

## WAR, STATES, AND MOVEMENTS: WITH TILLY; BEYOND TILLY\*

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In 2013, a virtual tornado hit the American National Security Agency (NSA) in Fort Meade, Virginia. A 29-year old NSA contractor, Edward Snowden, working in Hawaii, had downloaded a large number of classified government documents and secretly gave them to a freelance journalist, Glenn Greenwald, and a documentary film-maker, Laura Poitras, in a hotel in Hong Kong<sup>1</sup>. Greenwald and Poitras turned the files over to «The Guardian» and «The Washington Post», and within a week, they revealed to the world the secrets that Snowden had uncovered. It turned out that the NSA had been monitoring telephone traffic from around the world, invading American citizens' privacy, and forcing internet companies to share their records with the government<sup>2</sup>. Snowden's revelations were the most important release of secret government documents since the Pentagon Papers were given to the «Washington Post» and the «New York Times» by Daniel Ellsberg in the 1960s.

The Obama administration quickly labeled Snowden a traitor, revoked his passport, and sought to have him arrested and brought back to America to be tried under the World War One Espionage Act. Snowden tried to get to Ecuador, where he hoped to ask for asylum, but got stuck between planes in

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<sup>1</sup> The government at one point accused Snowden of stealing «millions of pages of documents», a number that has no known source in reality, but which the press picked up on as if it were a fact.

<sup>2</sup> A. Ross Sorkin, *Tech Companies Tread Lightly in Statements on U.S. Spying*, in «New York Times», June 10, 2013, available at [http://dealbook.nytimes.com/2013/06/10/tech-companies-tread-lightly-in-statements-on-u-s-spying/?\\_php=true&\\_type=blogs&\\_r=0](http://dealbook.nytimes.com/2013/06/10/tech-companies-tread-lightly-in-statements-on-u-s-spying/?_php=true&_type=blogs&_r=0). As late as September 2014, there were still 24,700,000 «hits» for the keywords «Snowden + NSA» on Google.

Moscow, where he remains as an uneasy guest of the Russian government<sup>3</sup>. Nearly two years later, new documents continue to be made public, revealing the scope of the government's abuses of privacy, and Snowden – though in semi-hiding in Moscow – remains very much in the public eye<sup>4</sup>.

Internationally, Snowden's revelations caused a crisis with some of the United States' closest allies – like Chancellor Merkel of Germany, who discovered the NSA had been hacking her cellphone<sup>5</sup>. Domestically, it revealed that the NSA had been scooping up the telephone and internet communications of millions of American citizens and that the NSA's leaders had been regularly lying to Congress about what the agency was doing<sup>6</sup>.

What would Charles Tilly have made of the Snowden affair?

*First*, he would have linked it to *war*: He would have argued that modern warfare has increasingly penetrated domestic society. He would have seen that as wars blend into peace, peace becomes more warlike and civil society has been the victim;

*Second*, he would have linked war to *states*: He would have seen that the American state is not a despotic «Schmittian state» as some observers think it is<sup>7</sup>; he would have seen that it is what Michael Mann called an *infrastruc-*

<sup>3</sup> Snowden was granted a temporary one-year resident permit by the Russian government, which was renewed for three years in August, in the midst of the standoff between President Putin and the western governments over Ukraine.

<sup>4</sup> Greenwald's article can be found at <http://www.theguardian.com/world/2014/may/11/glenn-greenwald-nsa-whistleblower-edward-snowden-book> and Poitras's video at <http://www.theguardian.com/world/video/2013/jun/09/nsa-whistleblower-edward-snowden-interview-video>. The story of how Greenwald and Poitras were contacted by Snowden, obtained these files from him, and got them published by the two newspapers is told with gripping suspense by Greenwald in his *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*, New York, Metropolitan Books, 2014. At this writing, it is too soon for scholarly assessments of the «Snowden affair» to have appeared, but see L. Harding's *The Snowden Files: The Inside Story of the World's Most Wanted Man*, New York, Vintage Books, 2014.

