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“ANYTHING CAN HAPPEN:” INTERPRETING THE ‘END’ OF WAR

Fionnuala Ní Aoláin *

THOMAS U. BERGER, *WAR, GUILT, AND WORLD POLITICS AFTER WORLD WAR II* (2012). Pp. 265. Hardcover \$97.00.

LARRY MAY, *AFTER WAR ENDS: A PHILOSOPHICAL PERSPECTIVE* (2012). Pp. 258. Hardcover \$94.00.

KIMBERLY THEIDON, *INTIMATE ENEMIES: VIOLENCE AND RECONCILIATION IN PERU* (2012). Pp. 480. Hardcover \$75.00.

Wars are perennially with us. For centuries, the attention of many disciplines, specifically law, has been on justifying and controlling the move to war (*jus ad bellum*) with equal concern to the regulation of conflict once the fighting starts (*jus in bellum*). Much less consideration has been paid to the ending sequences of collective violence, the duties of states to the ending phase, and the complexity of transition for all those who have been involved in or find themselves on the sidelines of collective violence. In various ways the three books under review by Thomas Berger (*War, Guilt, and World Politics after World War II*), Larry May (*After War Ends: A Philosophical Perspective*), and Kimberly Theidon (*Intimate Enemies: Violence and Reconciliation in Peru*) engage these newer questions in considered ways.¹ Berger’s preoccupation lies with memory and the “effects of historical memory on the political affairs of nations.”² For May the goal is to give an account of the “normative principles of *jus post bellum*, [the] governing practices after war ends.”³ Theidon’s imperative is the exposure of conflict pain and grief coupled with navigating co-existence in communities where violence has been intimate, intentional, and where carnage constantly lurks.⁴

In any reflection on the aftermath of war, a number of prefiguring motifs are pre-

* Dorsey & Whitney Chair in Law, University of Minnesota Law School and Professor of Law Transitional Justice Institute, University of Ulster (Northern Ireland). The title draws on Seamus Heaney’s poem “Anything Can Happen,” after Horace Odes 1, 34, written in the aftermath of the events of September 11, 2001.

1. See THOMAS U. BERGER, *WAR, GUILT, AND WORLD POLITICS AFTER WORLD WAR II* (2012); LARRY MAY, *AFTER WAR ENDS: A PHILOSOPHICAL PERSPECTIVE* (2012); KIMBERLY THEIDON, *INTIMATE ENEMIES: VIOLENCE AND RECONCILIATION IN PERU* (2012).

2. BERGER, *supra* note 1, at 1.

3. MAY, *supra* note 1, at 1.

4. See THEIDON, *supra* note 1, at ix-xiii.

sented. First is the presumption that there is political consensus on the qualifying features and experience of war. This challenge presents less in the classic two-sided state conflict, where, despite legal flirtation with the category of ‘measures short of war,’ there is generally a post-World War II consensus on what counts for the purposes of measuring the existence of armed conflict as defined by the United Nations Charter and the application of the Geneva Conventions.⁵ Nonetheless, even if the prescient reality of war is acknowledged, there may be substantial dispute over who started it, who was harmed the most by it, and who occupies the exalted status of victim over that of the reviled perpetrator.⁶ Generally, the status of war is far more fraught in internal contexts where nations dispute the existence of armed conflict *per se*, and continuously claim to local and international audiences that the harms experienced are terrorism, malcontents, and criminal elements at work in collective form.⁷ All three books encounter, to varying degrees, this challenge of recognition, with Berger and May being most clearly pitched in a context that assumes states as the primary actors engaged in recognition, acknowledgement, contrition, and action.⁸ Dilemmas of conflict status are most acutely felt in *Intimate Enemies*, where the terminology of the conflict is part of the meta-conflict of violence in Peru and deeply bound up in the practices of remembering and forgetting that permeate the “aftermath”.⁹

Sequentially, it is not always clear that the ‘end’ or post conflict phase is easily known.¹⁰ Ends have some rituals. They include ceasefires, armistice agreements, peace negotiations, and other pacts.¹¹ But the formalities can cloak the ongoing violence that sustains past formal agreements, the categorizations that frame some forms of violence as falling in the “armed conflict” box, others as falling outside it, and the cyclical nature of collective violence between and within states.¹² While only obliquely addressed by Berger and May, one salient feature of contemporary conflicts is their cyclical nature and the omnipresent reality that in many internal armed conflicts the return to violence is never far away.¹³ This makes the definition and management of the “after” a contentious enterprise. Slippage between the presumed extraordinary violence of war and the ordi-

5. See generally Geneva Convention, Common Art. 2, Aug. 12, 1949; U.N. Charter, arts. 39-51; NICHOLAS TSAGOURIAS & NIGEL D. WHITE, COLLECTIVE SECURITY THEORY, LAW AND PRACTICE (2013).

