Judging Their Own:

When and Why States Pursue Accountability for Human Rights Violations of Security Forces

by

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ABSTRACT

What explains why governments and militaries pursue accountability against some human rights violations committed by members of their armed forces during ongoing conflicts, but not other violations? Further, what are the consequences of such prosecutions for their military and governmental objectives? The theory put forth by this study suggests that rather than only the natural outcome of strong rule of law, domestic prosecutions within a state's security apparatus represents a strategic choice made by political and military actors. I employ a strategic actor approach to the pursuit of accountability, suggesting that the likelihood of accountability increases when elites perceive they will gain politically or militarily from such actions. I investigate these claims using both qualitative and quantitative methods in a comparative study across the United States and the United Kingdom. This project contributes to interdisciplinary scholarly research relevant to human rights studies, human rights law, political science, democratic state-building, democratic governance, elite decision making, counter-insurgency, protests, international sanctions, and conflict resolution. Particularly, this dissertation speaks to the intersection of strategy and law, or "lawfare" a method of warfare where law is used as means of realizing a military objective (Dunlap 2001). It provides generalizable results extending well beyond the cases analyzed. Thus, the results of this project will interest those dealing with questions relating to legitimacy, human rights, and elite decision making throughout the democratic world.

DEDICATION

This dissertation is dedicated to Valerie Simmons, whose support and encouragement have made this difficult experience infinitely more bearable, and Joel Olson, the most encouraging mentor in the long list of mentors I've been lucky to have.

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CHAPTER 1

INTRODUCTION

During the early years of the George W. Bush presidency, the Bush Administration opposed domestic human rights litigations, intervening in dozens of cases under the excuse that such prosecutions interfered with the foreign affairs power of the executive branch or that such prosecutions would be "dangerous" for the War on Terror (Stephens 2004). These attempts at prosecution involved domestic litigation against members of the US government and military, most notably for the detention camp at Guantanamo Bay. Further, the Bush administration publicly opposed US membership in, or cooperation with, the International Criminal Court (ICC). Also, with the backing of the Bush Administration, the US Senate and House passed the "American Service-Members' Protection Act 2002", prohibiting federal, state, and local American governments from cooperating with the ICC. The act also authorized the American president to use all available means to free any US personnel being detained or imprisoned by, or on behalf of, the ICC, giving the act the name "The Invade the Hague Act". In short, early in the administration of George W. Bush, there was opposition to both domestic and international human right prosecutions. Despite this, CIA officials prepared, as far back as 2002, to defend themselves from human rights trials thought, in the words of one senior CIA official, to be "inevitable" due to the tactics used by the CIA to extract information from prisoners (Gellman 2008, 177).

Two years into the War on Terror, in early 2004, the Bush Administration began to allow for the pursuit of courts-martial of members of the US military accused of violations of human rights, war crimes, and the laws of war. In fact, between the start of

2003 and the end of 2006, the US military pursued 79 courts-martial for detainee abuse alone with 64 of these courts-martial resulting in convictions (Human Rights Watch 2006). Another approximately 240 members of the US military faced non-judicial disciplinary proceedings with about 60 sentenced to non-judicial punishment. In comparison, 81 percent of those who faced courts-martial were found guilty where the US military found about 25 percent guilty in non-judicial proceedings. Further, these levels of prosecutions peaked in 2004 and 2006. Despite these courts-martial for abuses of members of the US military, no domestic prosecutions came for CIA officials, regardless the belief of CIA officials of their "inevitability." Further 95 percent of those court-martialed were enlisted personnel, and five percent were officers. Of those officers that faced a court-martial, only three were found guilty of their crimes (Human Rights Watch 2006).

This discussion of the shifting policy regarding human rights accountability and the selective nature of who the US government and military held accountable points to the key questions that form the heart of this project. First, why do governments pursue accountability for the alleged human rights violations of their security apparatus during ongoing conflicts in some instances, but not others? Second, when states pursue accountability, which segments of the security apparatus are held accountable? A third question asks, when there is accountability, what form does it take? Fourth, what causes shifts to elite thinking regarding accountability that moves elites from an anti-accountability position to a pro-accountability position, and vice versa. For several reasons, I focus on legal accountability in this project and leave open this question for future research.

This dissertation begins to explain some of the above questions. It incorporates elite actor strategic thinking within the context of human rights and attempts to establish a theory around the politicization of accountability for human rights violations. While extensive research focuses on exploring "victor's justice," where victorious forces only punish the violations of losing forces and the prosecution of former authoritarian regimes after democratic transition researchers have yet to fully ask the questions of this dissertation. Further, when scholars do discuss instances of self-punishment, it is often as a footnote to a larger discussion (Waldorf 2009, for example). In fact, one of the first of what scholars now consider to be human rights trials was the British Empire punishing members of their military for the murder of prisoners of war and civilians in South Africa (Simmons 2018). Despite this scant research or theoretical explanations the occurrence of pushing one's own human rights violations is more prevalent than may be expected. A number of governments or military have all engaged in the pursuit of accountability of their own forces for human rights violations, often labeling these crimes as violations of the laws of war or war crimes. This includes the governments or military El Salvador, Ethiopia, Guatemala, Indonesia, Namibia, Peru, Russia, Rwanda, Serbia, South Africa, the United Kingdom, and the United States. Why did these prosecutions occur; who faced accountability for which crimes and why; and what were the consequences in the broader context of the conflict?

Additional examples build on the previous decision regarding prosecution of American forces by the US military during the Bush Administrations engagement in the War on Terror. For example, during Vladimir Putin's first two terms as Russian President, several members of the Russian security apparatus were prosecuted by the

Russian state for crimes against civilians in the Second Chechen War in Russian courts. The first arrest was made in 2000 and announced in a press conference on Russian national television, a move that was unprecedented for Russian courts-martial. A further example comes from America itself and comes from the aftermath of the My Lai Massacre. In 1970, 26 members of the U.S. military were charged for crimes by the US military, for the My Lai Massacre, an event credited with increasing local opposition to the US in Vietnam and increasing American opposition to the Vietnam War (Corley 2007). Beyond the My Lai Massacre, nearly 330 additional alleged atrocities were investigated by the U.S. Military following the public outcry to My Lai (Turse and Nelson 2006). These investigations resulted in an additional 36 individuals being convicted by the U.S. military for violations of laws of war or human rights violations (Bourke 1999).

By not researching and understanding the causes and consequences of self-punishment for human rights violations during conflicts, researchers are presenting an incomplete understanding of the causes and consequences of accountability for human rights violations. Through only discussing "victor's justice" or post-transition justice, researchers are failing to provide comprehensive understandings of the causes and consequences of accountability for human rights violations. Further, research of accountability for human rights violations largely focuses on weak states or states in the global south, leaving the understanding of how these processes work in advanced industrialized democracies unanswered. Insights learned from multiple institutional environments may help us more completely understand these processes and better inform policymakers. In limiting our current focus of study, researchers are undercutting our

understanding of the potential usefulness of accountability for policymakers and leaving an incomplete understanding.

In this dissertation I employ several methodological approaches, including multivariate regression analysis; interviews; and process tracing, to understand the factors that impact the decision of government elites to pursue punishment of their members for human rights violations during ongoing conflicts. I employ a mixed-methods approach to provide multiple data points, fully explore the argument, and provide support for the theory. Considering other relevant factors, I argue that governing elites are strategic actors that make decisions based upon maintaining political power and achieving war aims. Costs can be either electoral, financial, reputational, or violent. Further, these costs and benefits for elites shift over time and can explain why the same elite may move from an anti-accountability position to a pro-accountability position, or why an elite backslide from being pro-accountability to anti-accountability. This explanation for the occurrence of accountability for human rights violations does not deny the spread of human rights norms but instead highlights mechanisms in which human rights norms are instrumentalized or when space opens for such norms to spread. I explore these relationships both in motivating the action of states, but also explore whether these trials accomplish changes in challenges facing governing actors. After all, without out at least the perception of payoffs for engaging in accountability, we may expect the pursuit of accountability once, but expecting it as repeated behavior would be unusual.

My research contributes to interdisciplinary scholarly research relevant to human rights studies, human rights law, political science, democratic state-building, democratic governance, elite decision making, counter-insurgency, protests, international sanctions,

and conflict resolution. Particularly, this dissertation speaks to the intersection of strategy and law, or "lawfare," a method of warfare where the law is used by states and militaries as means of realizing a military objective (Dunlap 2001). It provides generalizable results extending well beyond the cases analyzed since many states face questions regarding accountability for alleged human rights violations. Thus, the results of this project will interest those dealing with questions relating to legitimacy, human rights, and elite decision making throughout the democratic world. This project also highlights the role of norms, reputation, and strategic elite decision making on the occurrence of accountability for human rights violations. This information should assist policymakers, human rights advocates, military leaders, governmental and non-governmental organizations, and conflict mediators to prioritize efforts to more efficiently and effectively pursue accountability for human rights violations of their combatants. This ultimately impacts the development of democracy, law, and the state.

Defining Terms

Some of the terms I use throughout this dissertation require that I make clear what I mean by their use at the beginning. In 1948 the United Nations passed The Universal Declaration of Human Rights, which defined humans rights as freedom from slavery, torture (including inhuman or degrading treatment or punishment), arbitrary arrest, arbitrary detention, exile, arbitrary deprivation of property, religious persecution, and to be recognized as a person. The term "human rights violations" has been defined in numerous ways by academic researchers. Early human rights research focused on narrow definitions of "human rights violations" that included whether constitutions were declared not in full force and whether some political parties were banned (McKinlay and

Cohan 1975; 1976). Other early researchers defined human rights violations as torture, killing, and imprisonment, which resembles more closely what is considered human rights violations by more recent research (Mitchell and McCormick 1988). The vagueness of what types of killing or imprisonment constitute a human rights violations leaves this type of definition somewhat incomplete in its potential usefulness as a definition. Would any imprisonment by anyone count as a human rights violations? What about all killings? This definition does not distinguish between killing and murder, for example. Another early definition of human rights violations comes from Bunch (1990), who defines a human rights violation as state violations of civil and political liberties. While the above definition clarifies that a bit more about whose actions count for human rights violations, it is vaguer about what actions count as violations. What civil and political liberties count as human rights violations?

A well-known measure of human rights violations comes from Poe and Tate and others (Poe and Tate 1994; Poe, Tate, and Keith 1999; Wood and Gibney 2010; Gibney et al. 2012; Gibney et. al 2015). These works define human rights abuses as political imprisonment, execution, disappearance, and torture. Cingranelli and Richards (1999) build on this research and label human rights violations as physical integrity rights, which they define as freedom from arbitrary physical harm and coercion by their government. More specifically, these authors define human rights violations as extrajudicial killings, torture, disappearances, and political imprisonment. Many of these more recent projects have quantified measures of human rights violations, which perhaps contributed in part to the more rigid and clear definitions of "human rights violations."

Considering all possible definitions of human rights violations discussed above, for this dissertation, I rely on the definition offered by Sikkink and Booth-Walling (2007, 431). They define human rights violations as summary execution, disappearances, torture, and arbitrary arrest and/or imprisonment by a government agent. I do so largely because that this definition overlaps significantly with many of the definitions listed above, but comes from research that focuses on human rights prosecutions. It is also important to distinguish between human rights violations, repression, and violations of civil liberties. Numerous research projects that describe their work as analyzing "human rights violations" treat human rights violations, repression, and violations of civil liberties as the same thing, which for the sake of this project I treat as different things (Poe and Tate 1994; Poe, Tate, and Keith 1999; Davenport and Armstrong 2004; Davenport 2007).

Early work on state repression, civil liberties, and human rights (Goldstein 1978) defines repression as the actual or threatened use of physical sanctions against an individual or organization, within the territorial jurisdiction of the state, for the purpose of imposing a cost on the target as well as deterring specific activities and/or beliefs perceived to be challenging to government personnel, practices or institutions (Davenport 2007). Goldstein (1978) goes on to explain "first amendment type rights" as violations of freedom of speech, assembly, movement, press, religion, association, and strikes. He defines "personal integrity rights" as freedom from torture, disappearance, imprisonment extrajudicial execution, and mass killings. Like other forms of coercion, repressive behavior relies on threats and intimidation to compel targets, but it does not concern itself with all coercive applications. Rather, it deals with applications of state power that

violate First Amendment–type rights, due process in the enforcement and adjudication of law, and personal integrity or security (Davenport 2007).

For this project, I separate human rights violations and violations of civil liberties into two distinct categories, which scholars may encapsulate under the broader umbrella of "repression." This is not to say that researchers who combine civil liberties and human rights into a single measure of repression are incorrect, but that my project is focused on explaining accountability for a narrow subset of repressive actions, human rights violations. Further, research that focuses on "repression" inherently focuses on merely violations that occurred within the domestic arena, while my project looks at violations that occur in either domestically or externally based conflicts. I'm not the first researcher to offer this distinction as Poe and Tate (1994) distinguish between physical integrity violations and related concepts such as democratic and economic rights. One of the reasons Poe and Tate (1994) give for this distinction is that democratic rights often function as an independent explanation for the occurrence of human rights violations. By then including democratic rights, such as civil liberties, as both the independent variable of democratic rights and as the dependent variable of human rights violations we're creating tautologies, or in statistical terms we are creating simultaneous bias or endogeneity. We risk using measures of democracy that inherently include aspects of civil liberties to predict human rights violations that also include aspects of civil liberties. We also risk exaggerating the frequency and impact of human rights violations if we include aspects of civil liberties in our definitions. Further, the literature on accountability for human rights violations that this project builds upon and speaks to limits their definitions to violations of physical integrity rights.

While much of the focus of this dissertation will be to equate accountability with civilian or military prosecutions and hearings, prosecutions and hearings are not the only forms of accountability that can take place. Beyond prosecutions, accountability can take the form of those responsible being fired, resigning, forced into retirement, fined, or suspended. Further, accountability could take the form of public apologies, truth and reconciliation commissions, or financial composition for victims of violations. While the dynamics of the different types of accountability are worth exploring, I leave these dynamics to future research.

The accountability analyzed in this dissertation is considered to be "domestic" as opposed to "international" or "foreign" in that the accountability pursued is by the government, judicial branch, or military that the command of a given country for crimes committed by members of the state security apparatus of the same country (Simmons 2018). Scholars view "International" prosecutions as trials conducted by international institutions, such as the modern International Criminal Court. On the other hand, "foreign" prosecutions refer to foreign states punishing the actions of another state or foreign nationals, such as under the banner of universal jurisdiction. I define the "state security apparatus" of a given country to mean individuals either part of or under the command of the national military (including reserve units called up for service in the national military), private military contractors hired by the national government, members of or contractors for the national intelligence service, or members of a national police service.

Outline

In this dissertation, I provide a review of the extant literature pertaining to human rights trials, state building, counterinsurgency, and legitimacy to explore what we currently know on these topics and demonstrate that previously disconnected research can, and should, be combined to present a focused theory that explains the occurrence of accountability for human rights violations as the result of strategic elite decision making in Chapter 2. I also elaborate on my theory and hypotheses in Chapter 2. Further, I expand upon my methodological approaches and case selection in Chapter 3. I also will explore my two cases, the United States of America in the "War on Terror" and the United Kingdom during "The Troubles," highlighting how quantitative and qualitative analysis suggests that both of these governments were, in fact, strategic actors. I have two objectives with my two main case studies. The first is to determine whether strategic thinking on the parts of governing elites plays any role in their decision to pursue accountability for alleged abuses of the state security apparatus. The second to more thoroughly explore the validity of existing explanations for the occurrence of accountability for alleged abuses. A third goal, though not fully explored, is also to identify whether strategic uses of accountability by governing elites actually produces the expected benefit to the elites. The American case is the focus of Chapter 4, while the United Kingdom is the focus of Chapter 5. What I find is that governing elites are in fact strategic actors and use accountability to achieve goals of staving off challenges to their continued ability to govern.

My dissertation ends with Chapter 6 by reflecting on the main findings and contribution of the project. Using both quantitative and qualitative approaches allows me

to present a comprehensive view of the pursuit of accountability and understand the attitudes, actions, and motivations of governing elites. Using in-person interviews, primary sources, secondary sources, quantitative analysis, and detailed case studies, I show that governing elites are in fact strategic actors in their pursuit of accountability for the alleged abuses of the state security apparatus. Thus, my research builds on existing literature regarding the strategic motivations of actors. In particular, I expand our understanding of such motivations to the occurrence of human rights accountability to say that governments care a great deal about the potential utility of accountability for abuses to in maintaining their hold over a political office or bringing about the end of violent opposition.

CHAPTER 2

LITERATURE REVIEW AND THEORY

Literature Review

Pursuit of Accountability for Human Rights Violations

Current explanations for the pursuit of domestic accountability for human rights violations are numerous and complex. For instance, a large literature focuses on the role of international human rights norms and the so-called "justice cascade" (Sikkink 1993; Risse and Sikkink 1999; Sikkink and Booth-Walling 2007; Sikkink 2011; Roht-Arriaza 2005; Kim 2012; Cortell and Davis 2000; Donovan and Roberts 2006; Langer 2011). Other scholars have focused on the impacts of "naming and shaming" by international actors, thus leveraging norms into pressuring "guilty" governments to pursue domestic human rights trials, or at the very least change their human rights violating behavior (Lebovic and Voeten 2006; Hafner-Burton 2008; Lebovic and Voeten 2009; Hillebrecht 2012). This literature often connects itself to the "justice cascade" argument by arguing that the strength of human rights norms empower actors to be able to shame states and cause damage to the reputation of offending states. Further, increased technologies for documenting human rights violations and the greater ease of access to resources needed to engage in prosecutions and courts are shown to increase the likelihood of prosecutions (Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999; Lake 2014).

Scholars also argue that leaders who want to promote and ensure the protection of human rights within their country will seek out and agree to international enforcement and domestic commitments. They do this through the signing of international human rights agreements matter for state building or "binding" (Keck and Sikkink 1998; Risse,

Ropp, and Sikkink 1999; Hafner-Burton 2008; Lupu 2013). Other authors have focused on explanations surrounding autonomous judicial branches acting as a protector of human rights and enforcers of human rights laws (Simmons 2009) and democratic structures or norms (Moravcsik 2000; Hathaway 2002). Lastly, authors have argued that balances of power between actors will determine the pursuit of trials, essentially arguing for a cost and benefits analysis as explaining the creation of amnesty laws and a lack of prosecutions, foreign, international, or domestic (Zalaquett 1991; Pion-Berlin 1994; Rodman 2008). These explanations for domestic trials largely focus their discussion and analysis on transition countries that punish former regimes, as opposed to explaining why actors punish members of their security forces. In other cases, this literature focuses on cases of victor's justice. "Victor's justice" refers to cases in which victorious parties in a conflict only seek to prosecute members of the opposing side, thus rendering justice partially, against only conflict "losers" (Meernik 2003; Peskin 2005; Peskin 2008).

Others argue that human rights trials occur to draw a clear separation between the past and the future. Within this argument, researchers suggest a strategic political goal as motivating accountability, namely that the state is trying to use trials to justify the present behavior of the state in regards to human rights violations (Simpson 2007). In the view of this literature, accountability is used by governing elites to enact social changes that benefit the current governing elites or to justify the mistreatment of a segment of the population. Critics have leveled such allegations at the governments of Rwanda and Israel in particular. A key finding in the literature is that it is the victor states themselves that turn the tribunals into weapons of "victor's justice" not the tribunals themselves. Peskin (2005) highlights the importance of using the tribunals for "victor's justice" as it

allows “them to have their suffering in the war acknowledged and their vanquished enemies prosecuted on the world stage while leaving the war crimes of themselves or their security forces unexamined and unpunished (Peskin 2005, 214).” Scholars have also argued that elites use domestic trials as a way for states to address the domestic public’s feelings of guilt and atone for crimes, though this literature focuses on punishing the crimes of the defeated and the guilt of their supporters (Huneeus 2010; Collins 2010).

Using the courts as a weapon for “victor’s justice” allows winners to eliminate opposition that the victors were unable to during the violent conflict. This type of justice also gives governing elites moral leverage building upon interpretations that show their government or social group were previously victims. Further, weaponized tribunals can eliminate opposition for victors in legal and socially acceptable ways. Lastly, tribunals eliminate opposition without any costs, both literal and moral, to the victors. By this, I mean that the victors do not have to pay to have the tribunal charge the loser and they do not have to incur the level of damages that pursuing the prosecutions themselves may cause. If the victors were to eliminate the opposition by extra-legal means or even through their courts, they risk losing the much needed post-conflict benefits perceptions of being the victor, or the victim, gives. Much like the large majority of human rights scholarship, this literature focuses on why elites would hold members of a previous regime accountable and not their own.

Others have highlighted the importance of accountability for state-building, stability, and governing legitimacy (Kritz 1996; Minow 1998; Akhavan 2001; Meernik 2005; Stromseth et al. 2006; Freeman 2006; Kim and Sikkink 2008). The arguments of this research suggest that bringing at least the perception of impartiality to the courtroom

is critical in re-establishing the rule of law and justice where such institutions had previously broken down (Meernik 2005; Stromseth et al. 2006; Kim and Sikkink 2008). Some scholars are quick to clarify that while trials are useful for establishing new regimes and stability, they must be a part of a wider array of state-building methods (Snyder and Vinjamuri 2003/2004). Domestic human rights trials of individuals are also argued to contribute to decreases in violence through eliminating a need for revenge, which can also contribute to legitimacy building (Akhavan 2001; Stover and Weinstein 2004; Sloane 2007).

Another strand of research debates whether strong domestic institutions, such as the rule of law, explains the effective pursuit of accountability for human rights violations (Fletcher, Weinstein, and Rowen 2009; Snyder and Vinjamuri 2003/2004). Fletcher, Weinstein, Rowen (2009) find that countries with strong legal systems are not more likely to pursue accountability for alleged human rights abuses. These authors show nuance in the case of Northern Ireland and suggest that colonial institutional strength, including aspects of the rule of law such as the judiciary, contribute to increased accountability for human rights violations over the course of the conflict there. Included within this argument are legal mechanisms for accountability of elites through elections and other democratic processes (Keohane 1998). Due to the fact scholars often define liberal democracies as an institutionalized system of accountability of elites to publics, some within this line of research suggests that as a whole democracies may be more likely to pursue accountability of elites for human rights violations, though these conjectures are not explored in current research.

This literature on the relationship between accountability and state-building or legitimacy tends to treat these outcomes as consequences of human rights trials and not motivations *for* them. For example, Sikkink (2011) demonstrates that human rights prosecutions decrease levels of conflict, but we do not know if these prosecutions were intended to do just that. Instead, we largely focus and celebrate on the outcome, without understanding whether the outcome was the motivating goal of the decision to pursue accountability. Alternatively, people may assume that the outcome was the intended one or that the reasoning does not matter, as long as the outcome is positive. While highlighting the important *consequence* of domestic trials on legitimacy, this literature does not explain the pursuit of legitimacy as a driving force behind the *decision to pursue* domestic human rights trials. Missing from this broad literature on the consequences and repercussions of domestic trials, are the motivating factors that cause elites to pursue investigations and prosecutions into human rights abuses committed within their forces. Instead of assuming the outcomes produced by these trials such as democracy, improved human rights, and political stability are themselves the reasons states pursue trials we need to begin by understanding the motivations for these trials as a separate phenomenon. Assuming the result explains the beginning without exploring and firmly establishing this produces incomplete and erroneous explanations at best.

There are some notable exceptions to the above-mentioned focus on outcomes as motivators for trials Lanegran (2005) and Pion-Berlin (1994) suggest that elite control and preferences are driving factors in the pursuit of trials. Specifically, newly empowered elites may not want to pursue punishment for human rights violations or may want to control the prosecution process because they may want to protect their violators or use

prosecutions as a negotiating tactic. Further, the efforts of powerful actors to shift focus from their crimes committed may politicize the trial process (Lanegran 2005). Lastly, powerful actors may strategically use interpretations of the past to achieve current political goals may drive the decision-making process (Pion-Berlin 1994; Lanegran 2005). These scholars fall into the pitfall of limiting their discussion to post-transition states as opposed to a broader pool of states, which better reflects the reality of human rights accountability. As well, these scholars focus on punishment of former regime forces, not current. Thus, even when understanding the motivations for the pursuit of human rights accountability of the state, existing researchers leave open questions about the pursuit of accountability of a government's security apparatus by that same government.

Existing research has also highlighted the importance of international audiences for the occurrence of accountability for human rights violations. The issue with this literature is that it places a large amount of explanatory power for the impact of international actors on norms and the so-called "justice cascade" (Sikkink 1993; Meernik, Poe, and Shaikh 2006; Murdie and Davis 2010; Peksen 2012). In some cases, international actors have heavily encouraged prosecutions following intervention – for example, in the cases of the former Yugoslavia and Rwanda. There are some cases in which domestic human rights trials have been pursued even in the absence of an international interventions or pressures. Further, other research has found that external actors can "name and shame" violators of human rights abuses into decreasing violations and holding violators accountable for their actions (Sikkink 1993; Moravcsik 1995; Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999). While "naming and shaming" and

international pressures can account for some of the decisions to hold human rights violators legally accountable for their actions there are flaws with this argument. Primarily, the logic of this argument relies on high levels of attention from international audiences to human rights violations as well as a high level of interest in absorbing costs by international actors to enforce human rights laws, which may not reflect reality.

Some authors root their explanations of human rights trials not in norms or the rule of law, but in morals. While norms are acceptable standards or rules of behavior within the international system, morals are a sense of right and wrong. Some authors argue that human rights trials broadly occur because allowing impunity amounts to the governing elites condoning the violations and would lead to moral outrage. By punishing the violators of human rights, governments are demonstrating that they care about the suffering of others and want to protect people from harm (Mani 2002). Additionally, according to existing research governments that pursue punishment for human rights abuses are driven by a sense of moral obligation (Huyse 1995).

This thinking is a slight variation on the arguments that governments do care about the suffering of others, focusing instead that governments think they should care and are expected to care. In the first sense, elites are perceived as actually caring about the suffering of others, while the other suggests that governments pursue justice simply because they think they should care about punishing violators and the people think they care about punishing violators. The first explanation is ground in actual attitudes of elites, while the second suggests that elites see trials a performative function to meet expectations around democracy, human rights, or accountability. While classified as a moral explanation of accountability, this sense of what governments should do as a

motivating factor for trials may better align with the literature on norms. The distinction between this second type of morals and the literature on international norms lies in the fact that these morals originate from domestic evaluations and understandings compared to international norms. This sense of moral obligation is especially present when societies feel that their deepest moral values are under attack by the violations (Walzer 2000).

In total, the state of existing explanations of human rights accountability contains several gaps that this project attempts to fill. First, this project shifts the focus from potentially easier cases to understand, why the victors of wars or transitions punish the enemy, to hard cases of why governing elites pursue accountability for the violations of their security forces during an ongoing conflict. Second, even if one accepts the dominating "justice cascade" explanation, we current do not have a broad theoretical understanding of when and how the justice cascade impacts the pursuit of accountability. Why does the justice cascade spread into certain countries, but not others? How is it able to spread? Largely, current explanations of the spread of the justice cascade rely heavily on "naming and shaming." We do not know the impact of international political costs, the crux of "naming and shaming," on not only the behavior of states for human rights violations but their behavior regarding the pursuit of accountability of their security forces for violations. This project fills these "when" and "how" gaps by theorizing the opening of political spaces that make the spread of human rights norms possible through increases in the placement of costs on elites through populations acting upon their grievances related to human rights violations.

While this research does draw attention to important local dynamics in explaining the occurrence of human rights trials, they completely predict that absent a military

victory by one party or another, human rights trials, of either side, would be rare and therefore unworthy of study. Where pre-existing political elites maintain considerable power and influence during and after the conflict, it remains unclear why prosecutions against victorious troops might occur. This is a dynamic we observe in many contemporary militaries, including war crimes trials pursued by the United States military in its wars in Afghanistan and Iraq, as well as by the Israeli armed forces, and the Russian government and military in the Chechen conflicts.

Accountability More Broadly

Additional research outside of accountability for human rights violations proves applicable to an understanding of elite behavior regarding accountability for human rights violations. The first of such research comes from American criminal justice research. Numerous studies demonstrate that public opinion and electoral concerns motivate elected local prosecutors in their decisions around the cases they chose to pursue. In the American criminal justice system, elected prosecutors have prosecutorial discretion in deciding what cases they take up on behalf of the state, which makes the decision making incredibly useful to understanding elite decision making regarding accountability more broadly.

As a starting point, previous research has demonstrated that voters look for easy and clear measures of performance of elected prosecutors (Huber and Gordon 2002; Rasmusen, Raghav, and Ramseyer 2009). In fact, prosecutors actively promote and use their involvement in cases with high public salience in campaigns for reelection (Rasmusen, Raghav, and Ramseyer 2009; Wright 2009). On the voter side, as an easy to understand measurement of success, voters pay attention to are high profile cases (Wright

2009). What is unclear in current research is whether there is a causal arrow between the candidates messaging and the attention of the voters or whether both the candidate and voters separately focus on high profile cases (Wright 2009). What this research does highlight is the role of the media in covering cases and making them "high profile" in election years (Wright 2009). We see similar dynamics at play when it comes to accountability for human rights violations. The highly publicized 2000 court-martial of Yuri Budanov in Russia, the 1981 death of Northern Irish Member of Parliament Bobby Sands while in British custody, and the Abu Ghraib prison abuse scandal are all examples of "high profile" human rights violations cases that were widely covered by local and international media.