<sup>5</sup> In September 2014, Snowden and the editor of «The Guardian», Alan Ruisberger, were awarded an alternative Nobel Prize: <http://abcnews.go.com/International/wireStory/snowden-honored-alternative-nobel-25722895>.

<sup>6</sup> <sup>7</sup> When Director of National Intelligence James Clapper was asked by Senator Ron Wyden of the Senate Intelligence Committee whether Americans' private communications were being surveilled, he lied to the American people. The Clapper testimony to the Senate Intelligence Committee in March 2013 can be found at [http://www.youtube.com/watch?v=T9ss2\\_0emOY](http://www.youtube.com/watch?v=T9ss2_0emOY). In June 2013, Clapper apologized to Intelligence Committee Chair, Dianne Feinstein, for «erroneous testimony».

<sup>7</sup> Schmitt's theories worried Italian philosopher Giorgio Agamben enough for him to put his theory at the center of his study, *Stato di eccezione*, published in the shadow of 9/11 (*State of Exception*, Chicago and London, University of Chicago Press, 2005). He saw the state of exception as «a zone of anomie in which [...] all legal determinations are deactivated».

*tural state* which operates within civil society by molding public opinion and co-opting businesses and other groups<sup>8</sup>;

*Third*, he would have looked at it as a form of *contentious politics*. He would have seen that the «infrastructural power» of the American state is a double-edged sword; while it has coopted hundreds of companies and thousands of American citizens in the name of national security, it has also opened space for new forms in the repertoire of contention – like that of Edward Snowden and his allies.

But Tilly never systematically connected his work on war and state building to his work on contentious politics. When charged with this lacuna, he would dismiss it, saying: «I've written lots of books on war and state building, and lots of work on contentious politics: let someone else connect them». When Tilly left us in the summer of 2008 I resolved I would try to make this connection. I spent the next five years working on the book I just completed, which is dedicated to him. It is called *War, States and Contention* and it is my attempt to bring together the two sides of the Tillian heritage. In the book, I look at four historical cases of war, states and contention: the French revolution, the U.S. Civil War, the connection between World War One and the fascist revolution in Italy, and the United States after 9/11. Since the fourth case is the most extended one, let me use it to show how I built on Tilly but went beyond Tilly in looking at the interactions among war, states, and contention.

*Endless Warmaking.* We Americans like to think of ourselves as a peace-loving people, insulated from the wars of Europe and Asia by two oceans and determined to make progress through enterprise rather than conquest. But in fact, Americans have been involved in one form of military conflict or another since the founding. This table calculates the years of America's military engagements from evidence that Mark Brandon has gathered, and codes them for the type of military engagements they involved<sup>9</sup>.

<sup>8</sup> Mann's masterwork is his four volume *Sources of Social Power* (New York, Cambridge University Press, 1986-2013). The concept of infrastructural power is most lucidly presented in his article *The Autonomous Power of the State*, in «European Journal of Sociology», XXV, 1984, 2, pp. 185-213.

<sup>9</sup> M. Brandon, *War and the American Constitutional Order*, in *The Constitution in Wartime Beyond Alarmism and Complacency*, ed. by M. Tushnet, Durham-London, Duke University Press, 2005, pp. 11-38

*Number of U.S. military actions and number of years by type of conflict*

	Internal suppressions	External police actions	Seizures/ occupations of territory	Internal wars/ revolutions	Undeclared foreign wars	Declared foreign wars
Number of actions	15	28	16	2	13	6
Number of years	39	105	51	12	71	21

Clearly, not all these wars were as significant as others. For many of these years, Americans were engaged «only» in suppressing Indian tribes, gaining new territory, or engaging in «police actions», making the claim that Americans don't often engage in war somewhat disingenuous. But military action, long sustained, penetrates civil society. As Brandon concludes, «military action has been such a substantial part of the history of the nation that it is not unfair to characterize the United States as a warrior state»<sup>10</sup>.