6. As Thomas Berger details, the Austrian state was “able to hide from both itself and from the world this darker side of its history thanks to the convenient myth, first propagated by the Allied Powers in 1943, that Austria had been the ‘first victim of Nazism.’” BERGER, *supra* note 1, at 83.

7. See, e.g., FIONNUALA NÍ AOLÁIN, THE POLITICS OF FORCE: CONFLICT MANAGEMENT AND STATE VIOLENCE IN NORTHERN IRELAND (2000) (detailing the strategy of various British governments to avoid the categorization of the “troubles” in Northern Ireland as reaching any legal threshold that would implicate any portion of the law of armed conflict).

8. See BERGER, *supra* note 1, at 22; MAY, *supra* note 1, at 139, 151, 213.

9. See THEIDON, *supra* note 1, at 388.

10. May, for example, seeks to delineate the “post” war concept by referencing both concrete examples and theoretical line-drawing. In the context of the second Gulf war, is the “end” the point at which President George W. Bush declared victory in this war in May 2003? “By August 2010, when US President Barack Obama declared an end of combat operations, nearly 3,000 more US troops had died since Bush declared victory.” MAY, *supra* note 1, at 2. Cf. Gabriella Blum, *The Fog of Victory*, 24 EUR. J. OF INT’L L. 391 (2013) (on the variable meaning and assignment of the notion of victory to situations of armed conflict).

11. See generally CHRISTINE BELL, ON THE LAW OF PEACE: PEACE AGREEMENTS AND THE LEX PACIFICATORIA (2008).

12. See THEIDON, *supra* note 1, at 186.

13. See BERGER, *supra* note 1, at 218; MAY, *supra* note 1, at 98.

nary violence that permeates many post-conflict settings appears most conspicuously in *Intimate Enemies*, with violence against women emerging as the focal point of the illusory difference.¹⁴

THE RELATIONSHIP BETWEEN 'AFTER' AND 'BEFORE'

What happens 'after' depends a lot on what we understood to have happened before. To chart linear lines between these moments is extraordinarily difficult, and Thomas Berger's book seeks to provide some snapshots of the prior histories in Germany, Austria, and Japan that gave rise to undulating atrocity.¹⁵ Using a historical realist perspective, he consistently calculates the ways in which the "past is powerfully conditioned by the narratives generated by the state."¹⁶ This standpoint mandates a combination of the explanatory factors emphasized by different theoretical schools (Historical Determinist, Instrumentalist, and Culturalist) as a means to understand the "evolution of the official narrative and the politics of history over time."¹⁷ While Berger gives weight to the realist political tradition—viewing state memory practices as primarily shaped by practical considerations of security and economic gain—he does not discount the capacity of insurgent narratives to jut in.¹⁸ Such insurgent narratives are rooted in the lived lives of those who experience harm and whose memories have enduring traction.¹⁹ While states can ignore and suppress narratives of violence, deprivation, and inequality, sooner or later insurgent historical memory reasserts itself.²⁰ There is a cautionary warning in this finding for states whose practices assume forgetting and amnesia can bar social and political responsibility for "atrocities crimes."²¹ As Kathryn Sikkink has cogently argued, there is a "dramatic new trend in world politics toward holding individual state officials, including heads of state, criminally accountable for human rights violations."²² Accountability and acknowledgement are a new normal, the full effects of which are slowly permeating state practice and the consciousness of state officials and non-state actors.²³

14. This link between ordinary and extraordinary violence has been somewhat acutely identified by feminist and gender scholars, a number of whom caution against the easy assumptions that permeate notions of an 'end' to conflict. See, e.g., FIONNUALA NÍ AOLÁIN, DINA FRANCESCA HAYNES & NAOMI CAHN, *ON THE FRONTLINES: GENDER, WAR, AND THE POST-CONFLICT PROCESS* (2011); Nynke Douma & Dorothea Hilhorst, *Fond de Commerce? Sexual Violence Assistance in the Democratic Republic of Congo*, WAGENINGEN UNIVERSITY (2012), http://www.wmm.com/filmcatalog/study/justice_report.pdf (pointing out the failure in the DRC to adequately distinguish between conflict related sexual violence and sexual violence that are based on socially accepted customary practices).

15. BERGER, *supra* note 1, at 173, 228.

16. *Id.* at 2.

17. *Id.* at 230.

18. *Id.* at 18-22.

19. *Id.*

20. *Id.* at 18-22.

21. This is the term used by many NGOs and government officials to describe a set of particularly serious crimes under international law. See, e.g., DAVID SHEFFER, *ALL THE MISSING SOULS: A PERSONAL HISTORY OF THE WAR CRIMES TRIBUNALS* 3 (2012).