Other research suggests that a "high profile" case will only be electorally damaging to an elected prosecutor if they lose the case (Huber and Gordon 2002). In situations such as this, it would be more electorally beneficial to an elected official to have a high conviction rate than have a "high profile" loss in an election year. Gordon and Huber (2002), argue for the importance of an informed public to influence the behavior of elected prosecutors. Namely, the authors find that when voters are informed, and the elected prosecutor knows they are informed, sanctions to influence the elected prosecutor's behavior are unnecessary. If elected prosecutors have benefited previously from poorly informed voters sanctions must be placed on the elected prosecutor for a change in behavior to occur. What this literature may mean for human rights prosecutions are numerous. First, this literature highlights an important role for media coverage and selectorate attention in accountability. Second, this literature points to the possibility that there are certain "watershed moment" instances that may matter more for accountability,

or at the very least media coverage of violations. Third, this literature highlights the potential risk that elites face in the pursuit of accountability. In the case of elected prosecutors, the literature highlights that pursuing cases but losing them introduces a negative cost that would not have been present had the prosecutor not pursued the case they lost. Potentially then, if a government or military were to pursue accountability, there may be potential negative consequences that may harm them greater than if they hadn't pursued accountability.

Research has also found that elected prosecutors routinely broadcast their high conviction rates, and thus are inclined to pursue cases they view as more likely to end in a conviction in an election year (Huber and Gordon 2002; Huber and Gordon 2004; de Ming Fan 2007; Rasmusen, Raghav, and Ramseyer 2009). Some research argues that elected prosecutors believe voters care more about the speed and quantity of convictions than the nature of the charges, and this belief motivates their actions in election years (Rasmusen, Raghav, and Ramseyer 2009; Wright 2009). This includes prosecutors pursuing defendants the prosecutor thinks is innocent simply because a conviction is likely (Zacharias 1991). Huber and Gordon (2002) demonstrate that voters can place pressures on elected prosecutors, by rewarding behaviors they support and punishing behaviors they oppose, to induce the elected prosecutor to investigate the guilt or innocence of defendants, rather focusing on easy cases absence belief in innocence or guilt. An interesting result from this literature is that elected prosecutors who have been in office longer have fewer numbers of prosecutions (Rasmusen, Raghav, and Ramseyer 2009). This study did not include competitiveness of elections the incumbent faced or

whether election years influenced the rate of prosecutions to test the impact of these variables on the number of prosecutions.

Taken together, the literature on elected prosecutor behavior suggests some important points for the study of accountability. First, the available evidence suggests that elected prosecutors are strategic in the pursuit of justice. Elected prosecutors are more likely to pursue "high profile" cases, but only if they think they will get a conviction. Otherwise elected prosecutors will focus on easy to win cases to drive up their conviction rates, which may explain if we see certain groups, such as enlisted members of militaries, being held accountable more often than higher-ups. Further, research suggests that elected prosecutors do not necessarily focus on even their own beliefs of whether a suspect is innocent or guilty, but at how likely the case is to end in conviction. In combination with the importance of conviction rates for elected prosecutors, prosecutors then consider how likely a case is to help them win reelection as well as the law when deciding what cases to pursue. While somewhat cynical, the findings of this research suggest a deep politicization of law and accountability by elites, in this case, elected prosecutors. Second, elected prosecutors are motivated by electoral concerns, and seek to increase their convictions rates in preparation for election years. Third, the media can raise the attention of the public on given allegations, which in turn leads to the public demanding prosecution of such "high profile" cases. This public attention incentivizes elected prosecutors to pursue cases that they may otherwise ignore due to their difficult nature.

Elected Officials as Strategic Actors

Additional literature looks at the behavior of elected officials in the executive and legislative branch. In particular, existing research highlights that electorates often lack the necessary information to evaluate incumbent performance (Lupia 1992; Lupia and McCubbins 1998), and incumbents may alter their behavior in light of this possibility (Douglas 1990; Austen-Smith 1993). Other research argues that citizens are informed about politician performance and sanction politicians who fail to perform to the standard demanded by citizens (Key 1960; Fiorina 1981; Besley 2006; Ashworth 2012; Ferejohn 1986; and Fearon 1999). Perhaps unsurprisingly, members of Congress value re-election above all else, and they have clear incentives to represent what they perceive to be their constituents' interests (Mayhew 1974).

As with the literature on accountability for elected prosecutors, the media is shown to play a powerful role in the relationship between the citizenry and elected officials (Berry and Howell 2007). The media can highlight perceived failures of elected officials and raise questions about accountability for said issues. Additionally, Snyder and Stromberg (2010) demonstrate that press coverage of the American Congress impacts the implementation of policies, the amount of effort legislators put into seeking out constituent opinions and needs, and the level of knowledge citizens have about politics. It is also worth noting that researchers argue that political parties are held accountable by voters for the behavior of individual elected members of that party (Chong et al. 2015).

Healy and Malhotra (2013) outline the process through which voters gain information about policymaker decisions and make their evaluations of the policymaker and policy. Voters observe events in the world (e.g., disasters, wars), outcomes (e.g., macroeconomic statistics, test scores), and policy actions taken by elected officials (Step

1). They then attribute responsibility for these events, outcomes, and actions to particularly elected officials (Step 2). These attributions then lead people to evaluate the performance of officeholders, thereby influencing their voting decisions (Step 3). How politicians view the impact of the events on election results creates incentives for elected officials, thereby influencing the formation of policy both before and after elections (Step 4). In particular, these policy choices feedback into the events and outcomes that voters observe.

Achen and Bartels (2002) and Healy et al. (2010) argue and find support for claims that any negative or positive newsworthy event that occurs will lead to the electoral punishment of an incumbent or their party. This result is regardless of if the voters blame the incumbent for the event or if there as any reasonable connection between the event and the incumbent. One example from this line of research is that a win by the local college football team in the game before the election increases the incumbent vote share by about 1.6 percent points in legislative and executive branch elections (Healy et al. 2010). Taken together, this research seemingly suggests that key constituents, whether voters or other audiences, will impact the decision-making behavior of elites if they are at least somewhat informed about the decisions and policies of elites. In turn, elites will change their behavior to be more in line with the target group's preferences when they have information about citizen preferences and believe that citizens who support or oppose a given policy will be able to successfully reward or punish them.

Arceneaux (2006) finds that partisan affiliation matters a great deal when it comes to assigning blame and demanding accountability of governing elites. Partisans are less

likely to demand accountability for wrongdoing by elites from their political party and more likely to demand accountability of elites from the other party. The implications of this research for independent voters is largely left unanswered. Applying this to human rights violations and accountability then, members of a selectorate become informed about alleged human rights violations, determine their opinion on the allegations, whether the politician, their political party, or ruling power are responsible in some way for the allegations, and determine how they may sanction the elites they view as responsible. In turn, governing elites observe how members of the public react to the allegations, discern whether the elite will face electoral consequences and the size of the consequences for the violations, and chose to pursue accountability if they believe it could lessen the negative electoral impact of the allegations. While not explicitly focusing on the counterinsurgency settings such as those I focus on in this project, a similar logic may be extended. Members of a group in the counterinsurgency setting may be pro or anti-state, and this may impact how they react to allegations of wrongdoing by the state and the need of the state to address the allegations.

One related area research on the responsiveness and strategic considerations of legislative actors that connects directly to this dissertation is the research on the public's opinion on foreign policy decisions. (Risse-Kappen 1991; Hartley and Russett 1992; Holsti 1992; Powlick and Katz 1998; Sobel 2001; Howell and Pevehouse 2007). A minority of recent researchers on this topic argue actually that politicians move in the opposite direction of public opinion when it comes to foreign policy (Jacobs and Page 2005). This research builds on some of the first research regarding public opinion towards foreign policy, which argued that the average citizen was far too busy with their

daily lives to have any opinion on foreign policy (Lippman 1922; Lippman 1925; Almond 1960; Converse 1964). Considering this split in understanding the role of public opinion on foreign policy decisions, understanding the dynamics between the public and elected officials regarding human rights abuses can play an important role in the existing literature.

Dealing tangently with the issues of this dissertation, human rights, existing research demonstrates that public support for humanitarian intervention increases support from the American legislative branch for humanitarian intervention (Hildebrandt et al. 2013). Humanitarian interventions often have a low probability of success, vague definitions of what success will look like, and the high likelihood of electoral punishment in the face of failure. These issues make members of the American legislative branch often hesitant to support such actions, especially if main the opposition party supports such actions, out of fear of empowering the opposition (Donnelly 1993; Holzgrefe and Keohane 2003; Seybolt 2007; Hildebrandt et al. 2013). Despite the hesitation of politicians to support humanitarian interventions, research shows that American intervention in humanitarian conflicts often follows increases in public support for the intervention, though the relationship is far from guaranteed (Holzgrefe 2003). What this literature does show is that there is a positive relationship between the public's attitude and governing elite decision making around human rights.

Political Scandals

Important to any discussion about accountability for human rights violations is the broader literature on political scandals. This literature largely focuses on the impact of information about elite scandals on the attitudes and behaviors of citizens towards elites.

The key point of discussing this literature is to show that there is evidence that not only do citizens know about the bad behavior, but they also punish elites for such behaviors. One set of this literature focuses on corruption. The empirical record shows that exposing corruption leads to incumbent vote loss in elections that follow the scandal. However, whether such scandals always cost the offender elections, compared to only lessening their victory is somewhat disputed (Chang, Golden, and Hill 2010; Ferraz and Finan 2008; Peters and Welch 1980; Winters and Weitz-Shapiro 2012). Ferraz and Finan (2008), for example, compare the electoral returns of incumbent mayors randomly selected to be audited before the 2004 election in Brazil to the returns of incumbent mayors audited afterward. They find that exposing corruption hurts the incumbent's electoral performance. Shifting from Brazil to Mexico, Chong et al. (2015) find that corruption scandals diminish not only support for incumbents but also people's registration as a member of the political party the guilty candidate.

In the American context, political "survival" of politicians facing a controversy is the topic of numerous studies. Typically these studies have looked at the impact of a scandal on the immediately following election, both for the offending governing official, but also for their party (Basinger 2013; Brown 2001; 2006; 2007; Peters and Welch 1980; Welch and Hibbing 1997). Praino, Stockemer, and Moscardelli (2013) and Doherty, Dowling, and Miller (2014) examine whether the passage of time limits the effects of scandals and find in their studies of congressional elections that the effect of scandal is strongest in the election immediately after the scandal breaks and then quickly wanes in subsequent elections. Doherty, Dowling, and Miller (2011) ask whether there is a difference in the impact of the type of scandal on the electoral successes of an offending

individual or their party. They find that corruption scandals which involve elected officials abusing power to cover up illegal behavior, lowers the likelihood citizens will vote for the guilty politician in an election.

Little research to date has looked at how governing elites respond to scandals and the impact this has on the fallout with their electorate. One piece that has is Basinger and Rottinghaus (2012). This article explores numerous important points for understanding the impact of scandals. First, median media coverage of a scandal involving the executive branch lasts 12.8 months. International scandals such as external human rights violations by the armed services remain a focal point of the domestic media for approximately 12.2 months, slightly shorter. Basinger and Rottinghaus (2012) find mixed support for how administrations respond to scandals. Interestingly though, the authors find that when governing elites pursue accountability for scandals, the average negative media coverage time of the scandal decreases approximately 30 percent when accountability is pursued compared to attempts to ignore the scandal and complaints. If then it is true what other research has found about media coverage of events influencing selectorate assessment of elites the sooner a scandal is removed from media coverage, the sooner the scandal could be damaging to a politician. If by pursuing accountability for a scandal this decreases media coverage of the scandal, then this finding might suggest that politicians would be wise to pursue accountability of a scandal to decrease the potential negative blowback.

Rottinghaus (2014) builds off of this work and finds that the electoral damage of executive branch scandals are lessened the greater the control over the legislative branch the executive's party has. These findings suggest that scandals related to human rights violations may be more likely to impact the decision making of governing elites if they

have less control over other branches of the government or if the setting the scandal occurred is external, such as a foreign occupation. These findings also highlight that electoral politics matter for the behavior of elites facing political scandals. Rottinghaus (2014) finds that policy successes, defined in the article as economic strength, also lessen the electoral damage of a scandal. In short, everyone likes a winner, even one facing a scandal. This literature is helpful in highlighting that political controversies are electorally damaging for politicians, and thus addressing controversies to mitigate the electoral damage of a scandal is imperative for governing elites, not only for their political success but also their party's success. This literature also points to important mechanisms that may shield governing elites from the need to pursue accountability.

State Sponsored Human Rights Violations and Insurgent Violence

A great deal of literature examines the decisions of state security forces to resort to human rights abuses as a military strategy. Research has found violations of laws of war and human rights abuses by combatants occur due to desperation (Downes 2006; Hultman 2007; Wood, Kathman, and Gent 2012), shifting power dynamics (Stoll 1993; Kalyvas 2006; Hultman 2007; Ziemk 2008; Wood 2010; Lyall 2009), combatant cohesion and socialization (Cohen 2013), and to coerce surrender (Merom 2003; Valentino, Huth, Croco 2006; Downes 2007). Some of this research has looked at the targeting of civilians in counterinsurgencies, the setting of this paper.

Another research area that applies to the causes and consequences of accountability is the literature on the impact of state-sponsored human rights violations and insurgent violence. In a study exploring the Chechen conflict from 2000-2005 Lyall finds that indiscriminate shelling by Russian forces decreased the incidence of insurgent

attacks in the shelled district, but had no relationship to the severity of the shelling (Lyall 2009). In contrast, Wood argues that insurgencies can induce supporters to violence in an attempt to regain dignity in the face of condescension, repression, and indifference at the hands of the state security apparatus (Wood 2003, 2). Further, when a military force commits violations on a population, it provides rebel leaders a pretext to advertise their organization, retaliate, reframe political issues, define goals, and justify tactics in a manner that appeals to potential recruits and the population at large (Wood 2003, 15-16). Petersen (2001) argues that a shared group identity and grievances regarding abuses together form a norm of reciprocity where when the state security apparatus abuses members of a specific group and the members of that group feel as if they must retaliate against the state. This finding would suggest that costs of human rights violations by the state security apparatus may be the highest for the state with members of the same social group as those that have been the target of the violations.

Walter and Kydd (2006) highlight a "provocation strategy" whereas state-sponsored violations against the public allow insurgents to argue that the state lacks credibility and legitimates the actions of the insurgency. Without directly referencing it, this research argues that states are implementing self-inflicted costs upon themselves and are damaging their legitimacy with the population when they commit human rights violations. Sullivan finds that in Guatemala from 1977-1994 torture correlates positively with killing by counterinsurgents in the short term, but has no discernable association with insurgent violence (Sullivan 2014). Further, research has found that abuses of civilian populations often backfire on counterinsurgency operations and increase the strength or support of an insurgency (Pape 1996; Arreguin-Toft 2001; Carr 2002;

Abrahms 2006; Kocher, Pepinsky and Kalyvas 2011; Viterna 2013). We also know that avoiding human rights abuses and violations of laws of war is a strategic decision made by political and military elites (Kahl 2007; Dixon 2009; Hastings 2010; Farrell 2010). However, what is unclear is that if the conducting of human rights abuses and the avoidance of human rights abuses are the result of strategic decisions made by elites, does this thinking extend to the prosecutions of security forces for human rights abuses? This disagreement over the impact of state violations on insurgent violence leaves open the question and provides a greater need for research. Also, this literature leaves open questions related to how states that engage in state-sponsored human rights violations may be able to mitigate the damage to the legitimacy of their rule that such violations bring.

Human Rights Abuses and Law in Conflict

A growing body of research looks at the strategic nature of law during conflicts, popularizing the concept of "lawfare" to refer to the strategic use of law as a weapon of war (Dunlap 2008; Dunlap 2009; Morrissey 2011; Wittes, Goldsmith, and Chesney 2015). This lawfare literature is helpful in understanding the numerous ways in which law can be invoked and deployed to serve military objectives. In the case of the War on Terror, in which the Iraq War discussed in this dissertation is part of, the term is used to describe amendments to existing laws, the adoption, and implementation of new anti-terror legislation, and to detain perceived enemy combatants indefinitely. However, the term lawfare is most often used to refer to the use of the law against enemy combatants to advance military goals by removing them from the battlefield using legal as well as military channels. According to this literature, the law is often deployed selectively,

instrumentally and strategically to target adversaries in the context of ongoing military hostilities. This body of scholarship fills an essential gap for socio-legal scholars concerned with the relationship between law and conflict. Less research and discussion has been devoted to the selective and strategic use of human rights prosecutions and legal accountability within army ranks or against one's forces. Does a similar strategic "lawfare" logic extend to the punishment of one's security forces?

An emerging body of literature on domestic accountability processes and war crimes prosecutions in times of conflict seeks to direct attention to such dynamics overlooked by the lawfare literature (Binningsbø et al. 2012; Loyle and Davenport 2015; Loyle and Binningsbø 2016; Lake, Cronin-Furman, and Loken 2018; Simmons 2018). This work shifts the research focus from post-conflict settings towards, which has been the focus of some researchers, to the during conflict setting. In particular, Loyle and Binningsbø (2016) note that, while armed conflicts are ultimately about violence and destruction, elites pursue a variety of policies in conjunction with this violence which contributes to the course of the conflict and its outcomes. These may include the use of what Loyle and Binningsbø term "during-conflict justice," or the use of judicial and pseudo-judicial processes to advance political or military goals.

There are some recent notable examples of this literature which are key to understanding how this research views human rights justice and strategic thinking. Simmons (2018), in particular, examines decisions by governments and militaries to prosecute members of their armed forces for human rights violations as part of broader counter-insurgency strategy. Lake, Cronin-Furman, and Loken (2018) look at similar dynamics within the context of the pursuit of prosecutions of members of security forces

for sexual violence in the counter-insurgency setting of Sri Lanka. Analyzing such dynamics helps us to understand when, why and under what conditions the laws of war, international human rights law, and human rights pressures may be more likely to impact the decision making processes of ruling domestic elites.

While helpful in moving forward our understanding of why elites will prosecute state security forces for human rights abuses, this existing literature has some shortfalls. Loyle and Binningsbø (2016) fall short of a larger analysis through only looking at during conflict justice against the opposing side of a conflict. Their limited approach is perhaps not surprising given that the focus of their article is to introduce their expansive, detailed, and useful dataset on during conflict justice mechanisms. While greatly improving our understanding of when and why states may pursue or avoid justice against the opposing side of a conflict, Loyle and Binningsbø (2016) leave open the question of why states may reverse the gunsights of justice against their forces. Simmons (2018) focuses their discussion on a historical case study, well before the spread of the "justice cascade." Perhaps it is unsurprising in this setting that we see a strategic need, and not international law or human rights norms, driving human rights prosecutions. In many ways, the Boer War represents an "easy" test of such possibilities, but are similar dynamics present in the modern time with the increased power of international law and human rights norms? While illuminating why modern states may be willing to pursue such prosecutions, Lake, Cronin-Furman, and Loken (2018) explore their dynamics in a weak state setting. Are these dynamics limited to such a setting or do we see similar dynamics at play even with great powers?

The Strategic Pursuit of Accountability

The literature on domestic human rights accountability for human rights violations assumes that accountability occurs either because of spreading norms around human rights or as a weapon of the victors of conflicts to punish defeated oppositions. This perspective is despite ample research in other fields that demonstrate governing officials are strategic actors who are concerned with the political survival of themselves, their political parties, and the achievement of their goals. Further, as mentioned in the literature review section, researchers have yet to explain why elites of great powers punish their security forces for human rights violations during on-going conflicts, nor why elites would pursue such punishments during high periods of threat such as during ongoing conflicts.

In the remainder of this chapter, I build a theory of domestic human rights accountability of governing elite's security forces with a focus on the strategic thinking of governing elites. I base my theory around the well-established belief that incumbents elites want to remain in power and achieve their goals. I argue that if the amount of cost, or expected amount of the cost, incurred by elites for not pursuing accountability is greater than the benefit of not engaging in accountability than accountability for human rights violations will be pursued. If the costs of pursuing accountability outweigh the benefits, governments will not pursue accountability. Costs can take multiple forms, and different costs may matter more in certain contexts. The same thinking applies to the benefits one may gain as well. The numerous ways costs and benefits look will be addressed later in this chapter. Essentially, the theory laid out in this chapter argues that

the likelihood of the pursuit of accountability is increased due to an instrumentalization of the legal process to achieve the agenda of elites.

Trials as the Result of Cost/Benefits Analysis

In outlining my theory below, I make two assumptions about governing elites. First, I assume that governing elites engage in all major decision making with the intention of producing the desired result of continuing to hold as much power as possible, either the same elites or at the very least their political party or to achieve some other political goal, such as the surrender of a violent enemy. That is to say, governing elites are assumed to choose among available options with strong consideration for their consequences for their continued ability to hold power or achieve other political goals. Second, I assume that governing elites adopt strategies based on what they believe the preferences, and likely actions, are of audiences that can enact damaging costs and endanger the goal of the continued political power of the elites and their allies. Essentially, governing elites develop strategies regarding human rights accountability that they believe are the best response to the anticipated costs and benefits enacted or awarded by different audiences. These assumptions link the decision making of elites to the possible choices in front of them and the costs/benefits of each of those choices in explaining outcomes.

Pursuing accountability of one's forces could potentially be a costly endeavor for a government to engage in. After all, the forces under scrutiny were most likely engaging in actions on behalf of the government, or at the very least, theoretically under the control and authority of the governing elites. In this sense then, governments would be punishing those that have been loyal to them over the course of a conflict the elites led. If the elite

controlled government chooses to punish these once loyal actors, this could endanger the continued loyalty of those forces and endanger the continued rule of the government potentially more so than not punishing the service members would have. Not only could this endanger the loyalty of the forces facing accusations, but the pursuit may also actually cause supporters of the forces to turn against the ruling government. Essentially, pursuing accountability for human rights violations may destabilize a government's "winning coalition" and result in the removal of the elite or the elite's political party if the executive is bounded by term limits, or damage a war effort if the selectorate comes from those engaging in conflict on behalf of an elite (Bueno de Mesquita et al. 2003). This form of accountability does occur more frequently than thought by scholars (Weschler 2009), but researchers have yet to explain why.

Failing to pursue accountability for human rights violations may also be a costly decision for governing elites. Actors who want accountability for human rights violations to take place may also enforce costs on the state to signal their preferences. Further, the government may predict the accrual of costs from key audiences based on prior experience with the same actors or similar actors. Governments will consider what actors may enact costs on the government, their ability to enact the costs, and the amount of the costs. Likewise, with the costs associated with non-accountability, elites will evaluate the actual or expected costs from multiple audiences. These actors could be non-violent, violent, domestic, or international. Further, costs may matter at different times for a democratic government due to the built-in accountability of elections. Elites will weigh these costs of not pursuing accountability against the potential costs expected from the

pursuit of accountability in an attempt to maintain their power, or the power of their coalition if bounded by term limits.

As explored in the literature review, this strategic thinking has previously been found in governing elites during wartime, impacting a wide range of aspects from violent tactics to peacebuilding institutions. It has also been found to impact the decision making of governing officials at local levels in the form of district attorney prosecutions in America. Therefore, it is not a stretch to consider whether similar dynamics of strategic considerations influence the pursuit of accountability for alleged abuses by the security forces controlled by the governing elites.

Grievances, local populations, and insurgencies

Expanding upon the importance of grievances of local populations in territories governed by elites, I argue that democratic states facing an insurgency will engage in accountability for human rights violations of their armed forces to win over the "hearts and minds" of the insurgents and populations that may support the insurgency during a conflict. A variety of domestic factors influence the building of government legitimacy, and one such way is through attempting to "win the hearts and minds" of opposition populations, especially to preempt or prevent the potential threat of violent opposition. In this sense, accountability helps to win "hearts and minds" as it provides the perception of responsiveness and fairness, signals a commitment to the rule of law, and increases positive calculated evaluations of governments by target audiences. All these factors provide public goods and decrease the need for challenges to the ruling power by increasing their legitimacy with the opposition population.

Much research has focused on the creation of political legitimacy in states, including causes and deterrents. This literature argues that governments gain legitimacy through impartiality and fairness in the treatment of the populace under the administration of the government (Cupit 2000; Gilley 2006; Rothstein and Teorell 2008; Rothstein 2009). Scholars have argued this equality is expressed through democratic rights and, importantly, through the judicial process, namely trials (Falk 1995; Rawls 1993; Mishler and Rose 2001A; 2001B; Carothers 2006; Egnell 2010). Additional scholars have also argued for the importance of the courtroom, the rule of law, and judicial process to the legitimation of a ruling power (Peerenboom 2002; Tyler 2003; Moustafa 2008; Moustafa and Ginsburg 2008; Landry 2008).

The creation of political legitimacy in counterinsurgency settings such as those focused on in this project in particular focuses on the idea of winning the "hearts and minds" of the opposition population. The most important tenant of "winning hearts and minds" as a tactic of counterinsurgency, is that winning a conflict against an insurgency requires shifting the popular attitudes, sympathies, and support of the civilian population away from the insurgent forces and towards the controlling authority. "Winning hearts and minds" is a clear understanding that military force is effective only in conjunction with a policy of economic and political development that attacks the causes of unrest. Within this thinking, support and trust from the local population for the ruling authority depend on whether the needs and the legitimate grievances of the local population are handled properly by the ruling authority. In the simplest of explanations, "a 'hearts and minds' campaign…consists of soberly assessing what motivates people to rebel and devising a strategy to address the underlying causes of unrest (Mockaitis 2008, 23-24)."

Building on this thinking, the pursuit of local legitimacy is an effort to combat the potential for opposition by building trust in the ruling authority to govern over them in a fair capacity, keep them safe, and to govern them competently. The goal of this effort is that local civilian populations perceive the ruling authority as legitimate and cooperate within the processes of the ruling power and its institutions. I'm not the first to link together the rule of law with counterinsurgency strategies. Noted counterinsurgency practitioner, British General Frank Kitson, argues that fair use of courts and the rule of law by an occupational power signal the impartial implementation of the law for all parties in the conflict (Kitson 1970, 69). He suggests that such prosecutions are a valuable counterinsurgency tool for gaining the allegiance of the insurgent population (Kitson 1970, 69).

This theory suggests that elites use court-martials for human rights violations as a counterinsurgency tactic to win over the "hearts and minds" of the insurgents and populations potentially supportive of the insurgency to weaken the insurgency and legitimate the government's rule. This willingness of government forces to punish their own in turn signals fairness and equality, helping to establish the legitimacy of the government's administration over people and thus combat potential political or military opposition.

Violent insurgencies attempt to defeat pro-government forces, or at the very least attempt extract concessions from the ruling elites (Bueno De Mesquita 2005; Kydd and Walter 2006). On the other hand, governments try to defeat insurgents, minimize the amount of violence enacted by insurgents, and limit concessions to the insurgents (Bueno De Mesquita 2005). One type of strategy are concessions offered by governments for

insurgent grievances with the current system. Governments will attempt to offer such grievance based concessions to convince the rebels that the current governed will address their issues and there is no need to overthrow/separate from the current government. This is especially true if governments have been unsuccessful in attempts to militarily defeat insurgents. One type of grievance may be perceived human rights violations of the insurgent's forces or the civilian groups they claim to represent. Addressing grievances of insurgents may take place due to face to face meetings and direct demands by rebels, but also may occur due to the violent negotiation of the battlefield. Each interaction between insurgents and governments is an opportunity for information on the position of each group, including but not limited to their grievances and demands. Addressing these grievances allows the government to build legitimacy with the insurgent population.

Two clarifying points are needed before I go further. First, this theory is not arguing that the laws of war do not matter. After all, for there to be charges and trials, there have to be violations of existing law. Second, I am not arguing that human rights norms do not matter. After all, human rights norms have influenced the development of the laws of war and are present in every modern war. Instead, this theory suggests that strategic consideration explain why states may be more willing to enforce the laws of war and when human rights norms may influence elite decision making.

The Role of Scapegoating

Some may ask what the role of "scapegoats" is or how legitimate the accountability pursued by the government are for my theory. First, definitions are needed. For the theory, a scapegoat is an individual punished in the place of another for human rights violations. For example, the military may pursue accountability of members for

human rights abuses were the result of following orders, but not pursue accountability of their commanding officer who issued the order. For the theory here though, the reality of whether someone is or is not a scapegoat does not matter. What matters for my theory is a perception from the target audiences of the accused is a scapegoat or not. This approach may work not only for a pro-accountability audience but also for an anti-accountability audience. Just as a pro-accountability audience's attitude towards whether a person is responsible for a crime, a similar assessment from an anti-accountability audience may also matter. If either audience does not perceive the individual as being responsible for the violation in question, this may impact that audience's particular willingness to enact costs upon the state.