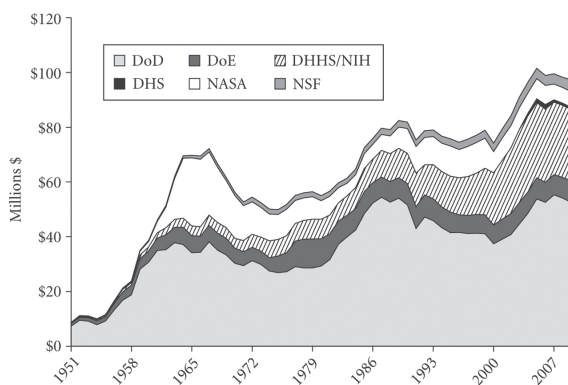
America's wars have also grown increasingly longer: the war against the Spanish in 1898 lasted for one year; Americans fought in Europe for two years in World War One; four in Europe and Asia in World War Two; thirteen from the beginning of U.S. involvement in Vietnam to the evacuation of the last Americans in 1975; ten years in Iraq and the thirteen years the country has been engaged in Afghanistan. If we consider the Cold War as a real war, the growth in the number of years of American wars grows even longer.

What are the effects of endless wars? First, there is an effect on the laws of war: when wars were short and finite, holding prisoners of war was justified by the desire to keep them off the battlefield until war's end. But when wars drag on endlessly, prisoners like those at Guantanamo Bay, Cuba, can be held *ad infinitum*.

Second, endless wars contribute to what Harold Lasswell called the «garrison state» or what Eisenhower called the «military-industrial complex». But neither Lasswell nor Eisenhower could have foreseen the militarization of American society or that heavy military equipment would be given to thousands of local police forces and even some school districts.

This «military-industrial complex» has morphed into a «military-technological» complex. The figure below shows the rise in technology spending by six federal agencies since the 1950s (it of course does not include the secret spending by the CIA or other national security agencies):

<sup>10</sup> Same as above.



Finally, instead of the bottom-up pluralism that observers since Tocqueville have seen as the logic of American society, these trends have created what Linda Weiss, in her recent book, *America Inc.*<sup>11</sup>, calls «governed interdependence», by which she means that «the strong state and strong industry go hand-in-hand; through their partnership, the capacities of both are mutually enhanced»<sup>12</sup>.

This takes me to Michael Mann's concept of «infrastructural power». Mann defines this concept as «the power of the elite to penetrate and centrally coordinate the activities of civil society through its own infrastructure». This he contrasts to «despotic power», which he defines as «the power of the elite over civil society»<sup>13</sup>. Through the exercise of «infrastructural power» the American state has been able to sustain almost uninterrupted war for the last thirteen years without exercising strong repression against citizens. The United States has not become a despotic state – as critics like Agamben have warned; it has become a state in which a combination of hierarchical and infrastructural power have impacted on both rights and contention. Let me begin with rights and then turn to contentious politics and social movements.

*Not a Schmittian State.* In his well-known theory of the state, German legal theorist, Karl Schmitt famously reduced state sovereignty to the rule: «Sovereign is he who decides what the law is»<sup>14</sup>. In that book, and in his

<sup>11</sup> L. Weiss, *America, Inc? Innovation and Enterprise in the National Security State*, Ithaca-London, Cornell University Press, 2014.

<sup>12</sup> L. Weiss, *Governed Interdependence: Rethinking the Government-Business Relationship in East Asia*, in «The Pacific Review», VIII, 1995, 4, pp. 589-616.

<sup>13</sup> M. Mann, *The Autonomous Power of the State: Its Origins, Mechanisms, and Results*, in *States in History*, ed. by J. Hall, Oxford, Basil Blackwell, 1987, pp. 109-136.

<sup>14</sup> K. Schmitt, *Political Theory: Four Chapters on the Concept of Sovereignty*, Chicago-London, University of Chicago Press, 1985.

essay on *The Partisan*, he described politics as a struggle between enemies, with the prime enemy those who oppose the ruler's designs<sup>15</sup>. The despotic state in wartime crushes opposition and regards civil society as a territory to be conquered. Schmitt applauded Weimar President Hindenburg's use of exceptional powers, which brought Adolf Hitler and the Nazis to power. Many American constitutional lawyers and social scientists who were deeply affected by 9/11 feared that the Bush administration's expansion of power would produce a Schmittian state of exception. Prominent among them was sociologist Kim Scheppele, who wrote a deeply pessimistic article subtitled<sup>16</sup>. In Scheppele's model, the script of exceptional powers begins at the center of the state but follows seven predicable stages that increasingly penetrates civil society with despotic powers:

- *Executive centralization*
- *Militarization*
- *Procedural shortcuts*
- *Putting people in their places*: Regimes of preventive detention and banning demonstrations
- *Inversion of speech protection*
- *Reversal of transparency*
- *Anticipatory violence*

A purely despotic state uses the instruments of despotic power – the military, the police, states of exception – to control citizens when it goes to war. For example, Scheppele's model would not have surprised historians who studied how Italy intervened in World War One. Drawing on the definitive work of Giovanna Procacci<sup>17</sup>, we see that the government ruled through executive decree – Parliament almost never met throughout the war years;

<sup>15</sup> K. Schmitt, *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*, New York, Telos Press, 2007.

<sup>16</sup> K.L. Scheppele, *The Migration of Anti-Constitutional Ideas: The Post-9/11 Globalization of Public Law and the International State of Emergency*, in *The Migration of Constitutional Ideas*, ed. by S. Choudhry, Cambridge-New York, Cambridge University Press, 2006, pp. 347-373.

<sup>17</sup> Of Procacci's many contributions to our understanding of despotic power in Italy during the First World War, the most relevant are *La legislazione repressiva e la sua applicazione*, in *Stato e classe operaia in Italia durante la prima guerra mondiale*, a cura di G. Procacci, Milano, Franco Angeli, 1983, pp. 41-59; *La società come una caserma. La svolta repressiva degli anni di guerra*, in *Grande guerra e popolazione civile. Repressione, violenza, deportati, profughi*, a cura di B. Bianchi, Milano, Unicopli, 2006, pp. 283-204; *Stato di guerra, regime di eccezione e violazione delle libertà: Francia, Inghilterra, Germania, Austria, Italia dal 1914 al 1918*, in *Le guerre mondiali in Asia orientale e in Europa. Violenza, collaborazionismi, propaganda*, a cura di B. Bianchi, L. De Giorgi, G. Samarini, Milano, Unicopli, 2009, pp. 33-52; and *Alcune note sulle eredità della prima guerra mondiale*, in *Pensare la contemporaneità. Studi di storia per Mariuccia Salvati*, a cura di P. Capuzzo, C. Giorgi, E. Martini, C. Sorba, Roma, Viella, 2011, pp. 49-66.

the military took over the management of factories in the entire North; Parliament passed a set of *Provvedimenti per la difesa economica e militare dello Stato* which essentially gave the government *pieni poteri*; there was widespread use of *domicilio coatto*; demonstrations were banned and newspapers were censored.

Students of the American state's reaction to its security dilemma since 9/11 have found plenty of evidence for the emergency script that Scheppele describes too. But they also find an increased use of *infrastructural* power and a reciprocal cooptation of the agents of mobilization and opinion that was largely missing in the Italian government's internal policies in World War One. For example, Lance Bennett and his colleagues found that, aided by the cooptation of the Democratic party, the media «indexed the news» to support the government's war making policies<sup>18</sup>.

The instruments of infrastructural power are not the same as the repression of dissidence. They can include: control of the media; expanded defense contracts on which hundreds of thousands of workers and thousands of businesses depend; the mobilization of civil society groups in support of the war; the denigration of opponents; perhaps most important, engaging actors in civil society with responsibility for war-making through the outsourcing of military and intelligence activities to private contractors.

It was such a company that Edward Snowden was working for in Hawaii when he exposed the government's intrusion into the public's privacy. When we turn to the expansion of state power in the United States since 9/11 we see a combination of despotic and infrastructural power with a mixed effect on citizens' rights and social movements. Let's begin with rights and then turn to the effects of infrastructural power on social movements.