22. KATHRYN SIKKINK, *THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS* 5 (2011). Sikkink builds her case around the conceptual frame of a "justice cascade," charging that social entrepreneurs across multiple jurisdictions committed to individual criminal accountability have succeeded in thickening and enabling norm diffusion. The claim to the cascade phenomena is rooted in "the idea that the most basic violations of human rights . . . cannot be legitimate acts of state." *Id.* at 13.

23. *Id.* at 13-14.

It is the extraordinary intermingling of the ‘before’ and the ‘after,’ as well as the place given to insurgent memory, that particularly sets Kimberly Theidon’s book apart. The work is innovative, challenging, and at times uncomfortable and unfailingly contains deft insight and reach. Theidon’s primary domain is anthropology, but its reach to the fields of international law and international human rights law with a particular interest in the gendered dimensions of armed conflict and post-conflict settings is unmistakable. *Intimate Enemies* is deeply theorized and has consistent intellectual force, but there is a taut line to the real world. Simple solutions are never offered, nor should they be, as one of her consistent strengths is to reveal density, as well as layered and conflicting realities.

Intimate Enemies takes as its starting point the awful realities of harm caused not by strangers or those who are external to a community, but rather by relatives, neighbors, and those in the extended ‘known’ community who perpetrate the most destruction.²⁴ Theidon’s work emerges from a choice to live intimately with a number of the communities from which *Sendero Luminoso* (Shining Path) emerged, persuaded, or controlled.²⁵ Her timeline (indicated in the Preface as from 1987 onwards) shows a sustained preoccupation with the region—Ayacucho—that has been termed the “cradle” of the Peruvian revolution.²⁶ The book thus evidences a lifelong project brought to fruition. There is an insistent, purposive commitment in this work to place and to people, and an authenticity of relationship and self in play as the scholar/author/anthropologist/observer/communal member reflects inwards and outwards. There is a willingness to probe disciplinary markers, to interrogate ‘nativism,’ and to take on the political myth-making of left and right, forging an independent scholarly voice that tenaciously holds its own.²⁷ The book confirms on every page its dedication to a role of “committed witness.”²⁸ It is the meticulous and forensic observation of the intimacy of death and harm in small and local places that marks this book out from other works addressing conflict-related violence and ruin. And yet, while the observations are located in the specificity of a place—a very rural and obscure place in the highlands and lowlands of Peru—there is universality to be gleaned in each segment and timely observation of the book. Theidon beautifully captures the space she borrows from Primo Levi: “the grey zone of half tints and moral complexity.”²⁹

Theidon’s book does not separate out the horrors of wartime³⁰ from the antecedent normality of Peruvian society. Thus, the harms of colonial pasts live with present day social inequalities, and the long-standing racialized discrimination against indigenous peoples is part and parcel of explaining the eruptive causes of violence and the limited reach of contemporary transitional justice measures. In this space of linking past and present harms, Theidon sits with a small group of thoughtful scholars reflecting on the pro-

24. THEIDON, *supra* note 1, at 25.

25. *Id.* at xi-xiii.

26. *Id.*

27. *See, e.g., id.* at ix-xiii.

28. *Id.* at 22.

29. *Id.* at xiii.

30. On the concept of time’s relationship to war, see MARY L. DUDZIAK, *WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES* (2011).

found paradox that is at the heart of transitional justice.³¹ Namely, while measures to address the failings of the past have a role in rebuilding society and state, transitional justice is "a product and [] an agent of neoliberal globalization, the most destructive effects of which . . . siphons off a part of the state's own legal, political, and symbolic power."³² Moreover, transitional justice has its own colonizing power, its own hierarchies and structural inclusions and exclusions, re-inscribing a sizeable portion of the pitfalls revealed in formal, legal process.

ORGANIZING PRINCIPLES

While societies rarely have the opportunity to revisit and remake their basic social, political, and legal compacts, countries emerging from conflict provide multiple opportunities for transformation on many different levels, opportunities uncommon in stable and non-transitional societies. Such potentially transformative moments are so infrequent that their occurrence helps explain scholarly and policy preoccupation with societies that have been deeply and cyclically violent.³³ Larry May identifies "six normative principles of *jus post bellum*: rebuilding, retribution, reconciliation, restitution, and reparation, as well as proportionality,"³⁴ as a means to organize a coherent understanding of *jus post bellum*. He also addresses one of the thorniest of issues: what difference should there be between victors and vanquished in terms of post-war responsibilities.³⁵ For May, the value of *jus post bellum* principles will strongly inform what international laws should be instituted in the aftermath.³⁶ His theory addresses not only political leaders intent on taking a country to war but also average citizens who consider the morality and legality of how wars ought to end.³⁷

If one aspect of the *jus ad bellum* motif is an extension of justness into the post-conflict phase,³⁸ then post-conflict reconstruction can be said to describe the collection of

31. See, e.g., Pablo de Grieff, David Gray, Christine Bell, Colm Campbell, and Fionnuala Ní Aoláin.

32. PIERRE HAZAN, *JUDGING WAR, JUDGING HISTORY: BEHIND TRUTH AND RECONCILIATION* 151 (2010).

33. In the context of women's empowerment for example, conflict transitions have been identified as critical break points that can allow for new versions of the social contract to emerge with better prospects for women to prosper within them. Moreover:

Conflict can provide women with opportunities to break out of stereotypes and stifling societal patterns . . . If women seize these opportunities, transformation is possible. The challenge is to protect the seeds of transformation sown during the upheaval and to use them to grow the transformation in the transitional period of reconstruction.