Perception will impact which audiences mobilize for or against accountability. Pursuing accountability of a top general, for example, may satisfy the audience that is demanding accountability, but may anger the audience that is against accountability. Pursuing accountability of a private may anger the pro-accountability audience while not incurring the wrath of the anti-accountability audience. It is also possible to placate both audiences who may be inclined to support accountability and those who oppose accountability with strategically punishing individuals the pro-accountability audience will accept, and the anti-accountability audience will tolerate. What may matter for the reactions of these two groups is their assessment of the allegations and who they view responsible for the alleged crime. Some may place blame on the individual who committed the alleged crime. Others may blame their commanding officer for giving the order. Others may blame the politicians who control where members of the security forces of the state are placed or control the policies of the security forces.

Cheap Talk Vs Costly Signals

In international relations theory actors, such as governing elites, attempt to demonstrate commitment in the form of costly signals. Costly signals incur or create some cost that the sender would not incur or create if they were not willing to carry out the threat (Fearon 1990, 1992, 1994, 1998). Signals are a way for an actor to give information to audiences who are unable to directly observe the information of the sender's behavior. It is unlikely that audiences outside of the governing elite would ever have access to all information required to know for sure the future actions of the governing elite. While audiences outside of the governing elite may have access to meeting transcripts, it is currently impossible to know for certain the internal thinking of anyone, including governing elites. Due to this, governing elites use public signals to send credible information regarding their future behavior.

To be credible with target audiences, a signaling action must have a cost or risk attached to it that would discourage an unresolved actor from making it. Costly signals are different from "cheap talk" in this is when actors say they may be willing to do something to address concerns over human rights violations without taking action to ensure that they will do so. Examples of costly signaling here would be issuing indictments for prosecutions, setting up investigatory committees or commissions, publicly condemning violators and their actions, passing legislation, signing agreements, strengthen judicial independence, or removing well-trained members of the military from their roles. In particular, public prosecutions through courts and legally binding oneself into prosecuting current and future prosecutions will send credible signals that the elites are addressing a target communities grievances.

Trials as a Credible Signal

Different types and levels of signals may be required depending on the audience targeted by the signaling regime. For example, the more skeptical an audience is, the more costly signaling governing elites will have to engage in. Audiences may be more skeptical of governing elites for a variety of reasons including, but not limited to: prior cheap talk regarding human rights, the audience's relationship to the victims of the alleged atrocities, or beliefs regarding the ability of elites to follow through even if they genuinely wanted to. Governing elites may have previously attempted to signal their commitment to certain policies, human rights related or otherwise, that the elites did not follow through on or later backtracked from. Due to this, audiences may be less trusting and more skeptical of elites thus requiring a more costly commitment to the policy. The relationship of the audiences to the victims of the alleged human rights violations may cause audiences to be more skeptical to the elites. This issue is due to the fact the security forces of the elites were also the victimizers calling into question how committed elites are to being impartial judges. Lastly, audiences may simply not think the governing elites have the political capital to follow through on plans of accountability. In this sense, audiences are looking at the political constraints of the elites and doing their own, limited, cost/benefit analysis of the elite's authority and capacity.

The most powerful venue to send a signal for elites concerning accountability will be the public prosecutions of security forces in transparent and legitimate courts. This venue is the ideal venue for such signaling for several reasons. Courts are open spaces in which citizens, through media coverage or attendance, can witness the government and legal system in action. The openness of courts is especially true in cases where the

government is involved in the prosecution of the alleged crime. This publicly viewed space allows government prosecutors to make clear what the government considers as legally acceptable and unacceptable behavior. Through proscribing what acceptable and unacceptable, the government establishes an identity or may reinforce an identity if the same behaviors are punished by the government repeatedly. Further, through the performance space of courts governments can say not only what is acceptable or unacceptable behavior, but that the government will punish unacceptable behavior. Public spaces would be especially useful to a state if the accused in a trial were an agent of the state, acting on behalf of the state. Public attempts, such as those through courts, at building legitimacy are in particular important when individuals under the rule of the state disapprove of the actions of the state (Gibson and Calderia 1998). In such cases, the state is prosecuting one of their "own," publicly declaring the behavior of the state agent unacceptable, and pursuing punishment for the unacceptable behavior.

Repeated over time the self-punishment would build up goodwill, positive assessments of the state, and legitimacy. While not necessarily focused on human rights trials, this argument resembles existing research on how repeated positive performances by courts and other institutions build up legitimacy and goodwill amongst publics (Giles and Lancaster 1989; Gibson, Caldeira, and Baird 1998). Existing research also highlights the importance of awareness of courts on perceptions of legitimacy gained from courts (Gibson 2007). This finding suggests that acting through courts, and making the public aware of actions through courts, are powerful tools for the creation of legitimacy for elites. As well, the importance of the process of acting through courts, not merely the outcomes courts produce are key to educating a public and increasing legitimacy for the

state conducting the trial (Widner 2001). Put another way; it is the procedural nature of the justice system which helps improve legitimacy (Murphy 2005; Sunshine and Tyler 2003, 514; Thibaut and Walker 1975; Tyler & Lind 1992; Tyler & Smith 1998; Wissler 1995). These scholars find that it is the perception by people of the process of justice, not the outcome of justice that mattered for individual assessments of the legitimacy of the judicial process. Essentially, transparent processes, fairness, and clear expectations, which would be outlined in an open trial, provide the most benefit to legitimacy.

While trials may be the strongest space to send credible signals of accountability, trials are not the only avenue elites have to pursue accountability through. Accountability for human rights violations by state security forces can take numerous forms, all of which we have seen ample evidence of in previous conflicts. Accountability can take the form of public condemnations or apologies, written reprimands, lustrations/forced retirements, fines of perpetrators, money payments to victims, and lowering of ranks. In fact, it may be possible that the pursuit of accountability begins with these additional forms of accountability before the pursuit of prosecutions occurs. It is also possible that these less serious forms of accountability may even be effective in appealing to local populations, and this may matter on culture and context. For example, in Afghanistan "blood money" payments for the wrongful killing of a family member are common and a cultural norm (Barfield 2001). However, this may not be the case in other cultural contexts. In fact, an attempt by the state to pay a family for a member's wrongful death at the hands of members of the security forces may further anger the already aggrieved family further.

Beyond cultural context, another issue for these additional forms of accountability are questions around whether they amount to accountability at all. Is a military publicly saying sorry for a violation, with no other steps taken accountability? Would a public apology and promises of changed behavior be perceived as credible without a demonstration of consequences for violations? Additionally, lustrations/forced retirements or payments to victims/victim families can be done quietly and in secret, while trials in democracies cannot. Further, when it comes to trials in democracies, trials are open and accessible methods of accountability. This removes SOME of the doubt that may come from whether the trial is a legitimate and honest attempt at accountability. Absent the publicity, explanation, blame, binding, and justice that comes from trials would these accountability mechanisms be as effective in swaying public opinion?

While trials may be more credible signals than other forms of accountability than non-judicial punishments they are also, on average, less expensive and administratively easier to execute than trials. Non-judicial avenues of punishment do not require prosecutions, defenses judges, juries, buildings, access to resources for both legal teams, coordination, media access and communication, and publicity. Yet, with the higher costs and greater difficulties reasons outlined previously suggest theoretically that trials are more impactful and useful in sending credible messages to aggrieved populations. Therefore elites may only move from one of these additional forms of accountability to prosecutions of their security forces only when on the ground pressures continue to rise despite these other forms of accountability taking place. In short, if other forms of accountability are not enough to ingratiate the military with the local community and

"win hearts and minds", elites will pursue prosecutions of their security forces to send a stronger and more credible signal of accountability.

Some states are not like the others

The theory of this project considers the pursuit of accountability for human rights violations to be the result of a cost/benefit analysis of strategic elites. The cost/benefit calculations of elites are driven by multiple audiences, both foreign and domestic. Further, the willingness of these audiences to enact costs are originate from domestic and international norms, institutions, group identities, and strategic thinking. The strategic actor theory proposed here builds upon current thinking of human rights accountability beyond being the result of human rights norms or the punishment of defeated actors. Lastly, this theory applies to numerous cases.

It would be theoretically naïve to expect that all governing elites in all countries will be equally susceptible costs in the same way. Countries that are military or economically superior or are less reliant on international trade or foreign aid will be more insulated from foreign costs that may impact domestic prosecutions of the state's security apparatus. Essentially "weak" states may be more likely to be influenced by international factors than "strong" states. This statement is not to say that international dynamics do not impact "strong" states, but that the impact may be greater in ease or frequency for "weak" states. Governing elites may also face different domestic aspects that impact their likelihood of pursuing accountability. Governing elites facing strong oppositions that are pushing for accountability, strong rule of law, or a strong civil society may more susceptible to domestic costs than states with weaker oppositions, court, or civil society.

Assigning Blame

While the theory laid out in this dissertation could be applied subnationally or locally, I largely focus on accountability for the national level security apparatus. I do this for a number of reasons. I focus on the national security apparatus due to clear chains of commands regarding structure, control, laws, and accountability. Federal systems do not make it easy for citizens to hold elected officials accountable for governmental decisions at the subnational level. Holding officials accountable is easiest when there is a concentration of power in a single individual or administration. When power is dispersed across multiple levels, it becomes unclear who is responsible for the actions and who is responsible for pursuing accountability. In a federal system, such as the United States, the president is often the commander-in-chief, and their administration directly controls the actions of the military branch. This clear link is not always present at the subnational level. Further, extensive research shows that voters in federal systems are unclear who is responsible or to blame for subnational policies but can easily identify responsibility for actions taken by the presidential administration. In support of the claims in this section, John Fousek and David Wasserman (2010) argue that there is a rapid decline of public support for presidents whose leadership appears ethically compromised following a scandal at the national or foreign policy level.

At the national level, there is a clear and easy connection for voters. The presidential administration is responsible for the national military, intelligence service, or police and linked directly to voters. In fact, previous research has connected foreign policy and military scandals such as human rights violations by the armed services directly to the executive branch, at least in the eyes of voters (Fousek and Wasserman 2010). Further, in a parliamentary system, with the executive and legislative functions

united, it is reasonable and easy for citizens to assume the controlling party is responsible for everything that government does. Existing research supports this claim. For example, Duch and Stevenson (2008) that find that increased concentration of responsibility for policy within a single party is positively associated with the strength of citizens to punish or reward the governing party for policy. Essentially, in parliamentary systems, it is easier and more likely for voters to punish the governing party as there is no question over blame that, which is not the case in presidential systems. If citizens do not approve of what the state security apparatus has been doing there is a clear link. This comparison across federal and parliamentary systems at the national level of responsibility for the national state security apparatus makes it to where my theory and project can be comparative and applicable to both types of political systems. If I were to focus on the subnational level, this comparison would be more difficult. I also focus on the national security apparatus as the literature on accountability often focuses at this level. It is perhaps only in civil wars that we see a focus at the subnational level, but even then that is to focus on the actions of the militaries of each side of the civil conflict.

Competing Actors and Interests

One last area that is key to the theoretical considerations of this project is that of competing actors and their interests. In an ongoing conflict involving a democracy, both military and civilian elites have goals that occasionally overlap and occasionally differ. Elites in the security forces are driven by a goal to defeat an enemy, win a conflict, and lose as few of casualties as possible. Domestic political elites may have all of those goals, but also have an additional goal of winning elections and remaining in power. At times, the priority of these goals may matter more for both political and military elites, and this

may impact how elites approach accountability. While military elites may believe prosecutions of members of their security forces may be useful for a counterinsurgency approach, political elites may view such prosecutions as harmful to their electoral chances. The opposite could also be true, where political elites believe that calling for the prosecution of members of the security forces for human rights violations may be politically useful, but elites in the security forces may believe them to harm the war effort. Even within political elites, there could be key differences that impact how elites approach accountability. In particular, elites in opposition parties may be more willing to call for prosecutions of the security forces if they believe such calls may harm public attitudes of the incumbent. Alternatively, if an incumbent is supportive of such prosecutions, it is possible an opposition party may see it as politically useful to attack such prosecutions.

Due to these competing interests, the institutions of accountability and control of these institutions matter greatly. In democratic regimes, there is a clear separation between judicial systems for security forces and those for civilians. While civilians courts can punish members of the security forces in such legal structures, this frequently can only occur if the security forces recommended charges but when the security forces have already separated an individual before recommending charges. These structures of how members of prosecutions for security forces are important for the theory of this project. Due to the fact elites of security forces control the investigatory process of their members and the filing of charges for violations, this places the considerations military elites at the center of any theoretical considerations.

The previous discussion is not to say that civilian elites cannot play a role, especially those elites in executive branches with control over military leadership. In theory, if civilian leadership disagrees with decisions of military elites, civilian leadership may have the ability to replace the leadership of the security forces with someone who agrees with them. Domestic norms around such behaviors may constrain civilian elite's willingness and ability to do so though. Instead, such norms may push domestic elites to pursue public or private inquiries, which, in turn, put domestic political pressure on military elites. Elites, in turn, will balance these domestic political concerns with military concerns in producing their actions. Additional consideration of this dynamic may be needed to fully understand military decisions regarding prosecutions of their forces, but is beyond the scope of this project. Instead, the focus of this dissertation is on the counterinsurgency battlefield. When combining the focus of this dissertation on the battlefield, the military focus on winning a conflict, and the near-universal control by security forces over the judicial processes that regulate their behavior theoretical focus on the military and their strategic considerations are justified. However, it would be naïve to not acknowledge other possible factors such as civilian leadership and their interests may also play a role, while recognizing this project is not the appropriate place to explore those dynamics.

Hypotheses

The theory laid out in this dissertation argues that governing elites will engage in cost/benefit analysis in deciding whether or not to pursue accountability for the human rights violations of their security apparatus. In this section, I will explore what costs

governing elites care about, why they care about these costs and derive some testable hypotheses from this thinking.

I theorized previously that violent conflict from insurgents impacts the decision making of elites and their willingness to pursue accountability. Violent insurgencies attempt to defeat pro-government forces, or at the very least attempt extract concessions from the ruling elites (Bueno De Mesquita 2005; Kydd and Walter 2006). On the other hand, governments try to defeat insurgents, minimize the amount of violence enacted by insurgents, and limit concessions to the insurgents (Bueno De Mesquita 2005). One type of strategy are concessions offered by governments for insurgent grievances with the current system. Governments will attempt to offer such grievance based concessions to convince the rebels that current government will address their grievances and there is not a need to overthrow/separate from the current government. This position is especially true if governments have been unsuccessful in attempts to militarily defeat insurgents. One type of grievance may be perceived human rights violations of the insurgent's forces or the civilian groups they claim to represent. Addressing grievances of insurgents may take place due to face to face meetings and direct demands by rebels, but also may occur due to the violent negotiation of the battlefield. After all, as Clausewitz famously once said, "war is the continuation of politics by other means." Each interaction between insurgents and governments is an opportunity for information on the position of each group, including but not limited to their grievances and demands. Addressing these grievances allows the government to build legitimacy with the insurgent population.

A variety of domestic factors influence the building of government legitimacy in a "home" state and a newly conquered state. One such way is through attempting to "win

the hearts and minds" of populations, especially to preempt or prevent the potential threat of violent opposition (U.S. Marine Corps 1940; Mockaitis 1990; Mockaitis 2003; Findley and Young 2007; Dixon 2009a; Dixon 2009b; Egnell 2010). What this means in practice, and how it pertains to human rights prosecutions, is worthy of further scrutiny. Much research has focused on the creation of political legitimacy in states, including causes and deterrents. This literature argues that governments gain legitimacy through impartiality and fairness in the treatment of the populace under the administration of the government (Cupit 2000; Gilley 2006; Rothstein 2009; Rothstein and Teorell 2008). Scholars have argued democratic rights, and importantly, the judicial process press this equality (Falk 1995; Fukuyama 1992; Rawls 1993; Mishler and Rose 2001A; 2001B; Carothers 2006; Egnell 2010). Fitzsimmons (2008) states, "among the mechanisms available…for establishing…legitimacy, one of the most prominent in both practice and doctrine has been the improvement of governance in the form of effective and efficient administration of government and public services. Good governance, by this logic, is the key to 'winning hearts and minds'" (Fitzsimmons 2008, 338).

The basic tenant of "winning hearts and minds" as a tactic of counterinsurgency, is that winning a conflict against an insurgency requires shifting the popular attitudes, sympathies, and support of the civilian population away from the insurgent forces and towards the controlling authority. Put another way, "winning hearts and minds" is a clear understanding that military force is useful only in conjunction with a policy of economic and political development that attacks the causes of unrest (Mockaitis 1990). Mockaitis (2003) also argues that support and trust from the local population for the ruling authority depend on whether the needs and the legitimate grievances of the local population are

handled properly by the ruling authority. Mockaitis (2008) builds on this understanding by adding that "a 'hearts and minds' campaign…consists of soberly assessing what motivates people to rebel and devising a strategy to address the underlying causes of unrest" (Mockaitis 2008, 23-24). Lastly, Richard Stubbs (1989) argues that the "hearts and minds" approach is about gaining the enthusiastic support of the civilian population for the ruling authority instead of merely their consent.

I define this pursuit of local legitimacy to combat the potential for insurgency as building trust in the ruling authority to govern over them in a fair capacity, keep them safe, and to govern them competently (Fitzsimmons 2008, Mockaitis 1990; 2003; 2008, and Egnell 2010). Additionally, local civilian populations should perceive the ruling authority as legitimate and cooperate within the processes of the ruling authority and its institutions. Noted counterinsurgency expert, British General Frank Kitson, argues that courts and the rule of law, which signal the impartial implementation of law fairly for all parties to the conflict, are a valuable counterinsurgency tool for gaining the allegiance of the insurgent population (Kitson 1970, 69).

This line of reasoning motivates the following three hypotheses.

H1: Increased rebel violent activity increases the probability for accountability of the state security apparatus.

H2: Peace agreement negotiations to end civil conflict increase the probability for accountability of the state security apparatus.

H3: Increased rebel public statements on human rights violations by security forces increases the probability for accountability of the state security apparatus.

CHAPTER 3

METHODOLOGY

Considering the diversity of my hypotheses and mixed methods approach, I use multiple research methodologies throughout the project. This chapter explains the operationalization for each of the testing of each hypothesis presented in this dissertation. The aim is to make as transparent as possible the process of my research. This process will allow other scholars to replicate the research presented here and build off this initial research.

Research Design

I approach the research questions of this project with a research design that focuses on my two main cases and combines within case quantitative and qualitative analysis, as opposed to a large-N cross-national approach. This allows me to explore the impact of the different types of costs and benefits may have on the pursuit of human rights trials of an actor's security forces.

Case Selection

Important scope conditions based on the theory and focus of this project limit the types of cases I could choose from. First, the theory is limited to periods of ongoing, insurgency based, conflicts. Second, members of the state apparatus must have authority to prosecute the crimes by the state security forces. Third, those in-charge of developing the conflict strategy of the military must have a clearly defined legal role in allowing the pursuit of prosecutions. This final two scope conditions accurately capture near all militaries in democratic states and many non-democratic states governed by military

governments. There are numerous possible cases that fit these requirements: America during the Vietnam War, America during the "War on Terror", Colombia during their conflict with FARC, Namibia during the Caprivi Conflict, Peru during their ongoing conflict, Russia during the Second Chechen War, Zimbabwe during the Bush War, the South African government during apartheid, Serbia during the Kosovo War, and The United Kingdom during The Troubles.

From these cases, there are several ways a researcher could further justify selecting a few different parings. Two collections of cases make sense on regional grounds. First, Colombia and Peru due to their South American proximity. One could also add America in the "War on Terror" to this combination as part of a larger "Americas" region. Second, I could pair South Africa and Namibia due to sharing a government until 1989. One could also justify the combination of American in the War on Terror, the UK during The Troubles, and Russia in the Second Chechen War since all three governments faced armed insurgencies and were viewed by part of the local community as hostile foreign occupiers.

I ultimately select the two cases of America in the War on Terror and the United Kingdom during The Troubles. First, thanks to numerous detailed government, military, and NGO records these cases contain an abundance of easily accessed information. Second, both cases share the English language, lowering the barrier for data collection. Third, both of these cases reflect diversity in their challenges to legitimacy. America faced an external insurgency in a previously conquered territory, widespread non-violent opposition to the Bush Administration, and damage to their international reputation. The

United Kingdom faced a widespread domestic insurgency paired with widespread non-violent protests as well as international reputation damage. Fourth, both of the cases are democracies. This allows me to account and control for legal differences that may exist between democracies and non-democracies. Fifth, both the United States and the United Kingdom were faced with, at least for a brief period, directly governing a previously relatively autonomous state. The government of the United Kingdom imposed direct rule over Northern Ireland from 1972 through 1999. In comparison, the government of America directly governed Iraq through the Coalition Provisional Authority for 14 months beginning in April of 2003 and played a vital support role for the new Iraqi government, including local Iraqis viewing the new government as a puppet of the US military occupation. Lastly, these cases provide "hard" tests of my theory due to their shared high levels of stability, development, and standing in the world.

I analyze these cases with several goals in mind. First, to broadly understand the motivating factors for the pursuit of accountability. Second, to explore if strategic decision making based on a cost/benefit analysis was a key motivator for governing elites. Lastly, to ensure that I do not omit other potentially powerful explanatory variables critical to the pursuit of accountability are not from my analysis I adopt a mixed-methods approach. I also use a mixture of quantitative and qualitative data in an attempt to provide multiple explorations of the relationship between challenges to legitimacy, and accountability in each of the cases to overcome the possible issue of leaving key variables uncovered. Due to data limitations, quantitative analysis is only done on the American case study for the time being. In-progress research by other researchers will allow me to expand the quantitative analysis to include Northern Ireland in the future. By exploring

the relationship between accountability and challenges to legitimacy I can triangulate my evidence and overcome the potential weaknesses of quantitative and qualitative research. Further, each of the cases selected will allow me to unpack specific hypotheses regarding the relationship between specific challenges to legitimacy and accountability for human rights violations, which I will discuss later in this section.

My strategic actor theory would be disconfirmed if three things occurred in the cases. First, if democratic governments did not express concern for, or face, costs following human rights abuses by their state security apparatus. Second, if governing elites pursued punishment of their security forces absent the enactment of costs. Lastly, if the timing of pursuit of punishment for one's security forces is completely unrelated to the enactment of costs elites incur. Any of these occurrences would suggest that strategic consideration by governing elites play no part in the decision of actors to pursue the punishment of their security forces.

Qualitative Data Sources

My study is based in large part on in-depth, open-ended interviews with informants. I interviewed a wide range of government, diplomatic, legal, and military officials in America. I also interviewed several officials from the government, military, and legal branches on top of former combatants in the Northern Ireland case. In both cases, I further interviewed numerous legal professionals, diplomats, journalists, scholars, and human rights activists. Interviewees were promised anonymity as a condition for using their comments in this dissertation because of the sensitive nature of the topics under discussion in my interviews or because certain informants were not authorized to speak publicly. Instead, I identify my interviews based on their position. Categories of

identification are: military officer, military enlisted member, civilian military advisor, member of the legislative branch, staff member of a member of the legislative branch, head of a government agency, employee of a government agency, reporters, military lawyers, civilian lawyers, former insurgents, police officers, police oversight employees, previous victims of torture, government lawyers, human rights activists, and academics.

These interviews ranged in duration from one to three hours. I re-interviewed several informants on more than one occasion for additional information over the course of my project. For the American case, interviews occurred in the Spring, Summer, and Fall of 2016. For the Northern Ireland case, interviews occurred in early Winter and Spring of 2017. When possible, interviews were conducted in-person, but occasionally interviews were conducted over Skype or phone as well. In-person interviews in the American case took place in Washington DC. In the Northern Ireland case, interviews took place in Belfast, (London)Derry, and in an undisclosed location in the Republic of Ireland. The confidentiality of this final location was implemented to protect the identity of an interviewee. These interviews were semi-structured in their nature that evolved based on the flow and content of the discussion with the interviewees. There were approximately 50 interviewees in each of the cases analyzed.

Additionally, there are additional qualitative data sources that I use to explore a number of my hypotheses. My primary sources include military investigations, congressional investigations, sworn testimony, media coverage, government/military documents, insurgent media, and autobiographies/biographies. My secondary sources include human rights organizations, academic research, think tank reports, and additional

books from historians/journalists. I cite and document each of these sources throughout my case studies.

Quantitative Data Sources

For the American case study only, I also include analysis of quantitative data. In the near future, in-progress data collection by other researchers will allow me to expand my quantitative analysis to include Northern Ireland as well. To test H1, "Increased rebel violent activity increases the probability for accountability of the state security apparatus" I turn to three main datasets, two for the Iraq War. The U.S. Army Court of Criminal Appeals (ACCA) provided the primary data for this paper. As the body that reviews all court-martial verdicts, the ACCA maintains the records related to all Army trials. While the ACCA has "appeals" in its name, the trials analyzed are the original courts-martial, not appeals. The record provided is of all courts-martial in Iraq from the start of the Iraq War to three months into 2009. Due to the ACCA classifying the data until 2016 this data has never been used by researchers. The cutoff point of the end of March 2009 is due to the change in U.S. President from President George W. Bush to President Barrack Obama, accounting for a three-month delay. This delay is in line with the three-month lag of most variables in the dataset as explained later in this section.

In line with existing political science research, human rights violations are violations of state forces such a summary executions, disappearances, torture (including mental, physical, and sexual abuse), and the arbitrary arrest and imprisonment (Sikkink and Booth-Walling 2007). Within the data of this project, human rights charges are those related to (attempted or "successful") murder/homicide, assault/battery, kidnapping, cruelty/maltreatment of a detainee, rape, indecent assault, and willfully endangering life,

as well as variations on these charges such as “simple” or “aggravated” assault. The Army identified when a charge was for actions towards a fellow US service member or an ally, and this project does not include these cases. Given the context of Iraq is a war zone, all charges not labeled as being towards a fellow US service member or an ally were considered to be against the Iraqi population or prisoners in Iraq based American prisons.

The dependent variable is a dichotomous measure on if a human rights violation charge that went to trial. For this reason, I label this variable “trial” because the charges reached the point of a trial and were not dropped by the US military at some point in the process. Put another way; this measure captures instances in which the US Army determined a specific violation of the laws of war, which are referred to as human rights violations, occurred. This data contains each charge filed, as opposed to only capturing the defendant. So a defendant may be included in the dataset if they had multiple charges filed against them. However, due to the removal of defendant names by the ACCA for security reasons, knowing what charges belong to the same defendant is impossible. This measure captures the date the jury reached a verdict for the specific charge. I use whether the charge for a human rights violations went to trial for two reasons. First, before a charge goes to trial the military or a judge could withdraw, dismiss, or find a charge is not required. Essentially, before a trial, the state can throw out a charge. My second reasoning relates to this point and my overall theory, the issuance of charges alone does not reflect the judicial process that I and others have theorized as being key to establishing legitimacy through courts and legal procedures. A robustness check in the appendix is whether a charge resulted in a guilty verdict.

The independent variable is a log of the count of the number of attacks conducted by insurgent groups in Iraq. This measure has been used by previous research to approximate insurgent strength relative to state security forces and public support for insurgents (Berman, Shapiro, and Felter 2011; Berman et al. 2012; Biddle, Friedman, and Shapiro 2012). The logic of this measure is that insurgencies will have increased capacity to enact violence when they have greater public support. This data comes from the Empirical Study of Conflict (ECOS) Iraq Civil War Dataset's "Sig-1" measure (Berman et al. 2012). This measure captures executed insurgent attacks targeted against the US-led coalition, Iraqi Security Forces (ISF), civilians, Iraqi infrastructure and government organizations and resembles as close as possible how the US-led Coalition measured insurgent attacks. This data excludes any attacks determined to be of a purely criminal nature and excludes non-insurgency sectarian violence such as rioting or looting. This measure is a count variable of the number of attacks, not a measure of the number of causalities or damage done. This variable is delayed three months, in line with existing research which demonstrates an average three-month gap from when a court-martial concludes and when a command sent the charges to a court-martial. As well, related research into counterinsurgency policy and insurgent behavior uses three-months before the decision date as a standard measure (Biddle, Friedman, and Shapiro 2012). As a robustness check, I explore the change in the value of the main independent variable compared to the month prior. This alternative measure captures the difference between insurgent violence three months prior and four months prior. The motivation for this additional check is due to the possibility that military leaders may assess whether

insurgent violence is increasing or decreasing, as opposed to the raw count of violence when forming decisions.