*Rights and Wrongs in the Post 9/11 Era.* Paradoxically, Tilly saw the establishment of rights as one of the indirect effects of war-making. But in the years after 9/11, critics of the Bush administration like legal academic David Cole, human rights lawyer Joseph Margulies, and publicist Mark Danner criticized the Bush administration for its ruthless repression of the rights of Muslim immigrants, battlefield detainees, and Muslim activists like Abu Omer, the Milanese Imam, who were kidnapped and sent to dark sites where they were tortured and abused<sup>19</sup>.

<sup>18</sup> W. Lance Bennett, R. Lawrence, S. Livingston, *When the Press Fails. Political Power and the News Media from Iraq to Katrina*, Chicago, University of Chicago Press, 2008.

<sup>19</sup> The literature criticizing the Bush administration for its repression of rights is vast. The most vivid condemnations can be found in D. Cole's *Enemy Aliens: Double Standards and Constitutional Freedoms in The War on Terrorism*, New York, The New Press, 2003; J. Margulies' *Guantanamo and the Abuse of Presidential Power*, New York, Simon and Schuster Paperbacks, 2006, and *What Changed When Everything Changed: 9/11 and the Making*

It was actions such as these that led critics like Scheppele to condemn the use of exceptional powers to «defend the homeland». The Bush-Cheney administration was not simply eroding rights, as previous Presidents from Wilson to Roosevelt to Nixon had done<sup>20</sup>; they justified their actions with an organic theory of «the unitary executive» according to which the president could establish a state of exception unilaterally, secretly, and despotically. To many observers after 2001, the United States was beginning to look like a «Schmittian» state. Yet for every story of suppression of civil liberties, there was a Tillian «counter-story». Looking at the history of rights in America, constitutional lawyer Mark Graber writes:

Some civil rights and liberties have historically been unaffected by war. Military action in American history is not associated with any substantial rise in the annual rate of executions or news restrictions on reproductive rights. Many restrictions on civil liberties are selectively applied<sup>21</sup>.

When we look at how the War on Terror and the wars in Iraq and Afghanistan affected the rights of Americans, the picture is a mixture of repressive stories and libertarian responses, from human rights lawyers like Joseph Margulies and Clive Stafford-Smith and law firms like Wilmer Hale and Shearman and Sterling, who defended detainees; civil society groups like the Bill of Rights Defense Committee, which passed a series of resolutions in local city councils throughout the country; and legally-oriented social movement organizations like the American Civil Liberties Union and the Center for Constitutional Rights.

When the Bush administration locked up suspects in Guantanamo and refused them even the most basic rights of *habeas corpus* guaranteed by the constitution, critics like Scheppele despaired that the country was moving towards despotic power. But beginning on 2004, lawyers and civil liberties groups began to bring a series of Supreme Court cases that either reversed or modified these decisions:

- In *Rasul v. Bush*, 542 U.S. 466 (2004), the Court held that the U.S. court system has the authority to decide whether foreign nationals (non-U.S. citizens) held in Guantanamo Bay were wrongfully imprisoned.

*of National Identity*, New Haven-London, Yale University Press, 2013; and M. Danner's *Torture and Truth: America, Abu Ghraib, and the War on Terror*, in «New York Review Books», October 15, 2004, p. 592. For a documentary history of the Bush administration's legal justifications for its torture and detention policies, see K. Greenberg, J. Dratel, ed. by, *The Torture Papers: The Road to Abu Ghraib*, New York-Cambridge, Cambridge University Press, 2005.

<sup>20</sup> G.R. Stone, *Perilous Times: Free Speech in Wartime*, New York, Norton, 2004.

<sup>21</sup> M. Graber, *Counter-Stories: Maintaining and Expanding Civil Liberties in Wartime*, in *The Constitution in Wartime*, cit., p. 95.

- In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) the U.S. Supreme Court reversed a lower court dismissal of a *habeas* petition brought on behalf of Yaser Esam Hamdi, a U.S. citizen being detained indefinitely as an «illegal enemy combatant».
- In *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), the Supreme Court held that military commissions set up by the Bush administration to try detainees at Guantanamo Bay lack «the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949».
- And in *Boumediene v. Bush*, 553 U.S. (2008), on behalf of Lakhdar Boumediene, a naturalized citizen of Bosnia and Herzegovina, held in military detention by the United States at the Guantanamo Bay detention camps. The court held that the prisoners had a right to habeas corpus under the United States Constitution and that the Military Commissions Act was an unconstitutional suspension of that right.