U.N. WOMEN, *PROGRESS OF THE WORLD'S WOMEN 2011-2012*, at 81, available at <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>.

34. MAY, *supra* note 1, at 1.

35. May poses this, at least initially, as a question:

[W]hy should these principles apply *equally* to both sides? If one side is clearly in the wrong because it initiated an unjust war, why shouldn't the consequence be that the side in the right has less of a duty of reconciliation than the side that was in the wrong? My view is that such an asymmetrical view of reconciliation will often fail.

Id. at 97.

36. *Id.* at 1.

37. *Id.* at 5.

38. Note, for example, the language of former President Jimmy Carter in response to the war in Iraq, emphasizing the relationship between the just war tradition and post-war responsibilities: "The peace it establishes must be a clear improvement over what exists." Jimmy Carter, *Just War -- or a Just War?*, N.Y. TIMES, Mar. 9, 2003, <http://www.nytimes.com/2003/03/02/opinion/just-war-or-just-a-war.html>.

programs created and administered by various international organizations and their local partners in the period immediately following the formal legal conclusion of armed conflict. There is frequently, but not inevitably, an overlap with the application of local and international transitional justice mechanisms and processes in play. In trying to understand how the concept of *jus post* differs or compares to post-conflict reconstruction, May's concept of justice in the aftermath of war, which focuses on the "rebuilding" of a state, is helpful.³⁹ From a methodological point of view, however, some linguistic parsing may be in order.⁴⁰ The idea of "re" building presumes a putting back together of that which is broken or destroyed, as does "re" construction. It is difficult to argue with the urgent necessity to bring order and structure back to societies whose physical and social infrastructure has been destroyed by communal violence and war. Yet, the comforting implication of this terminology presumes a going back to things as they were before, and this is where 'post-conflict reconstruction' and 'post-conflict reconciliation' frequently fall short. As feminist scholars have frequently noted, the call to reconstruct the pre-conflict order can be a slippery slope for women, risking a return to *status quo ante*.⁴¹ Similar pitfalls are present for marginalized and historically excluded communities within cyclically violent polities. Presumptions of the *status quo ante* also are largely played out on realist terms as a politics of power, security, and order.⁴² This approach has consistently ignored what Porter has termed the "politics of compassion," in which there is attentiveness to the needs of vulnerable persons who have experienced suffering, by active listening to the voices of the vulnerable and open, compassionate, appropriate responses to particular needs.⁴³ And yet, despite significant rhetoric to the contrary, much of post-conflict work is deaf to determining what women and other vulnerable persons want in terms of the post-conflict justice devised and meted out for them by local and international interveners.

For many, the enterprise of transitional justice, including the institutionalization and professionalization of its empire, has brought other complexities. These include the intricacies of using the law to curb violence, the "othering" of the subjects most likely to be in the contemporary gaze of criminal accountability,⁴⁴ the utilization of criminal law to advance the interests of powerful states, and the dominance of legal form in addressing the production and control of cyclical violence in deeply divided polities. Another related dimension of the complexity of victimhood is what emerges as competition for victimhood, "where practically everyone can demand reparation for suffering endured by

39. For a discussion defining the terrain as "governing practices after war ends," see MAY, *supra* note 1, at 2.

40. The ideas articulated here are more fully developed in Fionnuala Ní Aoláin & Dina Haynes, *Gender Jus Post Bellum*, in *JUS POST BELLUM: MAPPING THE NORMATIVE FOUNDATIONS* (Carsten Stahn et al. eds., forthcoming 2014).

41. Fionnuala Ní Aoláin, *Women, Security and the Patriarchy of Internationalized Transitional Justice*, 31 *HUM. RTS. Q.* 1055 (2009); but see Ana Maria Munoz Boudet, Patti Petesch, & Carolyn Turk, *On Norms and Agency: Conversations about Gender Equality with Women and Men in 20 Countries*, THE WORLD BANK (2012), available at <http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/On-Norms-Agency-Book.pdf>.

42. See generally Elisabeth J. Porter, *Can Politics Practice Compassion?*, 21 *HYPATIA* 97 (2006).

43. *Id.* at 97.