The Berman, Shapiro, and Felter (2011) data have limitations that need to be acknowledged. First, they capture violence against civilians and between non-state actors only when US forces are present and may undercount sectarian violence (GAO 2007, Fischer 2008, DOD 2007). Berman, Shaprio, and Felter (2011) conducted further research on insurgent violence and of sectarian violence-related deaths and compared that data with their instance of insurgent violence data. In the Berman, Shaprio, and Felter (2011) codebook for the dataset on instances of violence, the authors find that these two datasets correlate at approximately 90 percent. The difference in the two databases is that the first dataset goes beyond instances that resulted in deaths to included instances in which there were injuries or the destruction of property. Second, several potentially useful variables in the data, such as the type of attack and target of the attack, are inconsistently coded over time (Berman, Shapiro, and Felter 2011). Considering that neither of these variables is of interest for my project though, this is not an issue. Third, the authors themselves acknowledge that there is the possibility of random errors in the data (Berman, Shapiro, and Felter 2011).

Even with this slight shortcomings, I chose to use the Berman, Shapiro, and Felter (2011) dataset over other potential datasets for several reasons. First, the sheer depth of their data and coverage of insurgent violence. From February 2004 to February 2009, the dataset captures 170,000 unique instances of insurgent violence. In comparison, the RAND Corporation's database on insurgent violence only 11,000 (Rand 2016). While the coding for the RAND data is somewhat vague, it appears that the biggest distinction

between the two datasets is that RAND considers an incident insurgent violence if the target was a civilian person, as opposed to a civilian structure. In comparison, BSF allows for the target to be coalition forces, Iraqi security forces, civilians, infrastructure, and government organizations/employees. This presents us a more accurate description of targets in conflict zones beyond simply civilian people. Another potential data source for instances of insurgent violence in Iraq could be the Global Terrorism Dataset (GTD). This dataset is even more limited than RAND's dataset, having roughly half of the instances as RAND. This significant difference is due to the fact the GTD uses international laws that define legitimate targets in conflict and the fact the GTD distinguishes between instances of terrorism or insurgent violence. What this exactly means is left unclear as the GTD codebook does not explain. Limiting my analysis to the BSF data has the downside that I am limited only to Iraq and cannot include an analysis of Afghanistan. Whereas, if I had used RAND or the GTD data I could include both Iraq and Afghanistan. Essentially, I chose depth and accuracy over the ability to include a second front in the War on Terror.

I capture H2 through including a measure of the Sunni/Anbar Awakening. The 2006 "Sunni/Anbar Awakening" is where local Sunni militias, including anti-Coalition insurgents, formally aligned with the coalition and fell under their command in exchange for a monthly salary of $300 (Biddle, Friedman, and Shapiro 2012). These forces amounted to 100,000 combatants by the end of 2007 (Biddle, Friedman, and Shapiro 2012, 24). The Awakening had three central effects according to Biddle, Friedman, and Shapiro 2012. First, it took most of the Sunni insurgency off the battlefield as opponents, which weakened the insurgency. Second, the flipped insurgents provided refined

intelligence and increased the effectiveness of coalition forces to target insurgents, a finding supported by other research on local recruitment to counterinsurgency efforts (Lyall 2010). Lastly, Sunni members leaving the insurgency also decreased local Iraqi Shiite involvement in the insurgency due to the lack of a perceived Shiite need to counter the threat of Sunni insurgent forces. In general, this partnership signals a vital development in relations between the local community and coalition forces, including leadership, and a weakening of membership and support of insurgent forces. During this period there may be increased need to pursue courts-martial to encourage members of the militia and insurgency to join the Awakening and maintain the loyalty of those that had already joined with the occupation. This variable is dichotomous variable.

I include numerous control variables. First, I include the log of the monthly casualty rate of the US military in Iraq. This data comes from the U.S. Central Command. I also include the log of monthly civilian deaths caused by coalition forces. I do not include a measure of civilian deaths caused by the insurgency due to the high correlation between this variable and the independent variable of interest. This measure comes from the Iraq Body Count Project. Scholars who study the insurgency and counterinsurgency in Iraq in particular use this measure (Biddle, Friedman, and Shapiro 2012). If American elites were simply responding to high levels of human rights abuses, we would expect that higher levels of civilian casualties caused by American forces would be a significant predictor of prosecutions for human rights abuses. I also include a monthly measure of time from the start of the US-led invasion of Iraq. I account for the occurrence of Ramadan as insurgent attacks increase during these months. The increased amount of insurgent attacks during this time meant there was an increased possibility of a combat-

related violation occurring. Additionally, due to the increased insurgent violence during Ramadan, there may be increased need to send strategic signals to the local population to decrease their support for the insurgency to weaken their ability to engage in violence, in line with the theoretical framework of this dissertation. Due to the increase in American troop levels by approximately 20,000 combatants, coinciding with a change in Secretary of Defense, and change in counterinsurgency tactics related to "the Surge" in early 2007, I account for if the court-martial occurred post "surge" with a simple dichotomous variable. Due to problematic levels of autocorrelation between "the surge" and the raw number of American service members stationed in Iraq, I run separate models in an appendix, without the surge but with the log of the raw number of service members stationed in Iraq. All variables are lagged three months, in line with the independent variable lag.

CHAPTER 4

ACCOUNTABILITY IN THE US OCCUPATION OF IRAQ

Introduction

US military courts-martial are processes that determine whether a member of the US military has violated the Uniform Code of Military Justice (UCMJ), the laws of war for the American military. Particular to this project, these military trials are how branches of the military determine whether personnel are guilty of a specific set of violations of the UCMJ: human rights violations. The process that brings a member of the military before a court-martial involves numerous decisions ranging from the original action of the alleged perpetrator to the decision of their commanding officer to seek a court-martial or non-judicial punishment for the alleged action.[1] The civilian leadership of the Pentagon can overturn or reinstate charges following an Article 32 Hearing. It is this process of decision-making by commanding officers and the civilian government that is at the heart of this project. This chapter focuses on the fact military commanders are tasked with considering the impact on the success of a mission when determining the course of action to take in response to some wrongdoing by a servicemember (Wenek 2003). This chapter is a case study of this decision making and explores the impact of counterinsurgency concerns on the decision-making process of commanding officers and civilian leadership that may attempt to influence this process. This chapter is about how accountability for human rights violations by government forces becomes a tool of war, much like bullets and bombs. While the majority of this chapter focuses on the decision making of

[1] Page 1 of the Appendix Contains a Complete Flow Chart of Military Justice and the Court-Martial Process

American leadership in the Iraq War during the George W. Bush Administration, I will also incorporate evidence from the Afghan War during the same administration in further exploration of dynamics of interest in this project.

Early on in the so-called "War on Terror," which encompassed the Iraq War and Afghan War, there was a strong unwillingness by the Bush Administration and the US military to pursue accountability, whether domestic or international, for human rights violations by American security forces. In fact, President Bush determined, based on the advice of future Attorney General Alberto Gonzalez, for the War on Terror the Geneva Conventions and UCMJ should not apply as not applying them "substantially reduce the threat of domestic criminal prosecution (Gonzalez 2002; Goldsmith 2007)." Included in this was an executive order issued by George W. Bush that specifically denied the application of Geneva protections to suspects and combatants in the War on Terror and limited the ability to legally prosecute such actions as war crimes under the Uniform Code of Military Justice (Lasseter 2008). Further, the Justice Department under President Bush also blocked domestic civilian prosecutions of American security forces in the name of "national security" (Stephens 2004).

Jeff A. Bovarnick, then the senior legal officer for Bagram Air Force Base in Afghanistan, later revealed to be a site of prisoner abuse, torture, and murder, told investigators in 2004 that military police rules did not apply to the War on Terror following President Bush's 2002 executive order (Fay and Jones 2004). Further, Bovarnick testified that he was given explicit guidance by Secretary of Defense Donald Rumsfield that the US military was not to grant prisoners at Bagram the legal protections

of prisoner of war status (Fay and Jones 2004). According to General Ricardo Sanchez, former commander of coalition forces in Iraq:

"Essentially, it (the memo declaring the Geneva Conventions and UCMJ did not apply) set aside all of the legal constraints, training guidelines and rules for interrogation that formed the U.S. Army's foundation for the treatment of prisoners on the battlefield since the Geneva Conventions were revised and ratified in 1949. Our current detention and interrogation doctrine had been rendered obsolete and invalid in the war with Al Qaeda. According to the president, it was now okay to go beyond those standards with regard to Al Qaeda terrorists. And that guidance set America on a path toward torture (Sanchez 2008, Kakutani 2008)."

Lastly, retired US Marine judge Lt. Colonel George Solis stated, "In the early years of the Afghanistan and Iraq wars, the military appeared to be particularly unwilling to hand out convictions to troops who killed civilians." However, "That generally changed over time, with more convictions and lengthier sentences in later years (Savage and Bumiller 2012)." Lt. Colonel Solis, however, did not explain why the military changed their policy.

Included in these actions by the Bush Administration were steps to avoid international accountability. In particular, the Bush Administration chose not to join the International Criminal Court and demonstrated an unwillingness to ratify human rights treaties such as the American Convention on Human Rights. As well, under President Bush, the US "revoked" their signature on the Rome Statute of the International Criminal Court (ICC). The revoking of America's signature to the Rome Statute was done by the Bush Administration through a letter from the Administration's Undersecretary of State

John Bolton to the ICC (Goldsmith 2007, 62). Further, the Bush Administration actively sought to limit the ability of individuals to bring members of the Bush Administration and the American armed forces to trial for human rights violations in international venues (American Service-Members' Protection Act 2002; Stephens 2004; Military Commissions Act of 2006; Sikkink 2011). In particular, the American Service-Members' Protection Act authorized the American president to use all available means to free any US personnel being detained or imprisoned by, or on behalf of, the ICC, giving the act the name "The Invade the Hague Act." Put another way, the Bush Administration and the US military were actively avoiding domestic and international human rights laws and sought to protect itself, the US military, and the US intelligence community from future prosecutions for human rights violations in the early stages of the War on Terror.

All these steps to avoid prosecutions for human rights violations occurred while members of the administration feared eventual prosecutions by independent counsels, Justice Departments of future governments, or foreign and international courts (Goldsmith 2007, 12, 23). CIA officials prepared, as far back as 2002, to defend themselves from human rights trials. Such trials were thought, in the words of one senior CIA official, to be "inevitable" due to the tactics used by the CIA to extract information from prisoners (Gellman 2008, 177). It wasn't just the CIA that sought premature immunity for the enhanced interrogation tactics approved by the Department of Defense. In October of 2002, the Guantanamo Bay JAG officer, the lead legal representative in a military commander, Diane Beaver, sent a memo with her legal opinion to Secretary Rumsfeld stating that "it would be advisable to have permission or immunity in advance from the convening authority of military members utilizing these methods (grab, poke in

the chest, pushing, waterboarding, and threatening the detainee or their family with death) (Beaver 2002)." Secretary Rumsfeld revoked the authorization he granted following the October 2002 memo in January of 2003 and formed a working group to clarify detainee treatment tactics. This working group released a report in April 2003 to Sec. Rumsfeld which argued a member of the military could only be considered as committing torture *ONLY IF* the military member's sole goal in harming the detainee was only to cause pain and not gather intelligence from the detainee (Department of Defense Working Group 2003). This report also laid out preemptive legal defense arguments for members of the military accused of abuses in the future. While these guidelines were originally only approved for detainees at Guantanamo Bay, they were incorporated into the rules of engagement for the Iraq War (Graveline and Clemens 2010, 106-107).

Despite their initial opposition to human rights law and the prosecution of US military, intelligence, and government personnel for human rights violations, the Bush Administration and the US military during the Bush Administration later reversed their position. Both the Bush Administration and US military leadership later supported and executed domestic military trials, civilian trials, and non-judicial punishment of American soldiers serving in the Afghan and Iraq Wars for their alleged violations of the laws of war and human rights. Further, in a hearing with the Senate Armed Services Committee, Secretary of Defense Donald Rumsfeld took personal responsibility for human rights violations committed by American troops in Iraq. The American military also opened up public trials of those involved in numerous instances of human rights violations, after initially determining no such prosecutions were necessary. These public military trials were attended by survivors of violations, their friends and family,

additional members of the local public, and the local media. In fact, the military would often provide travel and accommodation to family members of victims to attend the trials. By 2006 the American security forces had opened up criminal investigations into over 500 service members (Schmitt 2006). Over 250 troops ended up facing military trials for human rights abuses during the Bush Administration's time in office (Schmitt 2006).

For comparison, over the course of the Vietnam War, the American military investigated 800 members of the military for similar crimes. Charges were recommended by investigators for 203 members, and 57 members were prosecuted by military trials (Turse and Nelson 2006). However, the peak number of American service members deployed in Vietnam at any one time more than doubled the peak amount of US military personnel in Iraq. This evidence suggests that perhaps the US military was more willing to pursue charges in the Iraq War than during the Vietnam War. Of course, due to changes in military law, increased activity of human rights activists, and advancements in technologies used to document comparison between the behaviors of the US military regarding accountability in the two cases may not be entirely accurate. This comparison suggests that there has been on improvement in the pursuit of legal culpability for violations by the US military, possibly due to spreading norms of human rights violations. However, this development does not necessarily answer the timing of when prosecutions occurred in the Iraq War.

The Justice Department also stopped blocking domestic civilian prosecutions for human rights violations, with the first of such trials occurring in 2004 when CIA contractor David Passaro was found guilty of felony assault with a dangerous weapon and three counts of misdemeanor assault for a detainee's death in Afghanistan. In fact,

the Justice Department prosecuted Passaro on behalf of the US government. Further, the US military paid out over 5 million dollars to 71 victims of human rights violations at the hands of American forces during the Bush Administrations tenure (Associated Press 2012). Additionally, as of February 2006, 98 detainees had died in U.S. custody, with approximately 34 deaths classified as homicides by the U.S. military, 11 where facts implied death as a result of the abuse, and 48 cases where the cause of death was undetermined (Human Rights First 2006). 12 of these detainee deaths resulted in prosecutions by 2006.

What explains this shift FROM opposition to prosecutions of US security forces TO prosecution of security forces? One explanation could be that there were no instances of human rights violations by the American military before those prosecuted by the US military. Considering there are numerous examples in which initially no charges for wrongdoing were pursued early on in the War on Terror which was then prosecuted by the US military, in some cases years after the alleged violations. One example of such behavior is the deaths of detainees at Bagram Airbase in Afghanistan. The detainees died while in the custody of American forces in December of 2002, but charges were not filed by the command at Bagram until October of 2004.

Another example is the Haditha Incident in November of 2005, originally reported by the Marine Corps as being the responsibility of insurgents and with the military not pursuing charges. The Marine command that issued the original faulty press release stated, in their own words, that they did so as part "of the Marines' disinformation campaign to help win the hardened *hearts and minds* of the Iraqis in Haditha (Helms Faraj 2016, 176). One officer from that command stated that he was "thinking about how

could beat the insurgents at their own blame game by using the Iraqi civilian deaths to benefit the Marines (Helms and Faraj 2016, 219).” It wasn’t until December 2006 that a second investigation resulted in charges of eight Marines. Another explanation may be that the laws changed, after all the US Supreme Court ruled in June 2006 that, contrary to the position of the Bush Administration, the Geneva Conventions did apply to the Iraq and Afghan Wars (*Hamden V. Rumsfeld* 2006). However, this court decision came after prosecutions, including those led not only by the military but also the Justice Department, for human rights violations began to occur despite initial opposition from the Bush Administration and US military.

Key to this discussion of the American case are events that occurred in late 2006 and early 2007. In January 2007, the US Army implemented the “Surge,” adding 30,000 troops to the mission in Iraq, and General David Petraeus was named the commanding general of the Coalition forces in Iraq. General Petraeus formalized counterinsurgency tactics, in particular, a goal of winning the “hearts and minds” of the local population of the Iraq, into the entire command of Iraq. He ordered the Coalition forces in Iraq to work to improve relations with the local civilian population throughout Iraq due to the perception that the occupation was failing because the Iraqi civilian population had turned against the occupation and the occupation backed government.

While this policy was officially implemented by the occupation at the national level in Iraq for the first time in 2007, American military leaders on the ground in Iraq had been practicing this “hearts and minds” counterinsurgency approach unofficially since a few years earlier in the conflict. This policy shift formalized and centralized this already moderately active approach (Biddle, Friedman, and Shapiro 2012, 27). In fact,

the “Sunni Awakening” or “Anbar Awakening” proceeded the “Surge” but was also done as part of a mission to win over the local population. The “Awakening” included local militias and insurgents changing their allegiance, joining the Coalition forces in return for a monthly salary and immunity for previous crimes, bringing a total of 100,000 additional combatants under the control of the Coalition by the end of 2007, Worth noting here is that the official US Army guidebook argues the US military can “win hearts and minds” of the local population by providing superior government services, such as the *rule of law*, thereby persuading civilians and insurgents to back the government and reject the insurgency (Department of the Army 2012).

Over the course of this chapter, the American case study will be divided into multiple sections. The first section introduces and contextualizes the case and important aspects. The second section features quantitative analysis of charges and trials by the US Army for human rights violations in the Iraq War, from 2003 through 2008. The information on charges and trials of human rights abuses is a subset of all legal violations pursued by the Army from 2003 to 2008. The US Army Court of Criminal Appeals (ACCA) provided this data. The third section features qualitative analysis of the case, including the results of fieldwork interviews. The chapter will conclude with a brief discussion of the overall findings.

The War on Terror and Examples of US Violations

On September 11th, 2001 Al-Qaeda conducted four coordinated terrorist attacks in the United States. On September 20th, 2001 President George W. Bush declared a “War on Terror.” As part of this so-called War on Terror, America and their allies conducted

the Afghan War, beginning in 2001, and in 2003, the Iraq War. As part of the War on Terror, America also conducted operations in Pakistan, Yemen, Syria, and numerous other countries. I focus my discussion in this chapter on the Iraq War due to its primacy in the War on Terror, with some of my analysis includes the Afghan War.

While the focus of this dissertation isn't the Iraq War or the Afghan War more broadly, some basic facts around these two conflicts may prove helpful. The US government and military launched the Afghan War on October 7th, 2001 following a refusal by the Taliban to arrest and hand over Osama Bin Laden to America, as well as expel Al-Qaeda for their role in the September 11th attacks. Initially, the US military required 60,000 troops to invade and occupy Afghanistan, but this number was rejected by the Bush Administration as being too high (Zimmerman 2011). Instead, the US military and CIA used a combination of special forces and planes to bolster the Northern Alliance, an Afghan insurgency already in existence and fighting against the Taliban controlled central government in Afghanistan. Following this combined force's successful capturing of important cities from the Taliban, Operation Enduring Freedom, using additional US forces, was launched in mid-October of 2001, which further pushed the Taliban out of key points of control to Pakistan or mountainous areas. In December 2001, the American occupation backed Afghan Interim Administration, later the Afghan Transitional Administration, came to power in Afghanistan. In 2002, an insurgency backed by the Taliban began launching attacks in Afghanistan. As part of the American backed occupation, the US military built military bases and detention sites. In August of 2003, the American led coalition formally handed control of security operations in

Afghanistan over to NATO, with the prime focus of the American government and military becoming Iraq. However, the US military maintained control over vital bases and detention centers. US forces continue to operate in Afghanistan as of 2017.

In March of 2003, the US military and their allies invaded Iraq, though American Special Forces and the CIA first entered Iraq in 2002. As in Afghanistan with the Northern Alliance, the US coalition coordinated with the Kurdish Peshmerga as part of their invasion. Immediately after the fall of the Saddam Hussein regime, an Iraqi insurgency organized and began attacking US forces and Iraqi civilians. However, this nescient insurrection was more limited in their abilities and actions than later in the conflict. The US-backed coalition created the Coalition Provisional Authority (CPA) to oversee the occupation and rebuilding of Iraq. Retired US Army Lt. General Jay Garner was the initial Director of the CPA before being replaced by Paul Bremer, a former US ambassador and State Department official, approximately one month later. The CPA governed Iraq from April 2003 until the end of June 2004, when power was handed over to the Iraqi Interim Government (IIG). The IIG was selected by the governments of the US and their allies and governed Iraq until the formation of the Iraqi Transitional Government in 2005. US forces continued to act as the main military support for the nescient Iraqi government, including the creation of US military bases and detention centers and continued to combat the insurgency. US forces mostly left Iraq in 2011, though there has been an increase in American service members in the country as part of the conflict with ISIS and the Syrian Civil War.

Camp Bucca and the Alleged First Violations

Over the course of the US occupation in Iraq during the Bush Administration, there were numerous instances of human rights violations by American forces. In the next few paragraphs, I will discuss in depth some of these violations, as well as the accountability that was pursued, or not in each case to provide context for some key incidents of violations, beyond well-known cases such as Abu Ghraib. This discussion will not be an exhaustive list of all instances of abuse, but will instead focus on a handful of examples to provide the context in the case. One of the earliest abuse controversies in the Iraq War was at Camp Bucca in May 2003. At Camp Bucca, three soldiers, Master Sgt. Lisa Marie Girman, 35; Staff Sgt. Scott A. McKenzie, 38; and Spc. Timothy F. Canjar, 21, was accused of dereliction of duty, cruelty, and maltreatment of enemy prisoners of war, filing false official statements, obstruction of justice and conspiracy to obstruct justice for their treatment of prisoners at the prison camp (Associated Press 2003). Originally, the three soldiers were to be prosecuted through court-martials but were later punished through a non-judicial punishment instead. While a court-martial tries soldiers by a jury of their peers, only one officer determines the ruling in a non-judicial punishment. Further, a non-judicial punishment carries lesser sentences than a court-martial. However, non-judicial punishments have a higher probability of a guilty verdict.

All three soldiers were given administrative discharges from the Army as punishment for their actions (Youge 2004). Additionally, the Army lowered the ranks of two of the three soldiers, and all three had to forfeit their pay for two months. In January

2005, Canjar's non-judicial punishment guilty verdict was overturned on appeal. In August 2005, Girman and McKenzie's guilty verdicts were overturned (Associated Press 2005). The overturning of the rulings did not reverse their administrative discharges, but reversed the reduction in ranks and meant the soldiers would not have to pay back two months of their pay as a fine. The US Army originally held a fourth soldier for the same allegations, Sgt. Shawna Edmondson, 24, received an "other-than-honorable" discharge from the military, which she requested rather than face punishment proceedings. Though other enlisted soldiers were involved in the abuse, no other soldiers were held accountable as they were found to be following the orders of Girman and McKenzie, despite in later cases of abuses the defense of "following orders" was not successful as a defense. In discussing the incident as part of General Taguba's investigation into Abu Ghraib, General Janis Karpinski stated that originally a court-martial was to occur for the commanding officer of the unit, Lt. Colonel Jerry Phillabaum, but the Army's command in Iraq sought to protect him and dropped the charges (Karpinski 2004, 150). Notably, Phillabaum would later command the Abu Ghraib prison. This case provides support for the theory outlined in this project as this instance of abuse occurred early on in the Iraq War before the evolution of the insurgency into the size and capabilities reached later in the conflict. Essentially, charges which were meant to be prosecuted in military trials were not, and this lack of prosecution correlates with a lack of strategic military need. However, this is only one instance, and I will explore additional instances as well.

The Death of Abed Hamed Mowhoush

In October 2004, four members of the U.S. military were arrested for the death of a detainee, Abed Hamed Mowhoush, in November 2003 after constraining Abed in a sleeping bag and beating him until the detainee died. These service members were Chief Warrant Officer Lewis E. Welshofer Jr., Chief Warrant Officer Jeff L. Williams, Sergeant First Class William J. Sommer, and Specialist Jerry L. Loper. In a court-martial, Welshofer was found guilty of negligent homicide and negligent dereliction of duty in January 2006. A military court acquitted Welshofer of murder and assault charges. Welshofer's punishment was a formal reprimand, 60 days of barracks confinement, and a fine of $6,000 (White 2006). The charges of murder for Williams and Loper were dropped by the prosecution in return for them testifying against Welshofer. The prosecution team also dropped Sommer's charge of murder, and he received a non-judicial punishment instead of a court-martial (Kane 2005; Foster 2006). Major Jessica Voss, the commander of Welshofer, Williams, Sommer, and Loper's unit, was reprimanded by her superiors for the event, but no further charges were brought by the US military. Controversy arose around the absence of charges for CIA contract workers, who had beat Abed Hamed Mowhoush during an interrogation earlier in the day (Schmitt 2006; White 2006). The son of Abed Hamed Mowhoush stated that what happened to his father caused him to begin to support the insurgency (White 2006).

In the week after Abed Hamed Mowhoush died, the local US Army psychological-operations unit quickly distributed leaflets about the "natural causes" of which Mowhoush died, stressing that he cooperated with the military and was well treated (White 2005). The distribution of flyers occurred despite the fact that the initial

autopsy report stated Mowhoush showed signs of blunt force trauma to the chest and legs, and the cause of death was determined to be asphyxiation (Kane and Moffeit 2004; White 2005). Further, in the immediate aftermath of Mowhoush's death, the Army opened an investigation into his death and issued two reprimands, neither of which went into official Army records. No additional punishment or investigations occurred, as the unit's commanding officer did not want to pursue charges (Kane and Moffeit 2004; Moffeit and Kane 2004; Kane and Moffeit 2005). The military later reopened the case in 2004 and pursued prosecutions (Moffeit and Kane 2004). Between the initial investigation's conclusion and the reopening of the case, no new evidence or confessions was uncovered by investigators, which would normally legally justify the reopening of the case. Despite this, the case was reopened a year later without legal cause.

What explains why originally the case was closed and then reopened nearly a year later? Evidence explored later in this chapter supports that this change occurred in response to increased insurgent strength and activity in the aftermath of highly publicized incidences of human rights abuses by US forces in the so-called "War on Terror." Notably, in the aftermath of the death of Abed Hamed Mowhoush and the later prosecutions of US service members for his death, the CIA was able to block references to the CIA's involvement in his death (White 2005). The Army's "autopsy examination report" of Mowhoush was edited to avoid references to the CIA or even Mowhoush's name. Specifically, "This Iraqi *name redacted on report* died while in U.S. custody. The details surrounding the circumstances at the time of death are classified (White 2005)."

The Haditha Incident

I previously discussed the Haditha Incident a bit, but its notoriety warrants additional discussion. In November 2005 members of the 3rd Battalion, 1st Marines were on patrol, and their vehicles were hit by an IED, with one marine dying and some of the Marines sustaining injuries. In response to this attack, the remaining Marines began opening fire and searching the surrounding neighborhood. The Marines later claimed they came under fire from the nearby homes and swept the area in a counterinsurgency operation. The result was 24 people dead, including women and children, and an additional nine injured. The Marine Corps describes the casualties as 15 civilians and nine insurgents.

Following the November 2005 attack, the Marine Corps blamed the events on the local insurgency, saying first that it was the insurgents who killed the civilians and then that the civilians died in a firefight between insurgents and marines. In response to this version of the events, local citizens, including the mayor of Haditha, marched on the Marine base in Haditha and demanded to speak to the commanding officer (McGirk 2006; Englade 2015). The military made these claims despite the fact the commanding officer of the Marines had acknowledged wrongdoing by the Marines to the mayor of Haditha (McGirk 2006; Englade 2015). Even after the meeting with the mayor of Haditha, the Marine Corps stood by its claim that the incident was the work of local insurgents. The Marine command later claimed they stuck with the inaccurate story as "part of the Marines' disinformation campaign to help win the hardened hearts and minds of the Iraqis in Haditha (Helms and Faraj 2016, 176)." It wasn't until over two months after the event in February 2006 that the military opened an investigation into it.

Investigators concluded in the original investigation that the incident was merely collateral damage and that no charges were warranted. The investigators supported the claim that following the IED explosion the Marines began taking fire from insurgents, and civilians were caught in the crossfire.

The US military paid the relatives of those killed in the incident $2,500 for each death and gave the surviving children toys in March of 2006 and closed the initial investigation (Stack and Salman 2006). The US military also paid for damages to the homes and injuries. In total, the military paid out $41,000 for the deaths, injuries, and damage to property, an unusually high amount compared to standard payouts for such instances (Englade 2015, 38). A member of the officer corps of the division in which the Marines belonged to, Major Thomas Osterhoudt, raised questions about the unusually large payment for an incident being blamed on insurgents as it was illegal to pay for damages caused by combat with insurgents (Englade 2015, 38). The only reason such a payment would be legal is if the incident was caused solely by a violation of the laws of armed conflict by Marines. Paying for the damages then countered the Marine Corps own version of events, even before the later unraveling of the Marine Corps narrative.

In fact, the Marine command Haditha originally stated, "the engagement was a bona fide combat action against a group of insurgents who callously used innocent civilians as their human shields" in response to initial questions into the incident (Englade 2015, 42). The commanding general also stated, "I support our account and do not see the necessity for further investigation" following the conclusion of the first investigation in March 2006 (*Thomas More Law Center* 2009). Additionally, Major Jeffrey Dinsmore, whose responsibility it was to write the initial in-depth report on the

incident, stated: “It’s well established that this was a Troops in Combat (SIC) situation, and the civilians were unfortunately collateral damage (Englade 2015, 91).” Further, the command of the Marines in Haditha recommend the Staff Sargent in charge of the incident for an award for heroism relating to the firefight after the initial investigation (White and Geis 2006).