Civil liberties groups were delighted with these decisions. On its website, the Center for Constitutional Rights called for the lower courts to «quickly move to hold hearings in the 200-odd pending individual cases where detainees are challenging their indefinite detention without charges»<sup>22</sup>. Alas, this was not to be: The Supreme Court allowed the lower courts to define the content of the decisions and they did so extremely narrowly. When a district court approved the habeas petition of Mohammed Al-Adahi, the Court of Appeals of the District of Columbia Circuit reversed the decision on the ground that the lower court had held the government up to too high a standard of evidence. An analysis by two law professors at Seton Hall University showed that following the Al-Adahi decision, of 12 Guantanamo habeas petitions that came to the District of Columbia Circuit, 11 were reversed<sup>23</sup>.

What can we conclude from this mixed history of the rights of foreigners swept up in the reaction to 9/11 and the Iraq and Afghanistan wars? While the American state is not a pure Schmittian state in which the sovereign has the power to declare what the law is, neither is it a pure rule *of* law state in which the law protects rights irrespective of state interests. It is a state governed by rule *by* law in which the law is susceptible to the push and pull among elements of the state and between the state and civil society. This takes me to my final observations about the infrastructural state: the role of social movements and contentious politics in war time.

<sup>22</sup> Center for Constitutional Rights, *Legal Analysis: Boumediene v. Bush*, <http://ccrjustice.org/learn-more/faqs/legal-analysis%3A-boumediene-v.-bush/al-odah-v.-united-states>.

<sup>23</sup> M. Denbeaux *et al.*, *No Hearing Habeas: D.C. Circuit Restricts Meaningful Review*, Seton Hall University School of Law, 2012.

*Contentious Politics in the Infrastructural State.* «A persistent theme in American history», writes constitutional lawyer Jack Goldsmith, is that «the rise of well-resourced advocacy groups that scrutinize government national security actions is one of the great accountability innovations of the last decade»<sup>24</sup>. What Goldsmith means by «well-resourced advocacy groups» is what we call «social movements», and, in particular «peace movements». The infrastructural state provides opportunities for contentious politics. Since the first World War, social movements have had a profound effect on war making in the United States:

- World War One peace activists were responsible for founding the organization that became the American Civil Liberties Union (ACLU) – the main protector of rights against the emergency state in the United States today;
- Conservative groups kept the United States out of the Second World War until Japan destroyed the Pacific fleet at Pearl Harbor in December 1941;
- The anti-Vietnam war movement helped end the war in Southeast Asia, ended conscription, and led to the expansion of civil liberties in the 1970s after Watergate and the Nixon resignation<sup>25</sup>;
- In the 1980s, President Reagan was forced to modify his nuclear missile threat by a major freeze movement<sup>26</sup>;
- The peace movement has also had a huge effect on other movements on issues such as non-violence, solidarity, gender rights and the involvement of scientists in social movements.

Over the course of the decade following 9/11, groups like the ACLU and the Center for Constitutional Rights were strengthened as alarmed citizens lent their support to rolling back the government's excesses. While it had just over 285,000 members in 2000, by 2010, the number of ACLU members had almost doubled. And while its total revenue was \$55.7 million at the beginning of the decade, by 2010 it had grown to \$105.7 million. From 170 staff members in 2000, the national organization grew to 338 in 2013<sup>27</sup>. The more militant Center for Constitutional Rights also grew rapidly as a result of its defense of civil liberties after 9/11. From a modest budget of \$2.1 million in 2001, its funding increased fourfold by 2013. In 2001, the organization had 14 employees. By 2013, CCR had a staff of 51<sup>28</sup>. But a state based on infrastructural power and rule by law also has the flex-

<sup>24</sup> J. Goldsmith, *Power and Constraint: The Accountable President After 9/11*, New York, W.W. Norton, 2012, p. 116.

<sup>25</sup> Stone, *Perilous Times*, cit.