44. See generally RICHARD ASHBY WILSON, *WRITING HISTORY IN INTERNATIONAL CRIMINAL TRIALS* (2011).

his or her ancestors, turning the political community into a community of plaintiffs."⁴⁵

HARMS AND ACCOUNTABILITY

The end of war is now deeply intertwined with discourses of impunity, accountability, and amnesty. Practices and analyses of all three figure prominently in various ways in these books. In his reflections on reconciliation and the rule of law, May argues that "it is respect for procedures being fair in a society, especially among current and potential bystanders to atrocities, that is the crucial normative motivation for restoring the trust necessary for the rule of law."⁴⁶ Drawing on and responding to the work of Stromseth, Wippman, and Brooks, May seeks to provide philosophical legs to the claim that "[p]ursuing accountability fairly and credibly can have *empowering ripple effects* in a post-conflict society."⁴⁷ While May takes account of some critical arguments that have emerged concerning international criminal processes,⁴⁸ there remains a palpable desire to "reform" existing processes, and significant optimism as to the relative benefits of truth and reconciliation processes, as well as to restorative justice processes in doing better. The harshest critiques of international criminal justice find little expression here, particularly the concerns of selectivity and justice perverted by politics, as international criminal law struggles to achieve meaningful autonomy from the political powers that have created it. There is substantial optimism around non-traditional forms building on the notion that wider public participation address both legitimacy and by-stander challenges.⁴⁹ Again, while acknowledging the detractors, May remains cautiously optimistic about both the Rwandan example he utilizes, and the broader capacity of non-traditional forms to address the needs of victims, inscribing the virtue of the legal process for society as a whole.

By contrast, Theidon's book, specifically chapter one, which is concerned with the truth recovery process in Peru, offers salutary caution to such optimism.⁵⁰ Theidon deftly captures the structural and individual mandate of the Peruvian Truth and Reconciliation Commission ("PTRC"),⁵¹ but adds substantial value to the existing literature on the "aftermath" of truth and reconciliation processes as they are generally understood. Her analysis is firmly contained in the terrain of memory work, but that local memory work is layered, textured, and sometimes internally incoherent, requiring much of the researcher to provide coherence and linear narrative to the unfamiliar reader.⁵² To navigate

45. HAZAN, *supra* note 32, at 155.

46. MAY, *supra* note 1, at 106.

47. JANE STROMSETH, DAVID WIPPMAN & ROSA BROOKS, *CAN MIGHT MAKE RIGHTS?: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS* 260 (2006).

48. His "objections" acknowledge the potential weak link between reconciliation and the rule of law, meaning there may be too much expected of trials, and that there may be "too much emphasis on changing people rather than changing the circumstances within which those people act." MAY, *supra* note 1, at 121.

49. For an example of bystander challenges to atrocity, see Ron Dudai, "Rescues for Humanity": *Rescuers, Mass Atrocities, and Transitional Justice*, 34 *HUM. RTS. Q.* 1 (2012).

50. See generally *Final Report*, PERUVIAN TRUTH AND RECONCILIATION (2003), available at <http://cverdad.org.pe/ifinal/>.

51. This corresponds to a seminal study of truth processes and their gendered dimensions in South Africa. See FIONA ROSS, *BEARING WITNESS: WOMEN AND THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA* (2009).

52. For a groundbreaking exploration of everyday memory in post-conflict societies and a call to utilizing

the inner complexity, Theidon develops key concepts such as that “of a phenomenology of justice and injustice, as well as the complicated alchemy of remembering and forgetting that characterizes postwar social worlds.”⁵³

The relationship between trauma and truth yields valuable insights in this work. The scrutiny of the PTRC’s coding system and its hallowing out of harms of local and specific forms is tremendously important for scholars (legal and other) who reflect on the capture capacity of our existing transitional justice mechanisms. The study underscores the ability and limitations of legal form to instill respect for persons and the law in the aftermath of atrocity. Moreover, the analysis pithily acknowledges that data coding inflicts its own trauma on those who were its subjects. Theidon resists the temptation to make it all too easy, to provide straight lines. Rather, she moves between performativity and ordinary moments (and there is more of the latter), weaving a deep theoretical web that links in the nativism of explanatory forms, and shows sustained and pensive disciplinary reflection to the task at hand.

This dense, anthropologically-led frame should force scholars to think about the period encompassing the aftermath of war up to possible reconciliation in much more complex ways. Chapter seven drills down to the substance and practice of reconciliation in communities where those who killed and harmed live side by side with those who lost and were harmed.⁵⁴ Her motif of “making and unmaking” provides a valuable insight into doing and undoing violent patterns of behavior.⁵⁵ Equally significant is the struggle with the idea that an ethnography of reconciliation mandates accepting the contradictory logics that are at work when the politics of scale are introduced to a post-conflict site.⁵⁶ Theidon’s writing on compassion, its loss, and its rescue is a vital addition to the scholarly understanding of the aftermath of war, not least because it has been so substantially ignored in other literatures.