The military later opened two additional investigations into the incident, one by the US Army and another by NCIS. These inquiries resulted in eight Marines receiving charges in connection with the incident. The charges included making a false statement, violation of a lawful order, failure to launch a full investigation, dereliction of duty, obstruction of justice, negligent homicide, assault, unpremeditated murder, and murder. Notably, a military court dismissed several of the charges due to “unlawful command influence.” The court ruled the commander of the Marines in Iraq at the time, (then) Lt. General James Mattis, was unduly influenced when recommending the charges go to a court-martial (CBS News 2008; Helms 2009).

One of the lead investigators into the killings, Colonel John Ewers, later became General Mattis’ attorney and was part of Mattis’ team when Mattis decided whether to send any of the charges to a court-martial. Per the UCMJ, investigators are supposed to be separate from decisions around punishment for crimes. Investigators can only recommend charges, not what the punishment for those charges are. One of these dismissed charges was over the failure of the initial Haditha investigation to properly report and investigate the Haditha Incident. In the end, of the eight Marines initial charged, only two of the Marines ended up facing a court-martial, with one found guilty of dereliction of duty and the other found not guilty of obstruction of justice, dereliction

of duty, and making false statements. Two of the Marines were involuntarily separated from the Marines over the incident later on. Notably, even in instances where the Article 32 investigators recommended no charges or charges that did not fit the definition of human rights violations in this dissertation for Marines involved in the Haditha incident, the commanding officer referred charges for human rights violations to court-martial (Englade 2015, 146). Once again Haditha presents an incident that was originally investigated and found to be lawful but later resulted in charges for human rights violations. This change once again raises questions about the cause of the change.

Mahmudiyah Incident

In March of 2006, four US soldiers in Iraq raped and murdered a 14-year-old Iraqi girl and killed three members of her family near Mahmudiyah, while a fifth soldier acted as a lookout. A sixth soldier was later informed by one of the participants to the crime but did not report it. Initially, the US occupation blamed the incident on the local insurgency, and no investigation occurred. It wasn't until the insurgency used the incident as justification for the capturing and murder of three US soldiers that the sixth soldier who did not participate in the rape or murders disclosed what happened to another soldier in frustration over the soldier deaths (Gallagher 2010, 305). However, following an initial investigation the commanding officer investigating the incident offered to pay the surviving family members $30,000 for the deaths, but did not pursue punishment of soldiers (Gallagher 2010, 323 and 325). As established previously, such payments are illegal if the incident was the result of insurgent violence and could only be legal if the military believed that soldiers were responsible for the rape and murders. It wasn't until July 10th of 2003 that the Army formally charged five of the six soldiers. A sixth soldier,

Steven D Green, was prosecuted in a federal court for the crimes as he had been discharged from the Army before the Department of Justice filed the charges. Green had been arrested by the FBI on June 30th and charged on July 3rd. Green was the first member of the US military to be prosecuted in a civilian court during the so-called "War on Terror." Such prosecutions would later occur in other instances of abuse where the accused had left the military before the filing of charges. Evidence explored later on in this chapter provides support for the claim that the change from no charges to charges is due to a strategic response to insurgent actions.

Abu Ghraib

Due to its notoriety and well-documented analysis by others, I won't spend as much time discussing Abu Ghraib as may be warranted. As early as June of 2003 there began to be reports of human rights violations by US forces at the Abu Ghraib prison. These included multiple reports from Amnesty International. The International Committee of the Red Cross also wrote a scathing report on abuse and torture following a Red Cross visit to the prison in October 2003. The Red Cross raised their complaints and allegations with the command at the time of their October investigation and also the Red Cross report was given to the military command of Abu Ghraib, but JAG and Military intelligence officers stated the findings of the Red Cross were not credible. In the words of the legal adviser to General Ricardo Sanchez, the Commander of Coalition Ground Forces in Iraq, Colonel Marc Warren "the allegations were crazy (Gourevitch and Morris 2008, 171)." Colonel Warren drafted a response letter to the Red Cross that called the allegations "misguided and hostile fantasy (Gourevitch and Morris 2008, 171)." Despite the command stating in their December 2003 response to the Red Cross' finding that the

findings were inaccurate, the Army made numerous changes to the treatment of detainees in line with the suggestions and critiques of the Red Cross (Lewis 2004). Additionally, members of this command sat in on meetings to discuss the Red Cross report in late November 2003 (Jehl and Schmitt 2004B). In November of 2003, the Associated Press ran an article describing numerous instances of prisoner abuse at Abu Ghraib based in part on the Red Cross report and first-hand eye-witness accounts of former prisoners. Even when faced with the evidence of this letter to the Red Cross from the Army, the Deputy Commander of American Forces in the Middle East, Lieutenant General Lance Smith, later testified to the Senate Armed Services Committee in May 2004 that the Army command in Iraq did not hear about the allegations at Abu Ghraib until a soldier, Joseph Darby, turned over the now infamous photos to the CID in January 2004 (Jehl and Schmitt 2004A).

After the Red Cross report and the photographic evidence from Joseph Darby, in January 2004, at a press conference in Iraq, the military command of Iraq first made public the allegations of abuse at Abu Ghraib. However, the exact location and severity of the cruelties were not made public. The command released to the press that there were vague allegations of abuse at a prison in Iraq and the Army was investigating the claims. The commanding officer in Iraq, Ricardo Sanchez, formally requested an investigation by the Army on January 19th, 2004 and General Antonio Taguba was selected to oversee the investigation. The belief from officers in Iraq was that the command was measuring what the public reaction would be before deciding how to respond (Karpinski and Strasser 2005, 17).

At the time, the allegations received little to no attention from the international or American press. The initial reaction of General Karpinski was to go to the Iraqi press to try to undo the local public relations damage the allegations of abuse would cause (Karpinski and Strasser 2005, 20-21; Jehl and Schmitt 2004B). She believed that her speaking to the Iraqi press and making clear the Army was pursuing accountability would "defuse anger and overreaction" (Jehl and Schmitt 2004B). However, her superior officer, Ricardo Sanchez, denied this request. Colonel Pappas, the Brigade Commander at Abu Ghraib, originally offered amnesty to those involved the day after the January 2004 press conference instead of pursuing an investigation (Davis 2008, minute 131; Gourevitch and Morris 2008, 247; Kakutani 2008). Those involved were told by Pappas they had 48 hours to delete or destroy evidence of the abuse and torture "without penalty or legal consequence," which the individuals involved did (Davis 2008, minute 131; Gourevitch and Morris 2008, 247). General Taguba did not know, or approve, of this amnesty offer.

Taguba's investigation concluded in February 2004 that there were "numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees. This systemic and illegal abuse of detainees was intentionally perpetrated by several members of the military police guard force (Taguba 2004)." The Abu Ghraib allegations included murder (determined by a US military coroner), rape, and sexual and non-sexual physical abuse. The rape allegations against US forces included both male and female prisoners, including the children of some prisoners. General Taguba's investigation led to the charges of 14 soldiers for various crimes related to the abuse and 11 of these soldiers were convicted. Charges included dereliction of duty, cruelty or

maltreatment of a detainee, assault, battery, indecency, obstruction of justice, making false statements, and conspiracy. No soldiers were ever charged with murder, though some of the charges against some of the soldiers were for taking pictures with the corpse of a murder victim. Beyond formal charges, General Janis Karpinski was relieved of her post, and Secretary of Defense Donald Rumsfeld offered to resign, which was declined by President Bush.

Discussion

This section discussed some different types of incident of human rights violations involving US forces in Iraq to explore the types of actions central to this project and to help contextualize the conflict. There are numerous other instances of alleged human rights violations by US forces in Iraq, but this project isn't meant to merely be a description of the violations. What these examples provided show is that such abuses, and accountability for such transgressions, can take multiple forms. While this project isn't an explanation in the variety of human rights abuses, the forthcoming sections of this chapter will hopefully shed some light on the second factor, the variation in accountability for human rights abuses by US forces in the so-called "War on Terror," focusing primarily on the Iraq War. These examples help to highlight initial military opposition to prosecutions in numerous cases of abuse and the later change to the pursuit of charges for abuses previously determined to be legal. In pursuit of this goal, the next section of this chapter discusses quantitative evidence in support of the theoretical argument of this project.

Quantitative Analysis

I begin my analysis with quantitative data on U.S. Army courts-martial for human rights violations in the War on Terror. This examination acts as an initial exploration of the theory put forward in this dissertation and allows me to explore whether there is even a correlational relationship between strategic concerns and an increase in the occurrence of prosecutions for human rights violations. The qualitative section that follows this analysis will explore the causal relationship between strategic concerns and an increase in the occurrence of prosecutions for human rights violations.

While discussed in the methodology section, I want to briefly discuss the data and variables. The U.S. Army Court of Criminal Appeals (ACCA) provided this data. As the body that reviews all court-martial verdicts, the ACCA maintains the records related to all Army trials. While the ACCA has "appeals" in its name, the trials analyzed are the original courts-martial, not appeals. The record provided is of all courts-martial in Iraq from the start of the Iraq War to three months into 2009. The cutoff point of the end of March 2009 is due to the change in U.S. President from President George W. Bush to President Barrack Obama, accounting for a three-month delay. This delay is in line with the three-month lag of most variables in the dataset as explained in the methodology section. Lastly, in line with existing political science research, human rights violations are charges related to (attempted or "successful") murder/homicide, assault/battery, kidnapping, cruelty/maltreatment of a detainee, rape, indecent assault, and willfully endangering life, as well as variations on these charges such as "simple" or "aggravated" assault. The Army identified when a charge was for actions towards a fellow US service member or an ally, and these charges were not analyzed in this project. Given the context

of Iraq is a warzone, all charges not labeled as being towards a fellow US service member or an ally were considered to be against the Iraqi population or prisoners in Iraq based American prisons.

The *dependent variable* is a dichotomous measure on if a human rights violation charge that was not dismissed, withdrawn, or found to be not required as the judge determined the charge was already covered by a different charge on the defendant. For this reason, I label this variable "trial" because the charges reached the point of a trial and were not dropped by the US military at some point in the process. Put another way; this measure captures instances in which the US Army determined a specific violation of the laws of war, which are referred to as human rights violations, occurred. This data contains each charge filed, as opposed to only capturing the defendant. So a defendant may be included in the dataset if they had multiple charges filed against them. However, due to the removal of defendant names by the ACCA for security reasons, knowing what charges belong to the same defendant is impossible. This measure captures the date a verdict was reached by a jury for the specific charge. I use whether the charge for a human rights violations went to trial for two reasons. First, before a charge goes to trial the military or a judge could withdraw, dismiss, or find a charge is not required. Essentially, before a trial, the state can throw out a charge. My second reasoning relates to this point and my overall theory, the issuance of charges alone does not reflect the judicial process that I and others have theorized as being key to establishing legitimacy through courts.

The *independent variable* is a log of the count of the number of attacks conducted by insurgent groups in Iraq. This data comes from the Empirical Study of Conflict

(ECOS) Iraq Civil War Dataset's "Sig-1" measure (Berman et al. 2012). This measure captures executed insurgent attacks targeted against the US-led coalition, Iraqi Security Forces (ISF), civilians, Iraqi infrastructure and government organizations and resembles as close as possible how the US-led Coalition measured insurgent attacks. This data excludes any attacks determined to be of a purely criminal nature and excludes non-insurgency sectarian violence such as rioting or looting. This measure is a count variable of the number of attacks, not a measure of the number of causalities or damage done. This variable is delayed three months, in line with existing research which demonstrates an average three month gap from when a court-martial concludes and when the charges were sent to court-martial as well as research into counterinsurgency policy and insurgent behavior which uses three months prior to the decision date as a standard measure (Englade 2015, 219; Biddle, Friedman, and Shapiro 2012). As a robustness check, I explore the change in the value of the main independent variable compared to the month prior. This alternative measure captures the difference between insurgent violence three months prior and four months prior. The motivation for this additional check is due to the possibility that military leaders may assess whether insurgent violence is increasing or decreasing, as opposed to the raw count of violence when forming decisions.

I include numerous *control variables*. First, I include the log of the monthly casualty rate of the US military in Iraq. This data comes from the U.S. Central Command. I also include the log of monthly civilian deaths caused by coalition forces. I do not include a measure of civilian deaths caused by the insurgency due to the high correlation between this variable and the independent variable of interest. This measure comes from

the Iraq Body Count Project[2]. This measure is used by scholars studying the insurgency and counterinsurgency in Iraq (Biddle, Friedman, and Shapiro 2012). I also include a monthly measure of time from the start of the US-led invasion of Iraq. I account for the occurrence of Ramadan as insurgent attacks increase during these months. The increased amount of insurgent attacks during this time meant there was an increased possibility of a combat-related violation occurring. Additionally, due to the increased insurgent violence during Ramadan, there may be increased need to send strategic signals to the local population to decrease their support for the insurgency to weaken their ability to engage in violence, in line with the theoretical framework of this dissertation. Due to the increase in American troop levels by approximately 20,000 combatants, coinciding with a change in Secretary of Defense, and change in counterinsurgency tactics related to "the Surge" in early 2007, I account for if the court-martial occurred post "surge" with a simple dichotomous variable.

Lastly, I account for the 2006 "Sunni Awakening" where local Sunni militias, including anti-Coalition insurgents, formally aligned with the coalition and fell under their command in exchange for a monthly salary of $300 (Biddle, Friedman, and Shapiro 2012). These forces amounted to 100,000 combatants by the end of 2007 (Biddle, Friedman, and Shapiro 2012, 24). The Awakening had three central effects according to Biddle, Friedman, and Shapiro 2012. First, it took most of the Sunni insurgency off the battlefield as opponents, which weakened the insurgency. Second, the flipped insurgents

[2] The Iraq Body Count Project is funded in part by the Foreign Office of the German government and Princeton University. For more information on their methodology, please go to https://www.iraqbodycount.org.

provided refined intelligence and increased the effectiveness of coalition forces to target insurgents, a finding supported by other research on local recruitment to counterinsurgency efforts (Lyall 2010). Lastly, Sunni members leaving the insurgency also decreased local Iraqi Shiite involvement in the insurgency due to the lack of a perceived Shiite need to counter the threat of Sunni insurgent forces. In general, this partnership signals a vital development in relations between the local community and coalition forces, including leadership, and a weakening of membership and support of insurgent forces. During this period there may be increased need to pursue courts-martial to encourage members of the militia and insurgency to join the Awakening and maintain the loyalty of those that had already joined with the occupation. This variable is dichotomous variable.

All variables are lagged three months, in line with the *independent variable* lag. I run a combination of models as robustness checks to explore the impact of the presence or absence of key variables. **Table 1** features the results of a logistic regression of these relationships. **Table 2** features the results of the change in the level of insurgent violence from the month prior. Additionally, I include a monthly chart of levels of insurgent violence, divided by 100 for visualization purposes, and US military charges for human rights violations for comparison. Several key data points stand out in the graph, including the increase in prosecutions in fall of 2006, which coincided with the Anbar Awakening, and a rise prosecutions in May of 2007, following the completion of the surge and the adoption of counterinsurgency tactics. As a whole, increases in charges for human rights violations correlates with increases in insurgent violence, providing initial support for the theory.

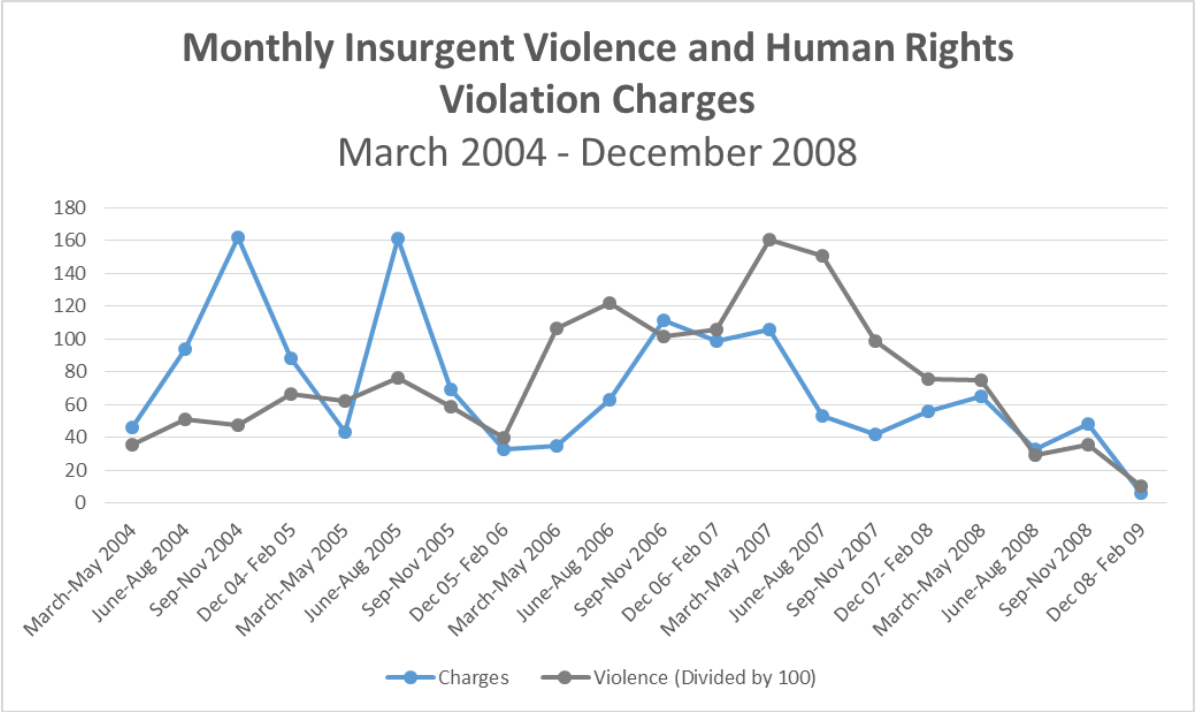


Table 1. Factors Influencing US Army Courts-Martial for Human Rights Abuses in Iraq

Variable	Model 1	Model 2	Model 3	Model 4	Model 5
Ins. Violence	1.120 (0.500)*	0.894 (0.440)*	0.873 (0.444)*	0.979 (0.480)*	1.076 (0.454)*
US Casualties	-2.200 (0.661)*	-1.491 (0.607)*	-1.520 (0.613)*	-1.540 (0.613)*	-2.198 (0.661)*
Civ. Cas (C)	-0.370 (0.410)	0.338 (0.370)	-0.258 (0.401)	-0.303 (0.410)	-0.350 (0.403)
Time (Mon)	-0.062 (0.016)*	-0.027 (0.007)*	-0.027 (0.007)*	-0.032 (0.011)*	-0.061 (0.014)*
Ramadan	1.140 (0.256)*		1.208 (0.252)*	1.224 (0.253)*	1.131 (0.545)*
Surge	0.084 (0.330)			0.195 (0.325)	
Anbar	1.064 (0.400)*				1.080 (0.385)*
Constant	2.981 (1.252)*	0.157 (1.031)	1.391 (1.069)	1.312 (1.079)	3.031 (1.240)*
N	637	640	639	638	638
AIC	852.55	879.72	856.56	858.2	850.61
BIC	888.30	902.06	883.37	889.48	881.90
Log-likelihood	-418.27	-434.86	-422.28	-422.10	-418.31

Note: Coefficients and standards errors. All models are logistic regressions. *=p ≤.05.

Table 2. Additional Factors Influencing US Army Courts-Martial for Human Rights Abuses in Iraq

Variable	Model 6	Model 7	Model 8	Model 9	Model 10
Change in Insurgent Violence	1.095 (0.441)*	1.639 (0.399)*	1.085 (0.437)*	1.103 (0.439)*	1.066 (0.439)*
US Casualties	-1.171 (0.532)*	-0.453 (0.474)	-0.625 (0.479)	-0.669 (0.491)	-1.065 (0.514)*
Civ. Cas (C)	-0.332 (0.408)	0.045 (0.386)	-0.305 (0.401)	-0.276 (0.407)	-0.385 (0.403)
Time (Mon)	-0.093 (0.013)*	-0.014 (0.005)*	-0.157 (0.006)*	-0.013 (0.008)	-0.043 (0.013)*
Ramadan	0.846 (0.277)*		0.944 (0.272)*	0.928 (0.74)*	0.877 (0.274)*
Surge	-0.251 (0.308)			-0.127 (0.302)	
Anbar	0.961 (0.385)*				0.913 (0.381)*
Constant	4.074 (1.129)*	1.457 (0.826)	2.426 (0.006)*	2.734 (0.885)*	4.098 (1.132)*
N	637	640	639	638	638
AIC	851.47	864.57	853.97	855.8	850.13
BIC	887.22	886.91	880.79	887.08	881.42
Log-likelihood	-417.73	-427.28	-420.98	-420.90	-418.07

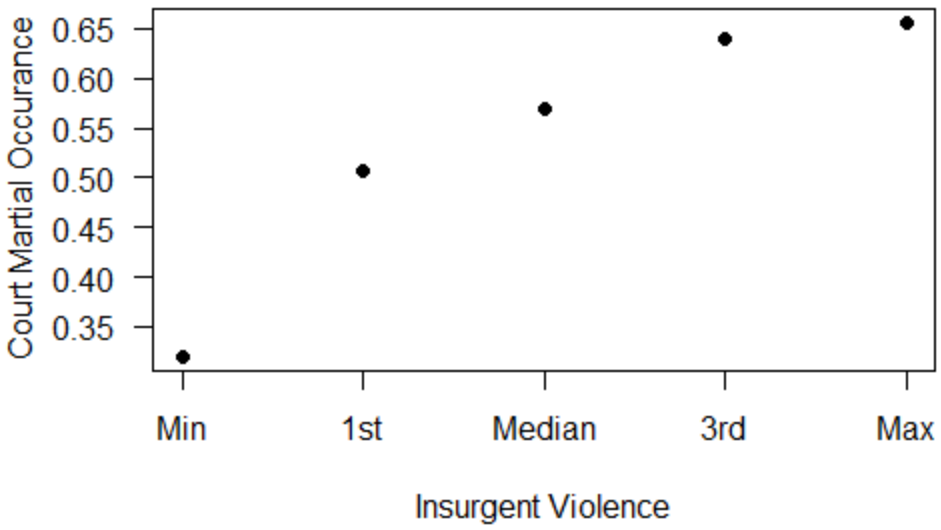
Note: Coefficients and standards errors. All models are logistic regressions. *=p ≤.05.

Model 1 of **Table 1** shows the results of logistic regression estimates of logged insurgent violence on the occurrence of US Army courts-martial for human rights abuses in Iraq. In line with hypothesis one, and the broader theoretical claims of this project, an increased level of insurgent violence has a statistically significant positive correlation with courts-martial for human rights abuses. Additionally, the results of *Model 1* demonstrates a significant positive relationship between implementation of the so-called Anbar Awakening and the occurrence of Ramadan on the occurrence of US Army trials for human rights abuses in Iraq. This first finding suggests a possible relationship between the recruitment of local insurgents to the counterinsurgency effort and the prosecution of American forces for human rights abuses, in line with hypothesis two. The second finding suggests that during Ramadan, a heightened time for insurgent violence, the US prosecuted more soldiers for human rights abuses, consistent with the theoretical claims of this project. The results of *Model 1* demonstrates a significant negative

correlation between US military casualties and length of the conflict on the occurrence of courts-martial for human rights abuses. These results are consistent across different model specifications and are consistent in the models which measure the independent variable as the change in insurgent violence, presented in **Table 2**.

To interpret these results further, I present predicted probabilities of insurgent violence on the occurrence of courts-martial for human rights violations in **Figure 1**. The predicted values for insurgent violence are based on the minimum, first quartile, median, third quartile, and maximum. At the minimum logged value of insurgent violence, there is approximately a 32 percent probability of a court-martial for human rights violations occurring. In moving from the minimum value to the median value moves the probability of a charge going to court-martial to approximately 57 percent. This is approximately a 25 percentage point increase in the probability, in comparison to the minimum value and nearly doubles the probability of a charge going to court-martial. Moving from the median value of logged insurgent violence to the maximum value increases the probability approximately nine percentage points to 66 percent, approximately a 15 percent increase in the probability. In total then, shifting from the minimum logged value of insurgent attacks to the highest logged value of insurgent attacks increases the probability approximately 34 percentage points and over 100 percent overall.

Figure 1: Impact of Insurgent Violence on Court Martials for Human Rights Violations



The analysis provided above provides quantitative evidence that an increased level of insurgent strength, measured by the log of an increased level of insurgent violence, correlates with the occurrence of U.S. Army courts-martial for human rights violations during the Iraq War, accounting for other possible confounding variables. This result also holds up when measuring insurgent violence by the change in the level of violence from the month prior. The results provide support for the claim that during a period of intentional recruitment of local forces, the so-called Anbar Awakening, there was an increased likelihood a charge for human rights abuses was sent to trial. In total, these findings present support for my hypothesis on the relationship between insurgent violence and my broader theoretical claims that the likelihood of militaries pursuing prosecutions of their members for human rights violations increases when there is increased strategic need to do so. In the next section, I engage in qualitative analysis to

explore if there is support for the theoretical causal explanation provided in this dissertation for this correlational relationship.

Qualitative Analysis

Human Rights Abuses and Insurgent Strategy

An important starting point for understanding the relationship between human rights violations by the state security forces and insurgency in the America case lies in understanding how insurgent groups viewed American abuse and torture in their strategic considerations. In particular, insurgents trained their fighters on American interrogation tactics, law, and how these could be used to the advantage of the insurgents. Insurgents taught their fighters that "Americans will not harm you physically," but encouraged their fighters to get Americans to do so if captured (Mackey and Miller 2004, 179; Miles 2005; Mayer 2005). "They must be tempted into doing so. And if they do strike a brother, you must complain to the authorities immediately (Mackey and Miller 2004, 179; Miles 2005; Mayer 2005)." One insurgent training manual encouraged their fighters to bait Americans into harming the captured fighter enough to leave "evidence" (Mackey and Miller 2004, 179; Miles 2005; Mayer 2005). These insurgents instructed their fighters to do this because you end the career of the person who did so and prompt an international outcry (Mackey and Miller 2004; Miles 2005; Mayer 2005). They also thought that it would be easy to provoke domestic and international outcry over such abuses (Mackey and Miller 2004, 180; Miles 2005; Mayer 2005).

The fact insurgents included this training in their training manual is important for the case of America for several reasons. First, this training advice highlights that insurgents viewed human rights violations and violations of laws of war by American

security forces as a legitimate and useful tool for strategic gains in their so-called war. Second, considering the domestic American outcry that occurred following scandals involving torture by American security forces, the insurgents had accurately understood how a vocal segment of the American public would view the abuses. Third, insurgents were correct in their assessment that there would be outcry internationally.

These three aspects all suggest an attempt by insurgents to use allegations of torture and abuse to harm the American strategy in its conflict against global jihadi terrorism. The insurgents expected that soldiers accused of abuse would be punished and removed from duty, requiring that the military replace a service member or risk weakening the war effort. The evidence provided also suggests that insurgents believed that there was a norm against abuse and torture in the American security forces, which oddly suggests that insurgents saw U.S. military laws, rules, and discipline as being consistently implemented and a source of weakness. These points from the training manual also seemingly imply that the American people more broadly were perceived as being against torture and this opposition could be used to harm the war effort by making the American people aware of abuses and turning them against the war, government, and military.

A key example of this strategy is the Haditha Incident discussed previously. While the Haditha Incident resulted in 24 civilian deaths, there is substantial evidence that the insurgent strategically caused the incident. Key video evidence used by *Times Magazine* in their original write up on the incident came from two men who local Marine intelligence recorded previously discussing plans to incite and record the local Marine battalion killing innocent Iraqis (Helms and Faraj 2016, xxii). According to later US

intelligence, the initial IED attack, which spurred the actions of the Marines, was planned about two weeks before it occurred. The intention of the insurgency was to harm the Americans and draw them into killing civilians in the immediate area while insurgent snipers fired on the Marines from a safe distance away (Bargewell 2006). According to the Marine battalion intelligence officer for the Haditha based battalion, Captain Jeffrey S. Dinsmore, the plan also included multiple coordinated attacks at the same time. The insurgency intended to record the Marine response towards the civilians and use it for recruitment propaganda (Bargewell 2006; Helms and Faraj 2016, 109). The Marines in the area knew that a planned ambush was in the works, but didn't know when or where. However, the some of the civilian population in Haditha knew. Civilians who survived the Haditha incident later told a CNN reporter that they knew the IED was going to explode when the Marines passed and took cover to protect themselves (Chilcote 2006; Limbacher 2006; CNN 206).

Beyond Haditha, there is evidence that suggests the insurgency used such tactics in other areas of Iraq. In preparing for the First Battle of Fallujah, the Marine command, including future Secretary of Defense James Mattis and future Secretary of Homeland Security John Kelly, argued that the military needed to show restraint in their actions. These officers argued the insurgency was intentionally seeking to provoke US forces into attacking innocent civilians as a way to gain support for the insurgency from the local population (Estes 2009, 33). In Mattis' own words "We do not have to be loved at the end of the day, this is a goal that is no longer achievable in Fallujah, but we must avoid turning more young men into terrorists. We will also avoid doing what the insurgents,

terrorists, and foreign fighters, and "Arab Street" all expect, and that is the thoughtless application of excessive force (Estes 2009, 34)."

