non-violent—at least from the point of view of victims. The paradoxes involved in the readable unreadability of violence is intrinsic to the symbolic order of law, which signifies 'a juridico-symbolic violence ... at the very heart of interpretative reading' of law, a performative violence of law which is directly linked to the performative violence of war.<sup>97</sup>

## **Conclusion**

Hannah Arendt asserted that '[v]iolence can always destroy power; ... [w]hat never can grow out of [the barrel of a gun] is power'.<sup>98</sup> This is not an assumption that an investigation on the production of the political community in the intersection between war and peace can find appealing. Indeed, violence and power are intrinsically connected. At the centre of any order emerging from war is the political community that justifies that order, a political community

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<sup>97</sup> Derrida, 'Force of Law', p. 37.

<sup>98</sup> Arendt, *On Violence*, p. 53.

that in the modern era has taken the form of the nation / state. This paper has explored how violence of war contributes to the constitution of political community, particularly to the (re)production of the latter at the intersection between war and peace—a question that is overlooked in the existing literature, despite the centrality of that community for the possibility of politics and violence itself being ‘the *ultima ratio* of politics’.<sup>99</sup>

The dominant understanding of violence of war emphasises instrumentality. The instrumental violence on which the constitution of the political community is grounded finds expression in an order of representation, which—with Derrida—can be termed ontopology, i.e., ‘an axiomatic linking indissociably of the ontological value of present-being to its situation, to the stable ... of a locality, the topos of territory, native soil, city, body in general’.<sup>100</sup> The paper has shown that ontopological interpretations of war violence have reified the congruence of national identity, state security, territory and people who inhabit it. Moreover, the circular relationship between ontopology and violence—insofar as ontopology has inspired extreme violent behaviour and also been used to justify violence in service of achieving an ontopological goal—has provided for a closure of interpretation with regard to effects of violence in the post-war setting.

In interrogating the meaning of ‘violence of war’ the paper exposes limitations of exclusive, means-ends, instrumental understanding of war violence due to the overlooking of the performative power of violence stemming from the centrality of bodily injuries in war. An understanding of war as the politics of bodily injury provides a venue for offsetting elitist

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<sup>99</sup> David Campbell and Michael Dillon, ‘Introduction. The End of Philosophy and the End of International Relations’, in David Campbell and Michael Dillon (eds), *The Political Subject of Violence* (Manchester: Manchester University Press, 1993), p. 1.

<sup>100</sup> Derrida, *Specters of Marx*, pp. 102-3.

intellectualisations of war that overemphasise instrumentality and silence the lived experience. Moreover, an understanding of war as the politics of bodily injury helps overcome closures that result from ontological interpretations of conflict analysis and responses by offering a more complete understanding of war—studied as a linked project that pays attention not only to international structures, states, and elites but also to the human body as a possible outlet for linking levels of analysis given the interweaving of war, body, state, and political community. The appeal—with Sylvester<sup>101</sup>—to broaden agendas for future research to engage with the body in order to explore the performative power of war violence should not be understood as suggesting the building of a new metanarrative, a new dominant discourse of war centered on the body. The role of international structures, states, and elites cannot be consigned into insignificance, but they can be *complemented* by studying—alongside them—the role of bodily injuries in war, and generally by studying people as the interior content of war not merely considering them as inevitable consequence of fighting.

Crucially, recognising the role of bodily injuries in war allows for an understanding of the structure of war as a relation between the interior content of war—the collective casualties that occur in war—and the exterior, verbal issues that stand outside war, that exist before the war begins and after it ends. Injuring in war—by its massive opening of human bodies—provides the material base for the dominant, or winning, post-war construct. As the above analysis has shown, these verbal issues in the post-war setting lead to a surrogate contest of re-imagining, re-understanding, re-experiencing political community in the course of which the performative power of violence contributes directly to the constitution of that community, of the post-war peace and the laws that justify it. Appreciating effects of instrumental *and* performative violence in the constitution of the political community provides a useful framework for

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<sup>101</sup> Sylvester, *Experiencing War*; Sylvester, *War as Experience*.

inquiring into the generative attributes of war, and the perennially important question of peace which it leads to, peace with law but rarely with justice.