Intimate Enemies is also concerned with the process of social reconstruction (or social repair) after violence. This book digs beyond the prosaic and the instrumental in post-conflict reconstruction and forces scholars and practitioners to face uncomfortable human realities. These realities in conflicted communities involve living next to those who have murdered those closest to you and inflicted humiliation and suffering on you and those to whom you have the closest bonds; yet the prescient communal and economic realities mandate uneasy co-existence.⁵⁷ Theidon gets us to the micro-level of these lived lives through the authentic voices of those with whom she has lived and the echo of their stated and unstated realities. A significant portion of the literature on post-conflict co-existence suffers from shiny optimism and a bright futures mentality, forged by scholars who live far away from the places of violence and darkness.⁵⁸ Theidon does not

informal, high-resolution indicators that can be supplied by examining localized and ground-level perspectives on political change, see Kris Brown, ‘High Resolution’ Indicators in Peacebuilding: The Utility of Political Memory, 7 J. INTERVENTION & STATEBUILDING 492 (2012).

53. THEIDON, *supra* note 1, at 12.

54. *Id.* at 185-224.

55. *Id.* at 46, 188.

56. *Id.* at 187, 361.

57. *See id.* at 159, 268-69.

58. Brandon Hamber & Richard A. Wilson, *Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies*, 1 J. HUM. RTS. 35, 36 (2002).

allow her reader a comfort zone. She mandates that we connect to the complexity of intimate violence in local places. We connect through her testamentary presence to violence and its luminal presence in the present.

ACTORS

The actors described in these books are multiple. For Berger and May, the movers and shakers are primarily states, and sometimes non-state actors or individuals who can be disruptive to states or force the notice of state actors. It goes without saying that men figure predominantly in the stories of war making, war ending, and war memory.⁵⁹ For Theidon, the state is an unavoidable backdrop to all action in the micro-sphere, but in the highlands and lowlands of Peru, as in many conflict zones around the world, the state's presence is often luminal.⁶⁰ Here, it is the relationship between central and field actors—a principle of mutual exploitation⁶¹—which informs the placement of key actors and the choices they make *in situ*.

Theidon's telling of the aftermath of war is deeply gendered. Drawing on earlier work, which combined primary empirical data from multiple interviews with ex-combatants in Colombia, she pays attention to the roles adopted by, forced upon, and assumed by both men and women in violent polities.⁶² In addressing the specificity of masculinity practices in post-war Peru,⁶³ Theidon does not merely tell us something important about one jurisdiction and its attempts to address the morass of male muscle in the negotiation toward conflict ending. Rather, she reaches across jurisdictions, and her insights around the status and value that combatancy brings to men in particular social and cultural settings are relevant to multiple conflict settings and endings.⁶⁴ Theidon demonstrates how cogently masculinities are tied to male status and limited exit, thereby problematizing disarmament, demobilization, and reintegration processes in ways that ought to bring pause to the work of policy makers merely intent on taking the guns away.⁶⁵ While there are multiple scholars thinking about the gender dimensions of armed conflict and its aftermath, few offer the originality we find evidenced in *Intimate Enemies*.⁶⁶ The book adds to a growing literature of transition and gender, including the work of Waylen,⁶⁷ Ross⁶⁸ and others. The narrative that captures the intersection of gen-

59. There are the odd exceptions here and there. For example, in the context of Japan, the particular challenges posed to the construction of and control over collective memory by the action of "comfort" women is well noted and integrated into the overall analysis of memory management in the Asian states. BERGER, *supra* note 1, at 180, 185.

60. See THEIDON, *supra* note 1, at 142, 144, 177-78, 230.

61. Samuel Tanner & Massimiliano Mulone, *Private Security and Armed Conflict: A Case Study of the Scorpions During the Mass Killings in Former Yugoslavia*, 53 BRIT. J. CRIMINOLOGY 41, 49 (2013).

62. Kimberly Theidon, *Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia*, 31 HUM. RTS. Q. 1, 13 (2009).

63. See THEIDON, *supra* note 1, at 135-36.

64. See *id.*

65. *Id.* at 142.

66. See, e.g., Elisabeth Jean Wood, *Sexual Violence During War: Toward an Understanding of Variation*, in ORDER, CONFLICT, AND VIOLENCE 321 (Stathis N. Kalyvas, Ian Shapiro, & Tarek Masoud eds., 2008); Elisabeth Jean Wood, *Armed Groups and Sexual Violence: When is Wartime Rape Rare?* 37 POL. & SOC'Y 131 (2009).