<sup>26</sup> D.S. Meyer, *A Winter of Discontent: The Nuclear Freeze and American Politics*, New York, Praeger, 1990.

<sup>27</sup> I am grateful to Terence Dougherty, Chief Operating Officer and General Counsel of the ACLU, for providing these figures.

<sup>28</sup> I am grateful to Baher Azmy, Legal Director of CCR, for providing these data.

ibility to create new ways of achieving its aims – as we saw in the effective reversal of the Supreme Court's *habeas* decisions by the District of Columbia Circuit court after the *Boumediene* decision. We can see the both the power and the limitations on infrastructural power in the most spectacular social movement challenge to the Bush administration's hegemony in the years following 9/11 – the anti-war demonstration against the Iraq war.

On February 15, 2003, millions of people demonstrated around the world against the impending invasion of Iraq. As Stefaan Walgrave and Dieter Rucht and their group estimate in *The World Says No To War*, 2 million 500 thousand Americans joined the protest<sup>29</sup>. Not only on the East and West coasts – where we find the usual suspects of American activism – but in the conservative heartland, Americans turned out in force to oppose the war that President Bush had already decided upon.

What is most remarkable from the standpoint of American power is, first, that these protests were completely unrepressed, and second, that they came from within the mainstream of American politics. No one went to jail for opposing the wars in Iraq and Afghanistan, and most of the protesters were engaged American citizens, rather than radicals or isolationists. And when Walgrave and Rucht asked their samples of protesters what their relationship was to the party system, 51 percent of them had voted in the last national elections; 91 percent had supported the Democratic Party in the last election, and 23 percent were active party identifiers. Goldsmith would no doubt see these findings as evidence of the vitality of American civil society – and so would I. But some caution is warranted:

First, the protesters faced a special set of dilemmas in post 9/11 America. The nation had been wounded by a horrible mass murder; the public supported the patriotic mood; and the media were in the grip of a carefully orchestrated government campaign to support the coming war<sup>30</sup>. The result was that the peace movement had to try to «harness hegemony» rather than challenge it, as one group of scholars put it<sup>31</sup>.

American flags waved over the protest groups; slogans insisted that avoiding war was patriotic; and radical groups were isolated by the moderate peace organizations that led the demonstrations. The result was that the «party in the street» largely defected from the peace movement. Michael Heaney and Fabio Rojas' data demonstrate how the peace movement collapsed when thousands of activists defected from the movement to participate in the

<sup>29</sup> J. Verhulst, *February 15, 2003: The World Says No to War*, in S. Walgrave, D. Rucht, *The World Says No to War: Demonstrations Against the War on Iraq*, Minneapolis-St. Paul, University of Minnesota Press, 2010, pp. 16-17.

<sup>30</sup> Lance Bennett, Lawrence, Livingston, *When the Press Fails*, cit.

<sup>31</sup> L. Woehrle, P.G. Coy, G.M. Maney, *Contesting Patriotism: Culture, Power, and Strategy in the Peace Movement*, Latham, Rowman and Littlefield, 2008.

election campaigns of 2006 and 2008. «After Obama's election», they write, «the antiwar movement never again organized a protest with tens of hundreds of thousands of participants»<sup>32</sup>.

*Conclusions.* What can we conclude from this telescopic examination of war, states, and contention in the United States since 9/11?

In some ways, post-9/11 American security practices resemble aspects of Scheppele's «emergency script». Detainees suspected of complicity with al Qaeda were essentially declared non-persons. Despite the Supreme Court's rejection of the military commissions, Congress re-instated them. Immigrants were increasingly regarded with suspicion and Muslim charities had their funds frozen. The NSA secretly taped the telephone and internet traffic of millions of citizens. America after 9/11 seemed to be sinking into a «Schmittian» state.

On the other hand, there was no state of siege declared, there were no mass arrests of antiwar protesters, no mass expulsions or interning of population groups – as there had been of Japanese in World War Two, no censorship of the press or other media, and the Supreme Court on at least four occasions defended minimal rights of detainees. This was at least in part the result of the efforts of human rights lawyers, civil groups, and social movements.