This discussion of insurgent strategy connects to the theoretical framework of this dissertation by demonstrating clear evidence that the insurgency had a strategy to use human rights abuses by US forces to their tactical advantage. The American military command in Iraq knew of this insurgent strategy during the war and made military decisions with an eye to avoiding abuses by the military to avoid the opportunity for the insurgency to gain politically. This point highlights evidence that military leaders were strategic in regards to their thinking around human rights abuses. For the military leadership, it wasn't just that abuses were legally or morally wrong, it was that they could be strategically useful to the insurgency, which harmed the war effort. This connect lays the foundation for the possibility that military leadership may view addressing potential abuses as a strategic benefit to the war effort.

Another key aspect for this dissertation is the relationship between the human rights abuses by American forces and the increased strength of the insurgency, along with the increased ability of the insurgency to successfully engage in violence. If there is evidence that, at the very least, the US military leadership believed that the alleged American abuses were strengthening the insurgency, then this increases the possibility that they acted to address the abuses in an attempt to remove the ability of the insurgency to use the abuses to their advantage. The previous section of this chapter provided evidence that insurgents believed human rights abuses by the US could be used to the advantage of the insurgency this section will provide evidence that insurgency used abuses to justify their violence and to recruit supporters to their cause. This section will

also provide evidence that American military leadership also believed the Iraqi insurgency was successful in these attempts.

Beginning with American military leadership, we see numerous claims that abuses by American forces strengthened the insurgency and were used to justify insurgent violence. Additionally, as referenced elsewhere in this dissertation, General Stanley McChrystal himself argues that American service member abuses in Iraq directly related to increased insurgent violence and strengthened the insurgency (McChrystal 2013, 200). As well, General Ricardo Sanchez, previously Commander of Ground Forces in Iraq, stated that in the aftermath of Abu Ghraib, there were predictions that jihadists would issue a call to arms around the world and stated: "that did, in fact, happen (Sanchez 2008, 378)." General Sanchez also credits the beheading of the American contractor Nick Berg as being retaliation for the treatment of Iraqi prisoners (Sanchez 2008, 385). Now retired Brigadier General David R. Irvine, a former instructor of war interrogation and law for the United States Army, stated: "In the three years since the cancerous photographs at Abu Ghraib came to light, the Army's acceptance of and resort to torture have made combat service in Iraq that much more dangerous for our forces there (Irvine 2007)."

General David Petraeus, then commander of Coalition forces in Iraq, stated: "We have done that (torturing and humiliating prisoners) at times in theater, and it has cost us enormously (Fox News 2007)." General Petraeus added "So the first step is that we've got ... make sure that folks remember that's a foundation for our moral compass ... anything we do that violates that is done at considerable peril." Lt. General Peter Chiarelli stated, "We have to understand that the way we treat Iraqis has a direct effect on

the number of insurgents that we are fighting (Reynolds, 2006).” Lt. General Chiarelli also argued that one innocent civilian death resulted in the recruitment of 10 new members of the insurgency in Iraq. General Richardo Sanchez, Commander of Coalition Ground Forces in Iraq, also met with the Iraqi Governing Council to apologize for the alleged abuses and torture at Abu Ghraib and explain what the Army was doing to address the allegations in an attempt to limit the local damage the abuses could cause (Sanchez 2008, 375). Lastly, Sanchez states that the Coalition Provisional Authority distanced themselves from the military command following the Abu Ghraib allegations due to the damage it had done with the Iraqi population (Sanchez 2008, 387).

In the Commander’s Inquiry over the Mahmudiyah incident the investigating commander, Lt. Colonel Thomas Kunk, told each person interviewed that the rape and murders would have negative consequences on the mission in Iraq and the safety of American service members there (Frederick 2010, 321). Following the alleged revenge attacks for the Mahmudiyah incident, First Lt. Matt Shoaf stated: “Until the horrible events of June, things were getting better (Frederick 2010, 337).” According to First Lt. Shoaf, after the insurgency announced the attacks were done due to the Mahmudiyah incident “Let me tell you, those were some pissed-off folks” in regards to the impact of the incident on the local population (Frederick 2010, 337). Lastly, in describing the initial investigation into the Majmudiyah incident Colonel Todd Ebel, commander of the 2nd Division BCT/101st Airborne Division in Iraq, stated the investigation was a hasty investigation conducted to hold someone accountable due to the “tactical risk” the incident caused (Frederick 2010, 329).

The chief of staff of the Second Marine Division, where Marines took part in the Haditha incident, claimed the Division ran with the version of the incident that placed the blame on the insurgency in the immediate aftermath of the incident in order to "beat the insurgents to the punch" in order to provide a positive spin on the incident before the insurgents could create propaganda for recruitment out of the incident (Englade 2015, 88). This statement is important for two reasons. First, it shows a concern for top military leadership for how the insurgency could use abuses by US forces to their advantage. Second, it shows that US military leadership made decisions around blame and accountability based upon concerns around the use of potential wrongdoings by the insurgency. Applicable to this discussion of Haditha, Colonel Christopher Conlin, an investigator for some of the Article 32's for the Haditha incident, stated "You cannot win popular support by killing over twice as many civilians as insurgents in one day's engagement, and then attempting to lay the blame at the feet of the same population and their leader, regardless of how corrupt you may perceive them to be (Englade 2015, 110)." Conlin also added, "To not recognize the potential for this event to reverberate far beyond the confines of Haditha is not to be in touch with the current nature of the conflict (Englade 2015, 111)."

My field interviews with senior members of the US military during the Bush Administration also support this perspective of the military. MILO42, a long time JAG in the US military, argued "Torture and abuse won hearts and minds…for jihadi groups. Intelligence shows that torture and abuse helped jihadi groups recruit." MILO35, an officer in an elite combat unit, was more direct and stated that human rights violations by US military personnel "caused an increase in insurgent violence." MILO7, a long time

intelligence officer in the US military, also expressed this viewpoint, “The torture and abuse by the US military increased insurgent violence and American service member deaths.” According to MILO42, “Osama Bin Laden was praying thanks to Allah for Abu Ghraib.” MILO42 also stated “Positive stories of detention experience gained the trust of the local civilian population and an influx of information, but the opposite effect happened following allegations of torture and abuse. The civilian population turned against the occupation.” MILO42 went on to argue “Torture and abuse create animosity with the local population. People who were supportive turned neutral, neutral turned enemy, and enemy grew more dedicated after Abu Ghraib scandal broke. We had to try to win back what support we could through prosecutions.” MILO137, an officer and 40-year veteran of the US military, stated human rights abuses by US forces was a “huge recruiting tool for the insurgency” in Iraq and Afghanistan. “It (human rights violations) erodes the will you are trying to build.” MILO137, who took command of a military base which previously had service members accused of human rights abuses, stating that the prior abuses at the base damaged relationships with the local leaders and local population and made counterinsurgency more difficult. MILO137 added, “In the context of insurgency, you’re trying to win ‘hearts and minds’ of the local population and abuses erodes what you’re working for.” MILO137 also stated abuses “erode the credibility and legitimacy of the governing authorities. It erodes the power of the government.”

American politicians also shared the belief that abuses by members of the American armed forces contributed to strengthening the insurgency and its capacity to engage in violence. At a two-day regional meeting of high-ranking U.S. government officials in Kuwait in the spring of 2006 concluded that “Detainee debriefs, and

intelligence reporting indicate that U.S. treatment of detainees at Guantanamo Bay, Abu Ghraib, and elsewhere is the single most important motivating factor for [terrorists and foreign fighters] traveling to Iraq (Lebron 2006).” American Senator John McCain also stated at the time, about the allegations around the Haditha incident’s impact on support for America in Iraq, “It certainly is harmful, but I can’t assess the extent of the damage (O’Neil and Oppel Jr. 2006).” As well, when Senator McCain asked a captured senior al-Qaeda leader how the organization established a foothold in Iraq, the leader replied “two things, the chaos after the success of the initial invasion, and the greatest recruiting tool -- Abu Ghraib (Tuttle 2008).” "This travesty of justice occurred on your watch," Senator Robert Byrd said, addressing General Abizaid and Lt. Gen. Ricardo S. Sanchez, the three-star general in charge of Iraq, in a Senate Armed Services Committee hearing. "The Iraqi prisoner abuse scandal has dealt a body blow to the heroic efforts of scores of American military troops and civilian workers in Iraq to win the hearts and minds of the Iraqi people. I do not know if that damage can ever be fully repaired (Tierney 2004)."

Critics and policymakers outside of the US government also supported the view that abuse by American forces strengthened the insurgency. Scott Horton, a notable human rights lawyer, stated that torture and abuse “was counter-productive because it turned into a recruitment tool for the enemy” and “the image of Guantánamo, as well as Abu Ghraib, was used to recruit people to these terrorist organizations, so it was extremely damaging to the United States (Horton 2013).” Anthony Cordesman, a defense analyst at the Center for Strategic and International Studies, argues "Those Americans who mistreated the prisoners may not have realized it, but they acted in the direct interests of al-Qaeda, the insurgents, and the enemies of the U.S." The reason is that they

came at a point when U.S. standing in the Arab world was already at an all-time low and was this perception was already in use in propaganda. The abuses validated the insurgency and caused people to rethink having previously written off the insurgency's claims and legitimacy. On this relationship, Cordesman states, "These negative images validate all other negative images and interactions with them." In other words, these images bolstered claims made by the insurgency about America by providing photographic "proof" of the demonic picture of the U.S. painted by anti-American propagandists (Karon 2004).

Interviewees for this project who were senior members of the US government and intelligence community at this time also support the view that abuses by American servicemembers strengthened the insurgency. GOVH63, a former senior member of the US intelligence community, framed the logic of the impact of abuses on the insurgency as, "If someone were beating up your brother, you would fight back." GOVH63 further added, "No debate to be had about the negative impact of abuse and torture on America. Domestically, internationally, and counterinsurgency wise, everything was damaged." GOVE36, a veteran member of the US intelligence community, stated, "Abuse and torture became a recruiting tool for the insurgencies in Iraq and Afghanistan, and terrorist networks around the world." GOVE68, a senior official in the Bush Administration, stated, "The most formidable thing that happened was the reaction of the Iraqi public to the discovery of the violations. The discovery came from the release of Abu Ghraib pictures. That opened the floodgates and led to pressure on the ground in Iraq to do something about any previous abuses covered up and any abuses that happened in the future." In the words of GOVH74, a former senior member of the Bush Administration,

"Allegations of abuses often caused blowback and harm to American service members. The lack of accountability harmed our legitimacy and created problems for the military and mission. Further, perceptions of the illegitimacy of the American forces in the local populations impacted their ability to successfully operate and hindered the mission."

Those involved in the Abu Ghraib scandal, including perpetrators and the prosecution team, also argued that the abuse fueled the insurgency. Sabrina Harman, one of the guards charged with abuse at Abu Ghraib, wrote a letter home in October 2003, when the abuses started, stating that in response to the abuse the guards were doing to the prisoners "these people (the prisoners) will be our future terrorist (SIC) (cited in Gourevitch and Morris 2008, 111). In the sentencing hearing for Corporal Charles Graner, another guard charged with abuse at Abu Ghraib, the prosecution team stated "We know that men fight on their willpower, don't they? It's not weapons. It's not equipment. It's the human heart and drive. The enemy has that, too. The enemy needs rallying points. He needs things that he can use to recruit those to his side, to encourage them in their efforts. You know, the accused has provided them with so much in that regard that I can't begin to tell you, nor can you begin to consider, how much harm that may have caused our soldiers, our Army (Graveline and Clemens 2010, 249)." This statement from the prosecution, representatives of the U.S. Army, highlights the belief that the abuses inflicted by the guards on their prisoners empowered the opposition, in this case, the insurgency in Iraq.

A former Army interrogator in the War on Terror, writing under the pseudonym "Chris Mackey" stated, "The abuses at Abu Ghraib are unforgivable not just because they were cruel, but because they set us back. The more a population hates America, the less

likely its citizens will be to lead us to a suspect (Mackey and Miller 2004, xxiii)." "Mackey" added that instances like Abu Ghraib "inflame anti-American sentiment in the Muslim world for generations, driving who knows how many would-be jihadists into the ranks of Al Qaeda and other terrorist organizations (Mackey and Miller 2004, 472). Christopher Graveline, a US Army prosecutor in the trials for the alleged abuses at Abu Ghraib, stated that his investigation uncovered insurgent websites that used the images of Abu Ghraib as recruiting tools (West Point Center for Oral History, 2014). Further, in his investigation he was told by platoon leaders, who later testified in trials to these facts, that beginning with the day after the Abu Ghraib images became public, cooperation with the local Iraqi's stopped as local Iraqi's no longer wanted to assist the occupation (West Point Center for Oral History, 2014). In his words, in the aftermath of the Abu Ghraib scandal "allies in that country (Iraq) ceased to be our allies (West Point Center for Oral History, 2014)."

The American media also presented the perception that allegations of abuse and torture were related to insurgent violence and recruitment (Daly 2004; O'Neil and Oppel Jr. 2006). For example, one such portrayal stated: "Wherever the blame actually rests, the abuses have fueled a growing fury and further endangered every American in Iraq (Daly 2004)." Notably, according to a CNN report, the Bush Administration's decision to publicly pursue punishment of the American forces improved Iraqi assessments of America, the Bush Administration, and the presence of coalition forces in Iraq (Costello 2004).

Turning from the American perspective to the insurgent and Iraqi civilian perspective on abuse and torture, there are numerous instances that support the claim that

American abuse and torture in Iraq and Afghanistan contributed to increased violence from insurgents and as an insurgent recruitment tool. Al Qaeda in Iraq, which evolved into its modern incarnation of ISIS, responded promptly and publicly to the release of photos from Abu Ghraib by beheading Nicholas Berg, a captured American contractor. In the video of the decapitation, Berg wore an orange jumpsuit similar to those worn by prisoners in American military prisons. In a personal interview, GOVH63, a former senior member of an American intelligence agency stated that it was not "coincidence insurgents dressed up victims in orange jumpsuits like prisoners at Gitmo and Abu Ghraib." GOVH63 suggested that this was a signal from insurgents to the US military and the Iraqi people that the insurgents were getting revenge for abuses of prisoners. When executing Berg, the head of Al Qaeda in Iraq, Abu Musab al-Zarqawi, released the following statement:

> *"We say to you, the dignity of the Muslim men and women in the prison of Abu Ghraib and others will be redeemed by blood and souls. You will see nothing from us except corpse after corpse and casket after casket of those slaughtered in this fashion….So kill the infidels wherever you see them, take them, sanction them, and await them in every place (Filkins 2004)."*

The opening line of the statement above directly references the allegations of abuse and torture by the American military and turns these allegations into a call to brutal violence against the America led occupation. While we do not know if Berg would have been kidnapped and killed by Al Qaeda in Iraq, what we do know is that allegations of American abuse and torture were used to justify his kidnapping and death. As mentioned previously, we also know that the American command in Iraq also connected the

treatment of Iraqi prisoners to the beheading (Sanchez 2008, 385). Rebecca Givner-Forbes, an expert on jihadi terrorism, highlighted some key dynamics that support the signaling of symbolic meaning in the Berg killing. According to Givner-Forbes, "they take what anyone who's ever been to a halal butcher shop would recognize as a halal butcher knife and they cut the side of the neck and saw at it, bleed him out, just as they do when they're killing sheep" and “they used the word for 'sacrifice,' which suggests the death has some kind of meaning (Glasser and Coll 2005).” The implication being that the Berg killing was meant to be a sacrifice to avenge the abuses at Abu Ghraib. As well, after pushback from some within the Muslim community at the beheading of Berg, al Zarqawi released a video stating Berg’s death was “justified” due to the abuse and torture of Muslims in American custody and that those Muslims who disagreed were just “slaves” (Glasser and Coll 2005).

Abu Musab al Zarqawi’s Al Qaeda in Iraq also cited concern for female prisoners at Abu Ghraib and Camp Bacca as motivating the kidnapping of three contractors in September of 2004 due to their belief that American forces were busing female prisoners. In a video broadcast on Al-Jazeera, the organization demanded the release of female prisoners from Abu Ghraib and Camp Bacca, citing the abuses as motivating their actions (*The Calgary Herald* 2004; *CNN* 2004; Wong 2004B). However, there were no women kept in either prison by the time of the kidnapping (*The Calgary Herald* 2004; *CNN* 2004; Wong 2004B). Previously though, as noted in my previous discussion of Abu Ghraib, female prisoners were kept in Abu Ghraib and were sexually assaulted, according to General Taguba’s investigation. It is unclear if the US military made it known that Abu Ghraib no longer held female detainees. In response to Coalition forces not meeting this

demand, which they had voluntarily met months earlier following General Taguba's investigation, the insurgency beheaded all three prisoners in September and October. The insurgency placed these victims in orange jumpsuits, similar to those worn by people held in U.S. custody (*CNN* 2004). In a video showing the first of the three murders of the victims, one of the insurgents stated: "Now Mr. Bush, we will make you drink from the same cup from which you made our brothers in Abu Ghraib drink (Wong 2004B)." In a public statement following the beheading of another captured American in fall of 2005, an insurgent from Al Qaeda in Iraq states "The war criminal Bush continues his arrogance, giving no value to people's lives unless they serve his criminal, aggressive ways…therefore the American security consultant for the Housing Ministry was killed." In a video showing this prisoner, Ronald Schulz, alive before his beheading, Al Qaeda in Iraq originally demanded the occupation release all Iraqi prisoners pay compensation to victims of America abuse (*CNN* 2005).

In the coming months, Zarqawi and Al Qaeda in Iraq would repeatedly return to Abu Ghraib for propaganda purposes and to justify tactics and targeting. The first full-length propaganda film released by Zarqawi in June 2004, entitled "The Winds of Victory," featured prominently the infamous images of abuse and torture at Abu Ghraib (Glasser and Coll 2005). During his first audio recording, released in July 2004, Zarqawi said that by beheading Berg he aimed to stop "the rape of our Muslim sisters in Abu Ghraib prison" and, rather than accept the money offered by negotiators, he "preferred to take revenge for our sisters and our nation (Associated Press 2004B)." Throughout 2004, Al-Qaeda in Iraq continued to kidnap and execute hostages, using Abu Ghraib to justify their actions. In total, Al Qaeda in Iraq executed around a dozen individuals in 2004

under the justification that they were responding to the torture and abuse by the American military. Zarqawi evoked Abu Ghraib again for recruitment in a speech published on Islamist websites on September 11, 2004. In the speech Zarqawi calls upon all Muslims, in Iraq and elsewhere, to defend Muslim honor that had been harmed by the torture and abuse of Muslims by members of the American military. Zarqawi even took the time to tell his audience what the Abu Ghraib prison was, about the allegations of abuse and torture, and asks how they will respond to such brutality against their fellow Muslims (MEMRI 2004B). In March 2005 Al-Qaeda published an article in its online magazine, "The Crest of the Summit of Islam," articulating its aims in Iraq and justifying its targeting of Iraqis. Again, Al-Qaeda justified their victim tactics and the killing of US service members through Abu Ghraib and other instances of American military abuse and torture:

> *"Why do we carry out operations in Iraq against the Americans and their collaborators in the military and the police? In order to kill those whose character has become impure and who has joined the ranks of the infidels in their fight against the Muslims in Iraq, that is, members of the Iraqi army and the police and spies, who strengthen the Americans and help them to commit crimes and to rape our sisters in the Abu Ghraib prison and other places (Middle East Media Research Institute 2005)."*

Criticism of the allegations of abuse and torture was used by additional insurgent groups, beyond Al Qaeda in Iraq. Muqtada al-Sadr, head of the Mahdi Army, responded to the allegations through some public statements. First, in a public address aimed at President Bush, Sadr asked: "What kind of peace could come from you or your agents

when you feel pleasure at torturing prisoners (Wong 2004A)?" In a press conference in spring 2004, Sadr stated "Look at what [coalition forces] have done. Look what the torture they have committed against our detainees (Roberts 2004)." Later in the spring, Sadr reiterated his argument that American abuses undermined the legitimacy of the American occupation: "The American President Bush is standing shamelessly in front of the world talking about all this prisoner abuse, these inhuman, immoral images. What peace can be expected from him (60 Minutes 2004)?" Beyond merely public statements, Abdulsattar al-Bahadli, one of Sadr's deputies denounced the torture at Abu Ghraib and offered rewards for captured coalition soldiers, $350 for capturing a male soldier and $150 for killing one, whereas a jihadi could keep captured female soldiers as slaves (Wong and Hauser 2004). Further, in 2005, another insurgency group, Ansar al-Sunna justified violence during Ramadan as revenge for actions of American forces (al-Shaab 2005). Lastly, Abu Ghraib itself came under attack from insurgents in response to the allegations of prisoner abuse there (Roggio 2007).

It was not only Abu Ghraib that was referenced by the insurgency as motivating their actions. Following the Majmudiyah rape and murders in March 2006 discussed previously, the Mujahedeen Shura Council released video showing the tortured bodies of American soldiers captured in the same town as the rape and murders following an attack on American forces and the capturing of the soldiers in June of 2004. The video contains multiple statements in which the insurgents claimed the rape and murders motivated the attack (Wong 2006). Particularly the video features the statement that the killings were to "avenge our sister who was raped by a soldier belonging to the same division as these two soldiers." The Mujahedeen Shura Council also stated, "Praise God, they captured

two soldiers from the same division as this vile crusader. Here are the remains…to rejoice the hearts of the faithful." Another insurgent group in Iraq, Jaysh al-Mujahidin, claimed that the downing of a US Army helicopter was "in retaliation for the child, Abir (misspelling of one of the rape and murder victim's name), whom US soldiers raped in Al-Mahmudiyah, south of Baghdad." The Islamic Army in Iraq claimed that suicide bombing near the Green Zone in Baghdad was "in support of the Abir operations." Further, the Islamic Army in Iraq unveiled a homemade rocket named "The Abeer" after the Majmudiyah rape and murder victim (Frederick 2010, 351). As well, the Islamic Army in Iraq captured two American soldiers near Majmudiyah, killing a third in the firefight, and released a statement taunting the Army stating "Searching for your soldiers will lead to nothing but exhaustion and headaches. You should remember what you have done to our sister Abeer in the same area (Frederick 2010, 352)." Both soldiers were found dead. Salah al-Din Brigades and Al-Mujahidin Army both also released statements vowing revenge for the incident (Islamic Renewal Organization 2006; OpenSource 2006).

A further example of the insurgency using allegations and incidences of human rights abuses by US forces to their advantage is the Fallujah incident, where US forces killed at least 15 civilians and injured at least another 65. Soon after the incident, a leading cleric in Fallujah public praised and endorsed insurgent attacks on Americans in retaliation for the incident (Hashim 2006, 28). Further, support grew for the insurgency in Fallujah after the incident (Chehab 2005). The parent of an Iraqi civilian killed in the incident stated: "We won't remain quiet over this. Either they (the US military) leave Fallujah, or we will make them leave (Fisher 2003)." In fact, insurgent leadership directly

credited the incident with increasing the recruitment of new insurgent forces (Tyler 2003). Approximately one month after the Fallujah incident local insurgents in Fallujah claimed responsibility for an attack on an American convoy by saying, "We want to revenge all of the martyrs that al-Falluja gave, and we will not allow American forces to occupy Iraq (Human Rights Watch 2003)." Local insurgents also stated they "Would keep attacking American forces until dead Iraqis were avenged (Tyler 2003)."

In another example of Fallujah's impact, a man who had moved away from Fallujah returned there to join the insurgency and avenge his son's killing in the Fallujah incident (Hassim 2006, 100). Further, an insurgent leader in Fallujah stated he became an insurgent in part because of the civilian violations caused by Americans (Graham 2004). In response to an attack on US forces which killed two soldiers, one local leader of Fallujah stated: "All the people are very happy with this operation (Tyler 2003)." Of course, the validity of this statement is unknown. Lastly, residents initially opposed the insurgency in the community, but following the "the unfairness and injustice" that occurred following the Fallujah incident civilians turned began to support the insurgency so they would not be "humiliated" by the occupational forces (Wong 2005).

The Haditha Incident also resulted in references to and from the local insurgency. A local Sunni tribal leader in Haditha stated that "such killings are (encouragement) for young men to join the insurgency (Loyn 2006)." Insurgents in Haditha claimed, following the initial investigation which found no wrongdoing, that the second investigation was just a charade and predicted the Marines involved would escape serious punishment, a prediction that ended up proving accurate (*USA Today* 2006). They used this prediction to justify their actions and encourage people to join them. However, the

Haditha Incident did not prove to be as strong of a reference point for the insurgency in Iraq. Why this is the case is for another project, but it is possible that this is due to the nature of the incident, which was in response to an insurgent attack.

As recapped elsewhere, an insurgent IED attack led the Marines in Haditha to either believe they were under a larger insurgent attack or to seek revenge for their fallen comrade. In either version though, the initial violence was conducted by the insurgency, and therefore it perhaps could be argued that the American attack was due to the actions of the insurgency and the insurgency may not want to promote the incident so as not to publicize their involvement. It is not useful to the insurgency regarding gaining support from the local population to be viewed as actively getting innocent civilians killed. Related to this point, the Haditha incident also occurred between two major incidences where insurgents killed civilians, including women and children. In the first incident, a car bomb resulted in the death of eight civilians and the wounding of 21 more (Helms and Faraj 2016, 2). The other incident occurred two days after Haditha. In this second incident, insurgents set off a car bomb outside of a hospital, killing 30 civilians and wounding 35 more (Helms and Faraj 2016, 3). Important to this discussion around the lack of attention placed on the Haditha Incident by the insurgency is the fact that of the eight Marines charged with wrongdoing, only two of the Marines charges resulted went to court-martial.

Another potential argument for the lack of insurgency references to the Haditha Incident, and connecting to the theory of this dissertation, is that the town of Haditha was viewed by the US forces and locals as being under the control of the insurgency (Mahdi and Carroll 2005; Helms and Faraj 2016). Therefore, the local insurgency may not have

felt it was necessary to recruit or, to connect to my prior point, may have thought it was harmful to their recruitment efforts in the region. Of course, it may be that the insurgent group based in Haditha, Ansar al-Sunna, was not as active as other groups in promoting their group or message. However, Ansar al-Sunna was known to post video footage of their message, successful attacks, and kidnappings, including videos of killing kidnapping victims (Helms and Faraj 2016, 55).

It wasn't always headline-grabbing incidences that turned the local population against the American occupation and towards the insurgency. For example, following the death of five civilians in an unsuccessful raid in the Mansour district of Baghdad, US soldiers opened fire on unarmed civilians outside of the targeted building. In response, one local man stated that while he was not a supporter of the Hussein regime, "I cannot accept the way Americans treat us. When I see things like this, I can understand why people want to drive them out of our country. If this happens more and more, then I will also join the resistance (Donkin 2003)." Following another incident where American soldiers killed unarmed civilians, an Iraqi man said, "They have crossed a line. I had to get a gun (Hassim 2006, 101)." Following a separate incident, another Iraqi man said "I train my son to kill Americans. It's not that I encourage my son to hate Americans. It's not that I make him want to join the resistance. Americans do that for me (Gettleman 2004)." In the words of another Iraqi insurgent, he joined the insurgency out of disgust at US behavior in Iraq and the bad treatment of Iraqis by American forces, defining US actions towards Iraqis as "terrorism (Hassim 2006, 103)." Lastly, the Army of Muhammad, an insurgent group in Iraq, legitimated their actions by saying "They (Americans) kill our women and children and old men (Johnson 2003)." Of course, all of

these claims could be fabrications, but at the very least the insurgency sought to justify their actions and recruitment as being motivation, at least in part, by alleged violations by American forces.

One argument for how the allegations of abuse and torture, specifically that of the rape of male Iraqi prisoners, impacted the strengthening of the anti-coalition insurgency in Iraq is that the sexual nature of the alleged prisoner abuses further incensed the Iraqis, and neighboring Arab states, due to concepts of shame and honor, which often inspire individuals to resort to violence to lessen feelings of shame and restore sense of honor. In particular, Dr. Abbas Kadhim argues that in Iraqi culture, victims of rape are blamed and stigmatized for the rape (Kadhim 2004). The fact that there were substantiated claims of rape of some prisoners held by American forces in Iraq meant that local communities in Iraq viewed all prisoners held by Americans as having been raped while detained by American forces, meaning their local communities stigmatized prisoners held by American forces. Due to this stigmatization, many Iraqi prisoners did not feel like they could go home following their imprisonment by the coalition. This left those individuals with two options: flee Iraq or join the insurgency to reclaim their pride and dignity (Kadhim 2004). In response to the original release of the Abu Ghraib photos in late spring 2004, Dr. Shibley Telhami stated "Those pictures reinforce that the U.S. is an occupying power in Iraq; and two, that the instruments being used, the sexual images, are especially humiliating in a culture where the concept of shame is so deeply ingrained that some people even, unfortunately, justify killing in order to restore honor. Today there is far more humiliation in the Arab world than there was a week ago (Kuhn 2004)."