67. See, e.g., GEORGINA WAYLEN, *ENGENDERING TRANSITIONS: WOMEN'S MOBILIZATION, INSTITUTIONS, AND GENDER OUTCOMES* (2007). Waylen has helped legal scholars reframe the way we understand political

der, testimony, and voice in this book is particularly noteworthy. Notably, Theidon's site-specific analysis of widows in chapter six⁶⁹ is an important contribution to the general legal, sociological, and anthropological literatures on an understudied segment of the victim population. Theidon's focus on an archetypal persona—and her close attention to this under-examined category of widows—is rigorous and poetic in equal measure. Her description of the Greek chorus quality⁷⁰ of the group as they enter and sustain presence in public spaces, the complex manner in which the group puts itself “in the position of a man,”⁷¹ and the duality of pain and possibility⁷² that emerges in this particular location of loss for women is deeply instructive to scholars and policy makers. While building some of her analysis on the prior research of Linda Green, Theidon goes beyond that contribution to cite widows as a key reference point in understanding the gendered post-conflict terrain.⁷³

REMEMBERING

After war, memories matter. For Thomas Berger, remembering is as much a state-driven exercise as it belongs in the domain of individual memories.⁷⁴ His three-pronged country study seeks to explain the effects of historical memory on the political affairs of three nations with a “past” to reckon with—Germany, Austria, and Japan. While each of these three cases has garnered substantial attention in its own right concerning how they “deal with the past,”⁷⁵ this book neatly captures the best of the comprehensive literatures on the three nations, connecting the politics so as to offer an assessment of how these states have “promoted particular official historical narratives and to identify the domestic and international consequences of their doing so.”⁷⁶ Along the way, a very cogent roadmap is offered for Germany's assumption of the role of model penitent, Austria as the prodigal penitent, and Japan as the occasionally truculent model impenitent. What we learn from the nuanced and succinct country studies is that the stereotyped assumptions of each country's penitence (or lack thereof) conceal complex relationships with history, responsibility, and the acceptance of contrite gestures and actions. Despite the attribution of a “severe form of collective amnesia” to Japan, a closer reading exposes a much

reform (driven by legal mechanisms) to advance women's interests in post-conflict settings.

68. See, e.g., ROSS, *supra* note 51 (containing an ethnographic exploration of the marginalized voices of women participants in the South African truth recovery process).

69. THEIDON, *supra* note 1, at 143-81.

70. *Id.* at 158.

71. *Id.* at 147.

72. *Id.* at 148.

73. LINDA GREEN, *FEAR AS A WAY OF LIFE: MAYAN WIDOWS IN RURAL GUATEMALA* (1999).

74. BERGER, *supra* note 1, at 181-88.

75. On Germany, see, e.g., THE POLITICS OF RETRIBUTION IN EUROPE: WORLD WAR II AND ITS AFTERMATH (István Deák, Jan T. Gross & Tony Judt eds., 2000); JEFFREY HERF, *DIVIDED MEMORY: THE NAZI PAST IN THE TWO GERMANYS* (1997); Karl Wilds, *Identity Creation and the Culture of Contrition: Recasting 'Normality' in the Berlin Republic*, 9 GERMAN POL. 83 (2000). On Austria, see, e.g., AUSTRIAN HISTORICAL MEMORY AND NATIONAL IDENTITY (Günter Bischof & Anton Pelinka eds., 1997); BARBARA JELAVICH, *MODERN AUSTRIA: EMPIRE AND REPUBLIC, 1815-1986* (1994); HELLA PICK, *GUILTY VICTIM: AUSTRIA FROM THE HOLOCAUST TO HAIDER* (2000). On Japan, see, e.g., FRANZISKA SERAPHIM, *WAR MEMORY AND SOCIAL POLITICS IN JAPAN, 1945-2005* (2006); Nicholas D. Kristof, *The Problem of Memory*, 77 FOREIGN AFF. 37 (1998).

76. BERGER, *supra* note 1, at 1.

greater level of acknowledgement that Imperial forces were responsible for atrocities and some fumbling towards making amends has been made.⁷⁷ Japan's efforts to pursue reconciliation have consistently failed to meet expectations and created a credibility challenge for the state. By contrast, Germany and Austria have been conspicuously more successful in adopting a repentant stance and reaping the economic and political rewards that follow.

The memory of the past and those who inhabit it is endemic in Theidon's Peru.⁷⁸ Her gaze is on what Pugh has described as "the voices and agency of the subaltern strangers-to-be cured, except as 'spoilers', romanticised victims, or western trained allies," who "have been almost entirely missing from the liberal narrative and from international peacebuilding practice."⁷⁹ Memory practices—what Theidon describes as the "complex alchemy of remembering and forgetting"—are a constant.⁸⁰ Her probing of "forgetting"⁸¹ is a singular contribution to the existing transitional justice literature and will be a marker in the field. As Theidon explores the complexity of witchcraft practices and the weaving in and out of religiosity in the conflict and post-conflict universe, she brings attention to a largely under-studied phenomenon from an armed conflict perspective.⁸² This analysis weaves its way into a parallel universe of universality and culturally relativistic arguments, and forces the intrepid reader to rethink those categories as one is submerged in the locales inhabited by this post-conflict setting.