But these organizations are hamstrung by their predominantly legalistic strategies in a country in which, under cover of the rule of law, the government expanded its ability to «rule *by* law». We saw how the District of Columbia Circuit Court of Appeals effectively neutralized the Supreme Court's rulings in favor of the rights of Guantanamo detainees after the *Boumediene* decision in 2008. And when NSA illegal surveillance was exposed by the «New York Times» in 2005, Congress gave the secret Foreign Intelligence Surveillance Court the power to give blanket approval to the agency's invasions of privacy<sup>33</sup>. Social movements depend on determined efforts, citizen support, and especially on the power to innovate in the repertoire of contention to effectively contest government hegemony.

This is why I began this talk with the Snowden affair, because it embodied three important changes in war, states, and contention:

First, it showed how the nature of war is changing from the physical clash of armed forces to the systematic use of cyberpower;

Second, it showed how the American state at war does not depend only on the despotic power of its national security apparatus, but on thousands of private contracting firms carrying out public purposes for the profit motive – Snowden worked for one of those contractors;

<sup>32</sup> Forthcoming.

<sup>33</sup> <https://www.aclu.org/blog/tag/fisa-amendments-act>.

Third, it showed how social movements in the XXI century are evolving. From fairly coherent social movement organizations with their core in one country or class, they have evolved into diffuse and often transnational networks of movement activists, journalists, documentary film makers, bloggers, and newspapers like «The Guardian», engaged in what Lance Bennett and Alexandra Segerberg call «the logic of connective action»<sup>34</sup> and what Andrew Chadwick and Simon Collister see as the renewal of professional news organizations<sup>35</sup>.

Snowden used his position within the infrastructural reach of the American state to expose the abuses of despotic power; he was not part of a classical movement organization, but he constructed an innovative, flexible, and temporary «movement network»<sup>36</sup> whose effects rippled outward to more conventional social movement organizations like the ACLU, to conservative lawmakers like Representative James Sensenbrenner, who was outraged at the use the government was making of the USA Patriot Act; and to the internet giants Google and Apple, which installed new privacy encryptions on their devices in direct response to Snowden's revelations<sup>37</sup>.

It is possible that the Tilly who wrote that, over the long run, warmaking leads to rights, would have found little to admire in the American internal policies of its post-9/11 wars; but he would have found much to admire in the actions of civil society groups working within American society to defend rights. Like Albert Camus' hero, Sisyphus, rolling a stone up the hill only to find that it rolls down again when he reaches the summit, civil society groups continue to seek new and innovative forms for their struggles. This is how the repertoire of contention evolves. As Camus wrote during the resistance to the German occupation of France: «Struggling to the summit is enough to fill the human heart. We have to imagine that Sisyphus was happy»<sup>38</sup>.

<sup>34</sup> W. Lance Bennett, A. Segerberg, *The Logic of Connective Action*, New York, Cambridge University Press, 2013.

<sup>35</sup> A. Chadwick, S. Collister, *Boundary-Drawing Power and the Renewal of Professional News Organizations: The Case of The Guardian and the Edward Snowden National Security Agency Leak*, in «Journal of International Communications», VIII, 2014, pp. 2420-2441.

<sup>36</sup> M. Diani, *Social Networks and Participation*, in *The Blackwell Companion to Social Movements*, ed. by D.A. Snow, S.A. Soule, H. Kriesi, Malden-Oxford, Blackwell's, 2004.

<sup>37</sup> D. Sanger, B. Chen, *Signaling Post-Snowden Era, New iPhone Locks Out N.S.A.*, [http://www.nytimes.com/2014/09/27/technology/iphone-locks-out-the-nsa-signaling-a-post-snowden-era-.html?\\_r=0](http://www.nytimes.com/2014/09/27/technology/iphone-locks-out-the-nsa-signaling-a-post-snowden-era-.html?_r=0).

<sup>38</sup> «La lutte elle-même vers les sommets suffit à remplir un cœur d'homme. Il faut imaginer Sisyphe heureux» (A. Camus, *Essais*, Paris, Gallimard, 1965, p. 198).