The Insurgency's Impact on Accountability

So far, I've presented evidence that suggests several key points. First, jihadi insurgents strategized how to use human rights violations, even merely allegations, by the US armed forces as an insurgency tactic. Second, American leadership, both civilian and military, believed insurgents enacted this strategy and successfully used violations by American forces to legitimate their violence and recruit new members. Third, I've presented evidence that the insurgency and local Iraqi civilians referred to the abuses by Americans legitimating insurgent violence and justifying recruitment to the insurgency. However, did this relationship between American abuses and the insurgency lead to increased prosecutions of US forces for human rights abuses in an attempt to win the "hearts and minds" of the local Iraqi population as part of a broader counterinsurgency approach? In the following section, I will provide qualitative evidence that suggests this very fact.

Beginning with the perspective of the US military, there are numerous primary and secondary references to the counterinsurgency nature of the trials for human rights violations by the US military. For example, shortly after the violations at Abu Ghraib were made public, former Marine Lt. Colonel Bill Cowan argued that if the US military didn't pursue prosecutions for alleged incidences of abuse "we'll end up getting paid back 100 or 1,000 times over… None of us, now, later, before or during this conflict, should wanna let incidents like this just pass (Leung 2004)." In a personal interview, MILO35, an officer in the US military during the Iraq War, argued that prosecutions for human rights abuses by American military personnel were the military and administration "managing a message to control support of the war" in Iraq. MILO35 added that this

"heavy drive to control public opinion" backfired and angered more people in both countries. MILO42, a long time military lawyer, further stated that "court-martials (SIC) were an attempt to win back the trust of the Iraqi population and hurt the insurgency." MLW113 stated, "There was an inflection point where commanders said 'Oh shit, we need to take care of this (abuse, torture, and violations of laws of war by soldiers)' as part of counterinsurgency tactics." MLW113 added, "I think counterinsurgency made people in the military much more sympathetic to avoiding abuse and pursuing accountability for that abuse."

MILO137, a senior military officer during the War on Terror, highlighted that the US military reached out to the local media in the region where a violation occurred to make public aware that the US military was pursuing an investigation and would pursue accountability if needed. As mentioned else, this practice occurred as early as 2004, following the Abu Ghraib scandal. MILO137 also stated "by going to the local media your adversaries hear it and the local population hears it" directly from the US military instead of through the rumor mill or second hand. By getting ahead of the local rumor mill or newspapers, the military hoped taking ownership and being the ones to break the news of the wrongdoing would lessen the damage than if the news of wrongdoing came from elsewhere. MILO137 also highlighted that the US military sought out family members of victims of human rights violations to explain what happened to the family member, what was being done to hold someone accountability, and to pay reparations for deaths that did not result in guilty verdicts of soldiers in order to win over the local population and stop the spread of any anti-American sentiment that could grow out of the situation. However, MILO42 was critical of the low amount of prosecutions "We were

foolish to think punishing only a few soldiers would undo the damage torture and abuse caused with local populations." MILO42 added. "Enlisted folks were sacrificed." On this topic, MILO35 added, "Officers are normally held responsible for small violations by their soldiers. If a soldier gets a DUI, his commanding officer is called in to be held accountable for their soldier's behavior. Yet, when it came to prisoner abuse only the enlisted soldiers were held accountable, and officers were protected."

As part of the US approach to addressing grievances, MLW113 stated that commanders begin the process of accountability by telling their JAG, the senior military lawyer of the command, the outcome that the officer wants. MLW113 also stated that a commander has final say on the form of punishment pursued following the recommendation made by an investigation. A commander makes decisions regarding court-martials, non-judicial punishments, or no punishment after being informed by investigators on their recommendation. Further, while uncommon, MLW113 "A commander can ask for an investigation to be reopened even if there is no new evidence. Further, a superior can request an investigation be reopened even if a commander doesn't want it to be." A case that highlights such dynamics is the cases related to human rights abuses by US military personnel at Bagram Air Base. As previously mentioned, a CID investigation recommended no charges for the abuses, but the command later pursued courts-martial for abuses approximately two years after the investigation concluded, despite the recommendation of no charges.

An important aspect to the strategic use of courts-martial is the location of where a court-martial takes place. In the words of one interviewee, MLW113, "Commanders decide the location of court-martials (SIC)." MLW113 added, "There is absolutely,

definitely, concerns for local populations and their opinions in determining locations of a court-martial." Normally, during combat operations, a commander will choose to hold a court-martial outside of the combat zone in the circuit court of the military branch that has jurisdiction over the offense. Each branch of the military has their circuit court. The Army has six circuits, the Air Force has five trial circuits, the Navy and Marines share six circuit locations, and the Coast Guard has nine districts. Each of these is centrally located to serve specific geographic regions. They can be found both in the United States and on military bases in foreign countries. Applicable to this discussion, in a personal interview, MLW113, a long time lawyer and officer in the US military, argued that one potential reasoning for a command to pursue a court-martial in a combat zone is that such trials, while rare, move faster than those not in a combat zone. While no additional evidence directly reflects such a dynamic in the Abu Ghraib trial, previous research has highlighted a drive for expedience influence commander decisions regarding during conflict military trials (Simmons 2018).

One of the clearest examples of a military command choosing to hold trials in a combat zone are the trials for the Abu Ghraib abuses. Due to the enormous interest in the Abu Ghraib scandal, the military command chose to hold the courts-martial in Iraq, as opposed to out of the country, and in particular chose to hold the trials in the Baghdad Convention Center (Graveline and Clemens 2010). The selection of the convention center was done to accommodate as many local Iraqi civilians and journalists as possible (Graveline and Clemens 2010, 27). While a court-martial may be open to the public, normally a court-martial is held on a US military installation and not in a public venue, like a convention center. However, the location of the convention center was in the so-

called “Green Zone,” which was a heavily fortified area in Baghdad. Therefore, it might be possible to argue these trials were on a military installation. However, while the “Green Zone” was heavily fortified, Iraqi people were able to enter the zone for to watch the trials. Further, due to the central location of the convention center, the selection of the BCC made the trials more accessible to a larger amount of people than if they were held on one of the US military installations on the outskirts of Baghdad. The decision to intentionally select a venue large enough, and in a central location, to encourage the attendance of large amounts of Iraqi civilians and journalists fits with the theoretical logic of this project. Additionally, the US Army promoted the trials in local Iraqi newspapers and in Arabic-language satellite channels that broadcasted in Iraq. Particularly, the US-funded Al Sabah newspaper widely covered the trials, including advertising the location and daily start time for the trials (Ciezadlo 2004). A large audience, media presence, and local media coverage would ensure a wide distribution of the news of legal accountability for American abuses locally.

A key part of the military strategy around addressing the allegations of abuses is the strategic considerations made around the location of the trials. Notably, the defense attorneys for the accused soldiers of the Abu Ghraib scandal accused the military of having the trials in Iraq for purely military strategic reasons (Graveline and Clemens 2010, 37). Beyond accusations of political motivations for having the trials in Iraq, the defense attorneys argued that due to issues around witness availability, difficulty of conducting a trial in a war zone, travel conditions, immense public pressure for conviction in Iraq, and the difficulty in finding an impartial jury warranted moving the trials out of Iraq (Graveline and Clemens 2010, 37). In comparison, the US Army

command wanted the trials to remain in Iraq due to the proximity to witnesses and the fact the victims of the abuse were Iraqis (Graveline and Clemens 2010, 38). For the Army command, it was important that local Iraqis got to see firsthand that American soldiers were being held responsible for abuses of Iraqis by the Army itself.

In one instance, the guilty plea hearing of Specialist Armin Cruz, a soldier accused as part of the Abu Ghraib scandal the Baghdad Convention Center was also hosting a meeting of the Iraqi Congress to discuss the new constitution of Iraq. Meanwhile, there was a "million man march" planned as a demonstration of solidarity with the Iraqi Congress outside of the Baghdad Convention Center. Further, there were credible terrorist threats made against the convention center that day (Graveline and Clemens 2010, 153). The date was September 11th, 2004. Despite all of these factors, the hearing was ordered by the local command to occur as scheduled and to remain open to the local Iraqi people and media (Graveline and Clemens 2010, 154). The commanding General, Thomas Metz, emailed the prosecution that the hearing was to occur as scheduled due to his determination to keep the trials "as transparent to the Iraqis as possible (Graveline and Clemens 2010, 154)." It was also important for, in the words of the senior JAG officer in Iraq, General Clyde Tate, that "the Iraqi people see justice being served (Graveline and Clemens 2010, 203)." Lastly, the Army's Judge Advocate General, Thomas Romig, told the prosecution that achieving convictions of the alleged perpetrators were "a…no-fail mission" (Graveline and Clemens 2010, 209). These instructions meant that the prosecutors were expected by the head of the legal branch of the US Army to get convictions of the accused. About this order, the prosecution team was concerned with the negative repercussions of too lenient of sentences for the

relationship between the US military and the people of Iraq (Graveline and Clemens 2010, 67).

The combined implication of the evidence provided suggests that the military command in charge of the Abu Ghraib trials chose the location of the combat zone of Iraq and specifically the Baghdad Convention Center for a purpose. The evidence suggests that the military command chose the Baghdad location to maximize local attention on the trials so that Iraqis would see that the US occupation pursued legal accountability for combatants who engaged in human rights violations. Based on additional evidence, it is also possible that the command chose to hold the trials in the combat zone so the trials would conclude at a fast rate. Lastly, based on comments from the head of the Army's legal system, it seems possible the trials were meant to achieve an additional goal besides acting out the legal process considering the accused were deemed guilty before conviction by the head of the Army's legal system.

It wasn't only Abu Ghraib trials in which strategic aspects appear to have played a role. The defense team for Steven Green, sentenced for the Mahmudiyah incident, argued that the push for the death penalty for Green by the Justice Department was motivated by a drive to appease the Iraqi government and the general Iraqi public to ensure support for the American occupation (Frederick 2010, 360). Darren Wolff, lead attorney for Green, stated "It became obvious this case was not about fairness or equity" but was "About appeasing the overseas communities (Iraq) who have been calling for Mr. Green's execution (Frederick 2010, 360)." Further, the Justice Department brought the Iraq Human Rights Minister and the surviving family members of the murdered family in the Mahmudiyah incident, which is not standard practice. Haytham Faraj, a defense attorney

for Frank Wuterich, one of the accused soldiers for the Haditha incident, argues that the charges of the eight Marines for the Haditha incident were "an easy way to regain some legitimacy" for the US occupation lost following the incident (Helms and Faraj 2016, 114). In the Haditha incident, reportedly "somebody high" in the Department of Department reportedly demanded that investigators "get the goods on the Marines who did the killing, fry their young asses, and move along (Helms and Faraj 2016, 243)." Further, the Department of Defense set up "Legal Team Charlie" to prosecute the Haditha cases, a separate council outside of the normal legal chain of command. Beyond prosecution of the case "Legal Team Charlie" was tasked with "analyzing the political situation" created by the Haditha incident to decide what course of action to take on accountability for wrongdoings to address the political fallout (*Thomas More Law Center* 2008).

Senior members of the Bush Administration and other government employees also linked trials to a policy of winning "hearts and minds." In a confirmation hearing before the Senate Judiciary Committee Attorney General Alberto Gonzales stated, "Do I believe that [abuse] may have hurt us in winning the hearts and minds of Muslims around the world? Yes, and I do regret that. But one of the ways we address that is to show the world that we don't just talk about Geneva, we enforce Geneva . . . . [T]hat's why you have these military courts-martial; that's why you have these administrative penalties imposed upon those responsible because we want to find out what happened, so it doesn't happen again. And if someone has done something wrong, they're going to be held accountable (Human Rights Watch 2006)." This statement from Attorney General Gonzalez might be one of the clearest evidence of support for the theoretical claims of

this project, in his own words the trials for abuse by American forces were done to undo the damage of the abuses to win hearts and minds. However, this statement does contradict Attorney General Gonzalez's prior position that the Geneva Conventions did not apply, as discussed earlier in this chapter.

Interviewees from the Bush Administration and other then government employees expanded upon this perspective. GOVE68, a senior member of the George W. Bush Administration, stated "The top military brass wanted to protect themselves and only pursued low-level scapegoats to appease critics. There was a lot of 'covering your own rear.'" According to GOVH93, a senior State Department official in the Bush Administration, stated "President Bush was more responsive to military leaders than to the intelligence community. Public statements by military leaders regarding the consequences of the abuses for the counterinsurgency operations absolutely influenced the Bush administration and the legislative branch" on their support for prosecutions of US military personnel for human rights abuses. GOVH93 stated that on top of counterinsurgency concerns, "Military leaders were concerned over tit for tat abuse. They were afraid that if America had a reputation for abuse that American soldiers would be abused if captured." GOVE36 stated, that the pursuit of accountability for abuses was done to help contain the damage to counterinsurgency and counterterrorism, but that the accountability done was too low to have any positive impact. Lastly, GOVH93 stated "Signaling to aggrieved populations absolutely contributes to decisions around the pursuit of accountability. Accountability is used to build bridges with former enemies to lower tensions and improve relations."

Members of the US government provided key evidence of the strategic instrumentalization of the accountability process for allegations of abuse in Iraq. GOVH93, a former senior member of the State Department during the George W. Bush administration stated, "Accountability for human rights violations are a 'political tool' used by elites to achieve goals. Elites are absolutely strategic actors when it comes to the use of trials." In this case, GOVH93 was speaking about the military trials for soldiers accused of human rights abuse during the War on Terror. GOVE68, a senior member of the George W. Bush administration, stated that they witnessed senior members of the administration communicate the importance of prosecutions to the mission in Iraq to senior military leaders, who were responsible for decisions around accountability in several cases of alleged violations. GOVH74 stated "signaling to local populations and insurgents absolutely drove accountability. Accountability was seen as a counterinsurgency tactic" in the War on Terror under George W. Bush. GOVH74 "Military leaders considered violations as negatively impacting their mission and causing problems." GOVH63, a former senior member of an American intelligence branch, argued that not only were the trials of abuse meant to repair the damage caused with the local population in Iraq, they argued that the trials worked and that "IED attacks dropped by 90 percent (in Iraq) as a result of the accountability for Abu Ghraib."

In this section, I've discussed primary and secondary evidence from the US military, intelligence community, and members of the Bush Administration which suggests support for the claim that military trials for human rights abuses occurred as part of a larger counterinsurgency policy attempt to win the "hearts and minds" of the local Iraqi population. I've also provided evidence that as part of this strategy, the military

strategically chose where to conduct trials for abuses. Particularly, I've provided evidence that the high profile trials related to the Abu Ghraib scandal were conducted in the centrally located Baghdad Convention Center to maximize local civilian and journalist access to the trials and local media coverage to publicize the fact the US military was prosecuting those involved in the abuse. However, while members of the US military, the intelligence community, and the Bush Administration all provided support for these claims, there was a mixed assessment of whether such accountability was effective. Future research should explore the effectiveness of this approach. These findings build on previous attempts in this chapter and elsewhere (Simmons 2018) to understand when and why militaries prosecute their members for human rights violations through historical analysis by analyzing a more recent conflict.

Similar Dynamics from Iraq to Afghanistan

Moving from Iraq to Afghanistan, we see a similar trend in Afghanistan as we see in Iraq. Though allegations of abuse and torture by members of the US military had existed in Afghanistan since late 2002, confirmation of human rights violations did not occur until late 2004 due to prior information about the allegations of abuse and torture remaining classified until then (Bazelon 2005). While the evidence I will explore supports similar claims to the Iraq case, US officials claimed that they did not expect the cases to have as powerful an impact on the American public or the Afghan insurgency as those from Iraq due to limited instances of abuse and limited release of evidence of abuses (Ricks 2004).

Bagram Air Base

In 2002, at the Bagram Air Base in Afghanistan, two detainees of the US Army died while in custody. Their names were Dilawar and Habibullah. Autopsies conducted by military coroners determined the cause of death for both detainees was “homicide” (Golden 2004A). However, the initial military statements on both deaths described the deaths being due to “natural causes.” In the immediate aftermath of two prisoner deaths in December 2002 at their base at Bagram, the Army opened an investigation, but closed it shortly after, finding no wrongdoing (Golden 2004A; Golden 2004B). These finding occurred despite the fact the American pathologist at the Armed Forces Institute of Pathology, who conducted the autopsies on the dead prisoners, determined the cause of death for both was “murder.” Even with the official death certificate labeling the death a homicide, the Army publicly announced that the prisoner had died of natural causes (Jehl and Rohde 2004; Gall and Rohde 2004). However, when the prisoner deaths and allegations of torture and abuse drew the attention of the media after Abu Ghraib, American Ambassador to Afghanistan, Zalmay Khalilzad, stated, "To the best of our knowledge this is the first time anyone in the military chain of command or the United States Embassy has heard of this alleged mistreatment (Gall 2004)." Adding “The U.S. military has launched an immediate investigation (Gall 2004).” Further, Lt. General David Barno, the Commander of United States forces in Afghanistan, stated in Spring of 2004 that he had not heard about the allegations but that he “takes those accounts very seriously."

However, the Commander of American Forces in Afghanistan in February 2003 acknowledged an investigation into the two deaths at Bagram, stating “We haven't found anything that requires us to take extraordinary action (Gall and Rohde 2004).” In reality,

following the second death interrogators were removed from their posts during the investigation (Golden 2004B). When the Commander was asked at the time whether either prisoner had suffered injuries in custody, something described on both death certificates issued by the military, he replied, "Presently, I have no indication of that (Gall and Rohde 2004)." Eventually, following the reopening of the cases, in October 2004, the U.S. Army Criminal Investigation Command announced there was probable cause to charge 28 officers and enlisted personnel with criminal offenses related to one of the Bagram prisoner deaths. These charges ranged from dereliction of duty to maiming, and manslaughter. Investigations cited fifteen of the same people for probable criminal responsibility in the Habibullah. The findings of the CID were passed along to the commanders of the 28 soldiers, where the command would decide how to proceed with the findings. In the end, there were charges of 15 soldiers. As previously mentioned, a CID investigation recommended no charges for the abuses in their initial investigation, but the command later pursued courts-martial for abuses approximately two years later after a second investigation, commissioned after the Abu Ghraib scandal broke, recommended charges. Of the 15 charged, 12 soldiers faced a court-martial. Of those 12 soldiers sent to court-martial, there were six guilty verdicts, while the rest were acquitted. Notably, some of the solders found guilty of abuse moved to the Abu Ghraib prison in between when the Bagram prisoner deaths occurred, and the Abu Ghraib scandal occurred. None of the soldiers found guilty of wrongdoing at Bagram were implicated in the abuse at Abu Ghraib. Further, though six soldiers were found guilty of wrongdoing at Bagram, the US government, in a report to the United Nations Committee Against

Torture, denied any wrongdoing. This report was issued in October of 2005 after several of the convictions for the abuses occurred.

The Lone CIA Prosecution

Another key prosecution in Afghanistan was that of CIA contractor David Passaro for the death of Afghan Abul Wali. Due to the uniqueness of this case, with Passaro being the sole CIA employee prosecuted for human rights abuses during the Bush Administration, I will spend a bit more time on this one case than I have when discussing individual cases elsewhere in this chapter. Abdul Wali was an Afghan man who died in US custody in June of 2003. As mentioned elsewhere, CIA contractor David Passaro was found guilty of felony assault with a dangerous weapon and three counts of misdemeanor assault, but not Wali's murder, in 2006 by an American grand jury in the United States District Court for the Eastern District of North Carolina. Passaro was not charged with murder because an autopsy on Wali's corpse did not occur (Associated Press 2006). Due to this lack of an autopsy, the Department of Justice argued that there was a lack of evidence to justify the pursuit of murder charges (Giardino 2007).

Uniquely, the US Patriot Act, designed to apply not to US forces but foreign terrorists, was used by the Department of Justice to charge Passaro. This section of the US Patriot Act extended the federal criminal code beyond the borders of America if the crime occurred within the context of the War on Terror. This is despite the fact that the 1996 War Crimes Act made it a felony for a US national to violate the Geneva Conventions and Passaro's charges fell under the War Crimes Act (Giardino 2007). However, this prosecution fits within the Bush Administration argument that the Geneva Conventions did not apply to the War on Terror. At the very least, it would have been

problematic politically and legally for the Bush Administration to argue that the Geneva Conventions didn't apply, while a federal court prosecuted a CIA contractor for violations of the Geneva Conventions (Giardino 2007, 726). Legal scholars have argued that the War Crimes Act was not used to prosecute Passaro because it would have opened the door for widespread prosecutions, causing the Bush Administration and US military to lose control over the accountability process (Giardino 2007, 726; Watts 2011, 94). This view suggests that both the Bush Administration and US military were willing to allow the prosecution of US forces for crimes by the summer of 2004, but only if they could control the pursuit of charges and punishment. There were also concerns that using the War Crimes Act would open the Bush Administration and military up to prosecutions after the Administration was no longer in power (Giardino 2007, 726).

The Justice Department indicted Passaro in June 2004, one year after Wali's death. In response to Wali's death, Said Fazel Akbar, the then Governor of the Kunar Province in Afghanistan, where the Wali's death occurred, stated that Wali's death would become a tool for terrorist recruiting and created a huge setback for Afghanistan's national reconciliation efforts (Dao 2004). In particular, Governor Akbar stated that Passaro's actions and Wali's death would turn "the Afghan people against the American military presence in their country and play into the hands of Taliban, Al Qaeda and other militant groups opposed to the presence of foreign troops (Doa 2004)." Discussing the impact of Wali's death a few years later Governor Akbar stated, "Wali's death made it more difficult for him to get the people to trust the new Afghan government and US forces (Weigl 2007)." Akbar also stated, "The distrust of the Americans increased, the security and reconstruction efforts of Afghanistan were dealt a blow, and the only people

to gain from Dave Passaro's actions were Al Qaeda and their partners (Weigl 2007)." Both quotes highlight that Governor Akbar believed his initial comments about the impact of the abuse on the counterinsurgency operations in Afghanistan came true.

Passaro argues in interviews with the media that he was a scapegoat, punished in response to the Bush Administration felt they needed to look like they were pursuing accountability following the Abu Ghraib scandal (Klein and Roane 2015). Though Passaro pled "not guilty," Passaro does not deny his actions, arguing he was following orders, and that he wouldn't have been punished for them if it wasn't for political need (Haberman 2015; Klein and Roane 2015). Further, Passaro's attorney cited the 2002 Bush memo first discussed at the start of this chapter in defense of his client. Passaro's attorney argued Passaro was protected by from criminal prosecution by the 2002 legal memo (Beaver 2004; Smith 2005). Further, in a formal written response to Passaro's indictment, his attorney argued Passaro's indictment was the result of "embarrassment to the government" caused by the public disclosure of abuses by US forces (Beaver 2004). While neither statements from Passaro nor his lawyer are necessarily true, what is important about both statements is their insistence on the politicization of Passaro's prosecution and Passaro's acknowledgment of his actions.

In a nationally televised press conference to announce the indictment, then-Attorney General John Ashcroft stated that the decision to prosecute Passaro occurred in February 2004, "before the exposure generally of the allegations about the prison in Iraq (Ashcroft 2004; Oppel Jr. and Hart 2004)." Attorney General Ashcroft added that the "world has witnessed a betrayal of America's values" in reference to the Abu Ghraib abuse scandal and this "calls for us to the defense of our values…through the

enforcement of the law (Ashcroft 2004).” On the one hand, Attorney General Ashcroft brought up the allegations of abuse elsewhere and was careful to say the decision to prosecute Passaro did not occur before the public outcry over abuses. Attorney General Ashcroft also referenced the world’s attention on the abuses in explaining why the Department of Justice pursued the charges. Attorney General Ashcroft was also careful to walk through the timeline of the allegations and charges. According to Attorney General Ashcroft, the Inspector General of the CIA began investigating the allegations of abuse “immediately” after Wali had died, the Justice Department took over the case in the fall of 2003, and in February 2004 the evidence was sent to a grand jury in the Eastern District of North Carolina. This grand jury then issued its indictment in June of 2004. Notably, the official Justice Department timeline of the investigation, which was made public due to a Freedom of Information Act request by the American Civil Liberties Union, is a blank document that states “Timeline US Vs. Passaro” in the content section but includes no actual timeline or any additional information. While Attorney General Ashcroft was correct to say that knowledge around Abu Ghraib was not widespread in February of 2004, it was known to the US military and US government in February, as discussed previously in this chapter. So, if we take the Attorney General’s comment at face value, while the press coverage of Abu Ghraib may not have influenced the decision to pursue charges against Passaro this does not mean the abuses at Abu Ghraib did not influence any decisions. Nor does the Attorney General’s statement suggest that strategic consideration at the heart of this project did not play a role in the charges of Passaro.

The actions of the Attorney General of being the one to announce the indictment was also unusual, as normally in cases before grand juries the announcement of an

indictment is left the presiding federal US District Attorney. If, in line with the theory expressed in this project, such prosecutions were attempts by the Bush Administration and US military to send a strategic signal that the administration would punish human rights abuses, then having a senior member of the Bush Administration announce an indictment in a human rights abuse case would be a useful way to send such a signal. The timing of Attorney General Ashcroft's announcement was about two months after the widespread coverage of the Abu Ghraib scandal in the US and the international community, which broke at the end of April of 2004. Attorney General Ashcroft's announcement was also shortly after insurgents began citing abuses by US military personnel as motivation for the capture and killing of American service members and contractors in Iraq and Afghanistan.

An important note around Passaro's charges is the fact the US Army's Criminal Investigation Command opened an investigation into Passaro's actions in the immediate aftermath of Wali's death. While Passaro was a CIA contractor, the allegations against him occurred on a US Army base, bringing the case under the jurisdiction of the CID, as well as the CIA and Justice Department. However, the CID closed the case due to a lack of evidence of wrongdoing. The case was reopened in May 2004, shortly after the Abu Ghraib scandal broke and before the FBI announced their indictment. The second investigation by the Army concluded in February 2005, with no additional charges brought against Passaro due to a lack of "solid information" (WRAL 2005). So we have one investigative branch of the American security apparatus declaring on two separate occasions that there would be no charges for wrongdoing, while another investigative branch pursued charges of wrongdoing. A few more points around the Passaro

prosecution are worth noting. First, the indictment was made public with direct mentions of Passaro's name, and the fact he worked for the CIA, despite the fact the Justice Department had claimed it would not do so, and that disclosure of either fact would lead to criminal prosecution (Beaver 2004). Passaro remained employed by the Department of Defense as a contractor based at Fort Benning, in North Carolina before his indictment. Third, Passaro offered to self-surrender after being informed formally that he was under investigation, but the Department of Justice declined this offer with the response of "that (self-surrender) was just not going to happen (Beaver 2004, 50)." Why the request to self-surrender was turned down is unknown, as this is a common practice in FBI indictments.

Chapter Conclusions

This chapter demonstrates the key role that strategic considerations played in explaining the prosecution of members of the US armed forces for human rights abuses during the George W. Bush Administration. While the argument of this project is not that such strategic considerations are the sole explanation, laws and a need for discipline certainly play a role, the evidence provided suggests that the likelihood of prosecution for violations of laws of war, referred to as human rights abuses here, increased when American leadership viewed a military need for such prosecutions to occur when facing an insurgency and a wary occupied public. Particularly, the quantitative analysis demonstrates that increases in levels of insurgent violence correlate with increases in the likelihood that a charge for human rights abuse results in a court-martial. Further, this analysis demonstrated that a period of conscious attempts to recruit insurgents to the counterinsurgency effort correlates with the increased likelihood of charges for human rights violations of American troops going to court-martial.

The qualitative analysis provided additional evidence of the strategic nature of human rights abuses and military trials. Evidence provided suggests that insurgents trained and planned attacks around the idea of provoking abuses, real or perceived, by American forces. Further, evidence provided suggests that the insurgency in Iraq made extensive use of real and perceived human rights abuses by American forces to recruit combatants to their cause and legitimate violent actions. As well, this chapter highlights that American military and civilian leadership were aware of such insurgent strategies and actions regarding alleged abuses by American forces. Lastly, evidence provided suggests that American leadership was strategic in their pursuit of accountability for abuses, as part of a broader counterinsurgency policy to win the "hearts and minds" of the local Iraqi population. Included in this approach is the prosecution of American forces for wrongdoing, the location and venues selected to host the criminal proceedings, advertisements in local Iraqi news around prosecutions for abuses, communication with local leaders, the issuance of press releases with military approved narratives around abuses, and the discrimination of pamphlets to the local population by forces on patrol.