For this feminist legal scholar, one portion of this book that left a sustained impression was the deliberations on embodiment and the manner in which the female body and voice holds, sustains, and marks the experiences of loss, shock, horror, disbelief, and the reality of having lived through the unbearable.⁸³ Theidon makes us understand the body as a storehouse. There is such vividness to the physical descriptions, and there is extraordinary capture of embodied harm, leaving the reader with an undulating sense of the gendered body in pain. The way in which Theidon juxtaposes the lived lives of women and men who have endured horror, connected with its constant manifestation in the physicality of day to day living, gives new depth to the constancy of war long after formal hostilities have ended. It roots and confirms the tenacity of memory. It also tells us how peace is "processed" at ground level. As Brown comprehensively articulates:

'Memory work' can reveal the concerns and chart the activities of many actors in processes of conflict resolution and management, transitional justice and statebuilding. Issues such as victim hierarchies, disarmament, security reform, the use of political symbols, the importance of territory, relations with the communal 'other', the

77. *Id.* at 123. Notably, the amends have included disputes over the preciseness of acknowledgment as opposed to apology and a willingness to engage in a significant amount of foreign aid to neighboring Asian states, but no willingness to pay formal reparations to states formerly under Imperial control.

78. See THEIDON, *supra* note 1, at 33-35, 40-41, 269.

79. Michael Pugh, *Local Agency and Political Economies of Peacebuilding*, 11 *STUD. ETHNICITY & NATIONALISM* 308, 314 (2011).

80. THEIDON, *supra* note 1, at 269.

81. See *id.* at 275-76.

82. See *id.* at 67-100, 191-93.

83. See *id.* at 40-43.

instrumentalization of myth and history, battles over legitimacy, calls or truth recovery, the acceptability of institutions, the naming of places, and the complexities of intra- as well as inter-community conflict frequently resonate within social memory practice⁸⁴

CONCLUSION

War and its human costs are become painfully visible to a global and watching world. Despite greater ‘knowability’ of violence and thus the presumption of deterrence, “some researchers have shown that mass crime must be regarded as a cumulative process of radicalization, underpinned by a complex system of extermination.”⁸⁵ In all three of these books, microscopic attention is paid to reckoning on the aftermath of war, where atrocity has been widespread, communal trust is shattered, and legal and political systems are barely functional. All three books offer a range of insights to the citizen, scholar, and policy maker. Berger would have us pay close attention to memory practices and the intentionality of state engagement with remembering and forgetting.⁸⁶ Despite some apparent malleability in managing the past, Berger confirms that what are assumed to be contemporary trends toward accountability and acknowledgment actually have deeper, post-second world war roots. His country studies broadly confirm that the confluence of the emergence of human rights norms, the socialization of states, and the need to address the legacy of violations, thereby enabling economic and political relationship to flourish between former state adversaries, have undeniable effects on state relationships to memory practices.

May holds tightly to a positive vision of reconciliation encapsulated in principles of *jus post bellum*. For May, the articulation of such principles and their activation not only effect the aftermath, but tie back to and are related to the justification for methods and means of any just war.⁸⁷ Theidon’s sensibility keeps us firmly rooted in the multifaceted world of loss, suffering, and inexplicability. It is not an entirely desperate environment, as compassion, agency, and order reveal themselves in surprising and deeply humanizing ways. Her voice is authentic, troubling, and honest, and speaks across multiple disciplines in new and unsettling ways. What the universe of conflict and post-conflict reality reveals, as the poet Seamus Heaney’s phrase captures, is that “anything can happen.” There are no linear outcomes, no given assurances, and nothing is necessarily predictable. It is precisely the unknown quality that attracts scholars of all hues and gives inter-disciplinary knowledge its distinct value. The virtue of that interdisciplinary wealth is much in evidence in all three of these books.

84. Brown, *supra* note 52, at 3.

85. Tanner & Mulone, *supra* note 61, at 49; *see also* Hans Mommsen, *The Realization of the Unthinkable: The ‘Final Solution’ of the Jewish Question in the Third Reich*, in *THE NAZI HOLOCAUST: HISTORICAL ARTICLES ON THE DESTRUCTION OF EUROPEAN JEWS* 217, 217-64 (Michael R. Marrus ed., 1989); MARTIN SHAW, *WHAT IS GENOCIDE?* (2007).

86. BERGER, *supra* note 1, at 245-46.

87. MAY, *supra* note 1, at 237.