As this chapter shows, strategic considerations play an important role in the pursuit of accountability for human rights violations of government forces. The use by the American government and military of military trials was an important part of the broader counterinsurgency strategy pursued in Iraq to "win the hearts and minds" of the local Iraqi people. However, these trials are not merely "scapegoat" or "show" trials without legal basis. Real violations by American forces occurred in some cases, and there were enough potential red flags in other cases that U.S. military commanders and key members of the George W. Bush Administration felt legally justified to pursue

prosecutions. Due to the discretionary nature of the legal process for military commanders, in particular, the pursuit of accountability for these very real crimes differed across similar cases. A goal of this chapter has been to show that this difference in accountability, and changes in cases over time, was in part due to American leadership assessing how accountability could be used as a tool of war, much like a bullet or bomb, to win the battlefield of the "hearts and minds" of the local Iraqi population. In this way, the American forces prosecuted for abuses continued their mission of fighting the insurgency on behalf of the American government and the American occupation.

CHAPTER 5

ACCOUNTABILITY IN "THE TROUBLES" OF NORTHERN IRELAND

Introduction

As with the previous chapter, this chapter argues that human rights prosecutions of states forces during periods of insurgent violence is in part a function of strategic counterinsurgency considerations of elites. Elites will weigh the perceived "hearts and minds" benefits of conducting such prosecutions with the potential "costs" of the prosecutions. When elites believe that such prosecutions would be beneficial to counterinsurgency operations, through weakening a public need or want to support the insurgency due to grievances around insurgencies, such prosecutions will be more likely to occur. However, elites consider not only the potential benefits of such prosecutions but also the potential political or military costs such prosecutions may produce. In short, the theory of this project suggests that human rights abuses by state forces in insurgent conflicts shift the support of publics to insurgencies, strengthening the insurgencies ability to wage violence against the state. In response to rising support for the insurgency due to these public grievances, elites may use prosecutions of their security forces for human rights violations to shift public support back away from violent insurgencies to weaken and defeat the insurgency.

While the previous chapter explored this theory within the context of American counterinsurgency operations in Iraq, this chapter explores the theory in the so-called "Troubles" of Northern Ireland. Over the course of the conflict, state security forces in Northern Ireland were dogged by allegations of human rights abuses. However, the British government frequently dismissed such criticisms and refused legal accountability

for their security forces. Perhaps surprisingly then, beginning in 1982, there were a series of public prosecutions of members of the Royal Ulster Constabulary (RUC), the local police which was turned into a counterinsurgency force by the state. Despite the fact of continuing allegations of abuse, these public prosecutions of the RUC ended after 1986.

The remainder of this chapter will explore evidence that suggests support for the broader theory of this dissertation and support for specific hypotheses outlined previously. Human rights abuses by the security forces in the 1970s, combined with a culture of rampant impunity, pushed members of the Irish community in Northern Ireland to increasingly support the anti-British insurgency and their political parties. In response to growing support for the Irish insurgency, the British began to change their counterinsurgent tactics to win the "hearts and minds" of the Irish community. The goal of this approach was to convince the Irish public that the British government was responding to their grievances, particularly those around human rights violations of the security forces, and there was no reason to support the Irish insurgency. In particular, the British state in Northern Ireland began to pursue prosecutions of the security forces for human rights violations of Irish people. Further, this approach was viewed by both British and Irish people as being effective in shifting support away from the militant Irish insurgency. However, while this approach was effective in winning over the Irish community, it resulted in members of the pro-British community and the security forces turning against the British state. In response to the growing political costs of the trial, and have felt like they achieved their goal of weakening public support for the insurgency, the British state discontinued their policy of accountability of their security forces and

enacted policies to decrease the occurrence of abuses, and there abuse based grievances, in the future.

This chapter divides the Northern Ireland case study into multiple sections. The first section introduces and contextualizes the case, focusing on the historical background, key groups, and events. The second section features qualitative analysis of the relationship between the Irish insurgency, British counterinsurgency, and prosecutions of the RUC. The third section features qualitative analysis of the battle for public support between militant Irish Republicans and non-violent Irish Nationalists and how this battle influenced decision making around RUC prosecutions. Lastly, I explore how the RUC attempted to balance using prosecutions to win over the Irish community with the possibility of losing support from the Unionist community and members of the RUC.

Background

This chapter is a case study of accountability for human rights violations by British security forces in the Northern Ireland Conflict, which is commonly known as "The Troubles." The conflict in Northern Ireland, running from 1969 to 1998, was mostly ended by the Good Friday Agreement. There were four main factions in the conflict. Within the Irish community, there were Irish Republicans who sought to unify Northern Ireland with the Republic of Ireland through violent means and Irish Nationalists who sought to improve the civil liberties and human rights of Irish people in Northern Ireland, as well as a unified Ireland, through nonviolent means. The pro-British forces came from British Unionists/Loyalists who wanted to keep Northern Ireland as part of the United Kingdom, and the security forces of the British government. The British security forces

included the British military, the Royal Ulster Constabulary (the police of Northern Ireland), British intelligence agencies, and the Ulster Defense Regiment (a special regiment of the British military consisting exclusively of individuals from Northern Ireland). Some commentators put forward the view that British Unionists and British Loyalists should be viewed as two different camps, with the Loyalists viewed as the more hardline of the two. However, most consider the terms "Unionist" and "Loyalist" to be interchangeable.

The violent factions of Irish Republicans, British Unionists, and the British government fought an insurgency/counterinsurgency-focused, conflict off and on for about 30 years. The conflict claimed approximately 3,500 deaths, almost 1,800 of which were civilians and 1,200 were British police and soldiers, and about 48,000 separate instances of injuries (Sutton 2001). The violence even reached into the British state, including a near successful attempt to assassinate Prime Minister Margaret Thatcher and leading members of the Conservative Party. Further, there were smaller instances in which Irish Republican forces killed members of the British government. In comparison to the previous Iraq case, where deaths regularly surpassed 3,500 in a year, the Northern Ireland case overall lesser levels of violence and lower levels of prosecution of state forces for human rights abuses. However, this relatively low amount of causalities is due to the relatively fewer number of inhabitants in Northern Ireland. In comparison, as a percentage of the population, the same death toll would equal approximately 100,000 people in America. I do not make this comparison to downplay the level of violence in Northern Ireland, instead I make this comparison to give a comparable context in order to better understand the scale of the loss of life in what is often viewed a low-level conflict.

For much of the conflict, accountability for any potential wrongdoings of British security forces was negligible, due to official government policy from 1972 that security forces in Northern Ireland were to be immune from prosecution. Per a secret government cable, the security forces in Northern Ireland were to be "suitability indemnified" from court proceedings around their actions (Duncan 1972). Often accountability took the form of "inquiries", which regularly cleared the British forces of any wrongdoing. These tribunals and inquiries began in 1972 following the "Bloody Sunday" massacre conducted by the British Army. Over the years there was the Widgery Tribunal (created in 1972), the Phillips Commission (1981), the Stalker Inquiry (1984), the Sampson Inquiry (1986), the three Stevens Inquires (over the span of about a decade with the first created in 1990), the Saville Inquiry (beginning in 1998), the Patten Report (1999), and the Barron Report (2003). Notably, the Saville Inquiry, formed as part of the Good Friday Agreement peace talks, lasted 12 years and cost over an estimated 200 million British pounds (Oborne 2004). The British government later reopened many of the instances investigated during the conflict. These post-conflict investigations were more critical of the British security forces than investigations during the conflict and trials for wrongdoing by state forces have begun. These types of investigations and tribunals resemble attempts by the American legislative branch, Bush Administration, and US military to investigate allegations outside of legal prosecutions in the US case. These investigations include the Ryder, Fay, Taguba, Senate Armed Services Committee, and Church reports.

One of the most controversial of these inquiries was the Stalker Inquiry. The Stalker Inquiry occurred following three instances in which unarmed Irish nationalists

were shot by police under controversial circumstances over the course of one month in 1982. Total, these incidents resulted in six deaths and one injury. Each of these three instances resulted in prosecutions, and acquittals, of members of the Royal Ulster Constabulary, the local police and counterinsurgency force. This inquiry was headed up by John Stalker, Deputy Chief Constable of the Greater Manchester Police, following claims by an RUC constable on trial for two of the unarmed shootings and began in 1984 (Stalker 1988). This constable claimed that he, and his fellow RUC officers, were following orders to shoot the Irish Republicans on sight, regardless of probable cause, and were instructed to cover-up their story. These claims, and the acquittals led to a widespread public opposition, both violent and non-violent, in Northern Ireland (Stalker 1988, 12-14).

The Stalker Inquiry is one of the most controversial and noteworthy affairs of the Northern Ireland conflict, due to the fact Stalker recommended the pursuit of widespread prosecutions of members of the RUC for a "shoot to kill" policy (Stalker 1988). After the British government halted Stalker's official inquiry under questionable circumstances in 1986, Stalker's recommendations were made unofficially in 1988 through the release of a Stalker authored book. The British government accused Stalker of having ties to financial crimes through a friend and the British government removed him from the investigation due to these accusations. An investigation later cleared Stalker of any wrongdoing. Following Stalker's publication of a heavily censored version of his original report in 1988, 19 RUC officers were charged with "perverting justice" for covering up RUC related deaths from 1982 to 1986 despite the fact Stalker recommended charges of each officer for "unlawful killings" for the deaths (Amnesty International 1994; Hermon 1997,

219). These charges would have meant all police killings in the 1982 to 1987 period would have resulted in prosecutions.

The official investigation started by Stalker was taken over by Craig Sampson of the West Yorkshire Police in 1986, but his investigation was quietly halted later that year. Before the termination of his inquiry, Craig Sampson also recommended charges of "conspiracy to commit murder" of additional members of the British security forces, on top of the charges for "unlawful murder" suggested by Stalker. Sampson also recommended charges of "unlawful murder" for members of the British intelligence services operating in Northern Ireland (Taylor 2001, 252). The implications of the Sampson and Stalker inquiries are worth stating clearly: all RUC related deaths from 1982 to 1987 were determined to be "unlawful killings" by two outside investigators. However, only 40 percent of the deaths resulted in "unlawful killing" charges during this period. Interestingly, the Director of Public Prosecutions in Northern Ireland sought to pursue additional prosecutions against the RUC and British intelligence following Stalker and Sampson but was blocked from doing so by the Attorney-General of England, Wales, and Northern Ireland (Taylor 2001. 252). On the recommendation of the Secretary of State for Northern Ireland, the Attorney-General of England, Wales and Northern Ireland, Patrick Mayhew, announced that despite the recommendation of additional charges, the British government would not pursue additional charges since doing so would expose secrets of the intelligence services (Taylor 2001 250-253). Lastly, Stalker also found that the Director of Public Prosecutions in Northern Ireland had evidence in support of "unlawful killing" charges in all RUC deaths, but only acted selectively.

However, while there was a culture of impunity during the conflict, there were numerous instances of members of the British security forces, namely forces of the Royal Ulster Constabulary (RUC), being prosecuted for human rights violations. The RUC was originally the civilian police service in Northern Ireland but was turned into a counterinsurgency force a few years into the conflict, which it would remain until the 1990s. Beginning in 1976, a process of "Ulsterisation" or "police primacy" occurred in Northern Ireland where the RUC became the lead counterinsurgency force in Northern Ireland. This process occurred in response to high levels of casualty rates of the British military and strategic concerns that images of the British military patrolling the streets reinforced the Irish narrative that the conflict was an anti-colonial conflict (Urban 1992; Ellison and Smyth 2000, Chapter 6). The RUC maintained this primacy until the end of the conflict. Further, Maggie Thatcher became Prime Minister in 1979, a position she held until 1990. It is this period of "police primacy" during the Maggie Thatcher Administration in counterinsurgency operations which is the focus of this chapter.

I focus on this time of "police primacy" during the Thatcher Administration for several reasons. First, the British government transformed the RUC from a traditional police service to a counterinsurgency military responsible for fighting the Irish insurgency. Second, per an official British government report, the RUC were subject to direct control by the British state, through the Secretary of State for Northern Ireland. The direct control over the RUC was in direct contrast to the rest of the UK where there was a clear separation between the national government and policing. While the British government could not claim responsibility for the police in England, Wales, and Scotland, the British government were responsible for the RUC and directly oversaw the

policies and actions of the RUC. Due to this, the RUC were viewed by the British government and local population in Northern Ireland as "not primarily as upholders of the law but as defenders of the state (Patten 1999, 2)." Put another way, the direct control contributed to the perception that the RUC was not a policing body meant to protect and serve the people of Northern Ireland, but an extension of the central government and a tool of British occupation (Patten 1999, 23). The RUC's actions were viewed by the British government and the people in Northern Ireland as being "the heart" of the conflict (Patten 1999). This same report discussed the view that the RUC needed to take accountability for human rights violations seriously for the British government to gain the support of the Irish community (Patten 1999, Chapter 4). Here were see direct reference by the British government connecting accountability for human rights violations of the RUC to support the British government in the Irish community.

In a separate investigation commissioned by the British government, retired Canadian Judge Peter Cory argued that allowing state agents to get away with criminal acts "will increase, not decrease, the level of homicidal violence" and such behavior previously had exacerbated the conflict (CAJ 2012, 15). Further, the Patten Report claimed that it the actions of the RUC were at least partly responsible for "The Troubles" and deepening Irish opposition to the British state (Patten 1999, 50). Additionally, the RUC was so central to Irish grievances that the closing of the RUC was a central negotiation point of the Good Friday Agreement. As part of the agreement, the British government agreed to terminate the RUC and created a new police service, the Police Service of Northern Ireland (PSNI), in 2001. Lastly, I focus on the twelve years of police

primacy during the Thatcher Administration to account for any potential impacts analyzing different administrations could have.

Over the course of the conflict, British security forces were responsible for 363 deaths (Sutton 2001). Of these 363 deaths, the RUC was responsible for 55 deaths, and various branches of the British military were responsible for the remainder. Four of the deaths were "friendly fire" instances where the RUC accidentally killed other members of the British security forces. Notably for this discussion, in 1972 the British Government had declared in a private meeting the official government policy that the British security forces should not be bound by potential criminal charges and should be free from fear of legal action for their actions in Northern Ireland (Duncan 1972). From 1976 through 1981, the RUC was responsible for eight deaths, and the British government did not prosecute these deaths for potential wrongdoing, in line with this 1972 policy. However, from 1982 to 1987 the RUC was responsible for 20 deaths, and seven officers were prosecuted for "unlawful murder" in eight of the deaths, breaking with this 1972 policy. These deaths and prosecutions are known as the so-called "Shoot-To-Kill Policy" deaths. This name was due to claims from the Irish community that the RUC had adopted a policy of killing known Irish Republicans when the RUC came in contact with them, regardless of legal justification. From 1988 until 1993, continuing the six-year periods, the RUC was responsible for nine deaths and zero members of the RUC were prosecuted for the deaths.

While trials of US service members in the previous case occurred in military courts, the prosecutions of the RUC in Northern Ireland occurred in the so-called "Diplock Courts" of Northern Ireland. These were special courts were set up to prosecute

conflict-related crimes in Northern Ireland and were juryless out of fear of juror intimidation. The Parliament of the United Kingdom created these courts through the Northern Ireland Act of 1973 at the advice of noted British General Frank Kitson. Worth noting is that before recommending these courts as a solution in Northern Ireland, Kitson argued that courts and the rule of law were a valuable counterinsurgency tool for gaining the allegiance of the insurgent population (Kitson 1970, 69). Kitson argued the courts give the perception of law being implemented fairly on all sides of the conflict. The courts not only had the authority to prosecute members of the insurgency, but also British security forces. However, as mentioned towards the start of this chapter, official British policy blocked prosecutions of members of the security forces, even in Diplock Courts. The Director of Public Prosecutions oversaw the Diplock Courts. The Director of Public Prosecutions in Northern Ireland was appointed by the Attorney General of England and Wales from 1972 through 2010 and their decisions could be overruled by the national government. In turn, the Attorney General of England and Wales is a non-cabinet position appointed by the ruling party or coalition in the UK Parliament and must be a Member of Parliament From 1972 to 1989 the position of the Director of Public Prosecutions in Northern Ireland was held by Barry Shaw, meaning the primary actor in charge of prosecutions in Northern Ireland did not change during the period I analyze.

These Diplock Courts make prosecutions in Northern Ireland somewhat unique as insurgents and state forces were supposed to be prosecuted in the same courts and under the same set of laws. The British government decided to use the Diplock courts under the "criminalization" approach to the conflict, who did not want to treat the Irish insurgents any different, for fear that such treatment would legitimate the conflict as a war. The

British approach was to legally prosecute all matters as being criminal, absent any political connotations. Therefore, all sides, whether they were Republican, Unionist, or members of the security forces, in the conflict had to be prosecuted by the government in the same manner. However, as noted previously, while this was officially the case, in reality, the British government had a policy of not pursuing charges against British security forces, until this occurred in the 1980s.

These Diplock Courts are similar in some regards to the US court-martial system in that they are special courts for those involved in conflicts. Further, the Director of Public Prosecutions (DPP) in Northern Ireland is similar to the commanding officers of the American case in that it is the DPP, like the commanding officers, who decides to send charge to trial or not following an investigations. There are key differences though. First, while a general court-martial requires an individual be tried by a jury of their peers, Diplock Courts were adjudicated by a single judge. Second, while Diplock Courts were designed for prosecuting crimes related to the conflict in Northern Ireland, and prosecuted members of the security forces, they followed civilian, not military law, unlike US military trials. What I mean by this, for example, is that if investigators determined a murder was the result of a Republican killing a Unionist then it would be prosecuted by a Diplock Court. Meanwhile, if a murder was determined to be unrelated to the conflict, regular courts handled the prosecutions. Lastly, the DPP's decisions could be overruled by the national British government.

What explains the change in official British policy that members of the security forces would be free from legal accountability? Further, what explains the variation in prosecutions for RUC officers? As well, why do prosecutions begin and stop, despite the

continuance of similar abuses to those prosecuted previously? In line with the theoretical considerations of this dissertation, one explanation for the occurrence of these prosecutions may lie in levels of insurgent violence. From 1976 through 1981, Irish insurgents were responsible for 64 percent of all conflict-related deaths. From 1982 through 1987, Irish insurgents were responsible for 73 percent of all conflict-related deaths. From 1988 through 1993, Irish insurgents were responsible for 57 percent of all conflict-related deaths. While correlational, the trend of RUC prosecution follows the trend of insurgency violence as when Irish insurgent violence increased in the early to mid-80s, so did prosecutions of RUC officers. Additionally, total causalities in the conflict were about 50 percent higher in 1981 than they were in 1980 and 1982 saw an increase from 1981 (Sutton 2001). In total, insurgent violence mirrors the level of prosecutions of RUC officers and levels of causalities were increasing in the initial period of prosecutions beginning in 1982.

Another possibility lies not only in the level of violence of the Irish insurgency, but the growth in the membership and fundraising capabilities of the Irish insurgency (Flackes and Elliott 1999). The impunity offered to British security forces for human rights violations in the 1970s and the death of Bobby Sands, an Irish Republican who went on hunger strike to protest the treatment of Irish people by the British government, are regularly cited as causing this growth in support for militant Irish Republicanism. In 1981 the death Bobby Sands led to an increase in non-violent protests and increased support for the main Irish Republican party, Sinn Fein. In particular, the death of Bobby Sands led to 100,000 Irish Republicans turning his funeral into a non-violent protest against Britain (CAIN 2010). 100,000 may not seem like much, but considering the

population size of Northern Ireland, and the Irish community in Northern Ireland, this is an eye-opening number. In 1981, the population of Northern Ireland was approximately 1.5 million people and the percentage of the population that identified as Irish was an estimated 500,000 (Northern Ireland Statistics and Research Agency 1981). These numbers mean that the attendance of the 1981 funeral of Bobby Sands was seven percent of the total population of Northern Ireland and 20 percent of the Irish population. In 2017 America, the approximate equivalent would be a protest attended by 21 million people. Beyond this non-violent protest police stations and British army bases were set on fire by Molotov cocktails thrown by rioters (CAIN 2010). Lastly, following the Bobby Sands death, electoral support for militant Irish Republicanism grew in comparison to the non-violent Irish nationalism.

For visualization purposes, I graph two key variables to show the relationship between Irish Republican strength and the percentage of deaths by the RUC resulted in prosecutions for "unlawful killing." Ideally, building off social movement research, I would have measures of Irish Republican violence, vote share, protest frequency and size, membership size, and financial records to capture the strength of the Irish Republican movement. However, due to data availability limitations I currently only have two measures. The first measure of the strength of the Irish Republican movement is a measure of the percentage of the overall deaths in Northern Ireland in each period that was the responsibility of the Irish Republican insurgency (Sutton 2001). The second measure captures the percentage of the Irish vote captured by militant Irish Republicans in British elections, in comparison to nonviolent Irish Nationalists. Consistently during the period of "police primacy" there is a correlational relationship between Irish

Republican strength, measured as the Irish Republican share of the vote and the amount of violence the Irish Republican insurgency was responsible for. As can be seen in the graph, Irish Republican strength increased greatly in 1982, immediately preceding the start of charges of the RUC for "unlawful killings" in 1983, moving from zero prosecutions to 40 percent of police-related deaths resulting in prosecutions from 1983 to 1987. While this will be explored later in this chapter, support for militant Republicanism was decreasing before the 1981 hunger strikes and Bobby Sands death and rebounded greatly after the two. Further, following prosecutions in 1983 and 1984 we see electoral support for Irish Republicanism dropping about 20 percentage points. In **Table**, I provide the raw electoral votes by the two groups during this period for additional comparison. Of course, this is very initial correlational evidence, and a more in-depth analysis is required to explore the causal relationship.

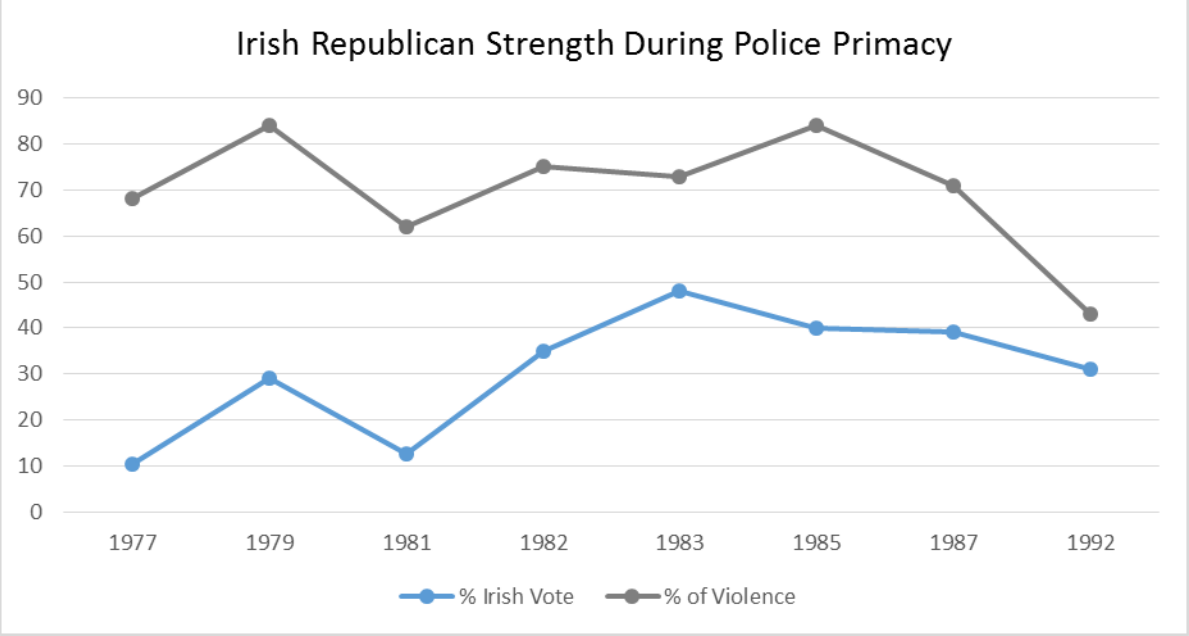


Table. Percentage of Votes During The Thatcher Administration

Year	Percent of Irish in NI Vote
1977 (Republican)	10.4
1977 (Nationalist)	89.6
1979 (Republican)	29
1979 (Nationalist)	71
1981 (Republican)	13
1981 (Nationalist)	87
1982 (Republican)	35
1982 (Nationalist)	65
1983 (Republican)	48
1983 (Nationalist)	52
1985 (Republican)	40
1985 (Nationalist)	60
1987 (Republican)	39.8
1987 (Nationalist)	60.2
1992 (Republican)	30.9
1992 (Nationalist)	69.1

What explains the shift from widespread impunity of the RUC, including official government policy blocking prosecutions, to prosecutions of the RUC? What explains the shift from prosecutions in the mid-1980s back to a culture of impunity? In this initial section exploring the background of the conflict, I've provided some discussion of possibilities to explain this shift from impunity to prosecutions and back to impunity including Irish insurgent violence and militant Irish Republican political strength compared to the non-violent Irish nationalist movement. In the next section, I will explore these dynamics by drawing on original field interviews and analysis of primary and secondary sources.

Qualitative Evidence

"The Occupied North of Ireland"

A central starting point for understanding the human rights violations of the RUC and their relationship to the Irish Republican insurgency lies in understanding how the

Irish Republicans viewed the RUC and the British state. In the simplest terms, Irish Republicans saw (and many continue to see) the British government as a colonizing, or occupying, force and the decedents of British and Scottish people in Northern Ireland as colonial settlers. Republicans see Northern Ireland as rightfully belonging to the Republic of Ireland and the Irish people in Northern Ireland being "behind enemy lines." Through this view, Republicans often refer to Northern Ireland as "the occupied six counties," or the "occupied North of Ireland." Irish Republicans see themselves as continuing Irish uprisings against British rule and settlement, which began in the 1600s and lasted until the 1920 partition of the island of Ireland into Northern Ireland and the Irish Free State, now the Republic of Ireland.

Personal interviews conducted in Spring of 2017 in Northern Ireland support this Irish view of the British state. According to NIACAD6, an advisor to the PSNI, "police represented the British state to the Irish community, both Social Democratic and Labour Party (the leading Nationalist party) and Sinn Fein (the leading party for Republicans) supporters, and was reflective of every problem they had with the British state. People here (Irish people, in general) didn't distinguish between the RUC, MI-5, British Army. All were tarred with the same brush. It was all the British state. The Irish felt like they had the police forced on them, like an occupational force." In the words of one interviewee, NIHURA1, a human rights investigator in Northern Ireland, the Irish community viewed the RUC as "part and parcel with the British government." NIACAD7, a former advisor to the Secretary of State for Northern Ireland, stated that the Irish community in Northern Ireland viewed the British security forces as "colonial overlords." The British security forces understood this Republican view. NIPO4, a long

time officer of both the RUC and the PSNI, "the Irish community in Northern Ireland viewed the RUC as an extension of the occupation. There was no difference to them between the RUC and the British government." Lastly, Nationalist leaders shared a similar view to the militant Republicans on this matter. NILGM2, a Nationalist politician, "the RUC was viewed as defending the British state by the Irish. They were seen as personifying everything wrong with the British *occupation* of Ireland."

Irish Republicans viewed their violent actions as being justified due to how the British state violently responded to the non-violent tactics of the 60s and 70s. In the words of NIHURA1, a human rights investigator, "had the release valve of peaceful protest been allowed, Republican violence would never have started. Left with no choice, Republicans took up arms, and many of the previously peaceful members of the community supported them." NIACAD5, a Northern Ireland based academic researcher with expertise on the conflict, stated that the violent response to the peaceful protests of the 60s and 70s "played to a narrow set of Republicanism, the violent wing, and legitimated their view to a wider audience." This researcher also stated British security force violence left even moderate Irish people thinking "what could we do if we couldn't peacefully protest but didn't want to commit acts of violence?" NIHURA1, a journalist, stated that the perception that the RUC was unwilling to intervene to stop Unionist violence contributed to the perception that the British security forces were colluding with the Unionist paramilitaries and that the IRA had every right to turn to violence. The lack of British opposition to loyalist violence early on in the conflict was seen by the Irish as the British state "releasing the dogs of war," according to NIHURA1.

An interesting perspective is that 1972 when the British government suspended the regional government in Northern Ireland, known as Stormont, the Irish community originally welcomed British rule. In fact, in the year after the British implemented direct rule deaths caused by the Irish insurgency dropped nearly in half (Sutton 2001). According to NIHURA1, an author and journalist in Northern Ireland, the Irish Republican movement viewed the implementation of the direct rule in 1972 as a win originally. Republicans thought that the British government would be fairer than the Unionist controlled government in Stormont. In line with this view, according to NIACAD4, a former senior member of the Provisional IRA, "Stormont standing down and direct rule was seen as a victory for the IRA. (It) Would've avoided conflict if direct rule was put in place in 1969 when the Army first came in. There probably wouldn't be a conflict that had happened." Further, according to NIRPRT1, a journalist in Northern Ireland, the Irish thought direct rule shifted moral blame directly to the British and increased the likelihood of accountability for wrongdoings by state actors. Instead though, the British devolved the counterinsurgency to the RUC to where they could continue to have some political cover and distance. The lack of RUC investigations around the McGurk and Kelly's bombings by Unionists led Republicans, and the IRA, in particular, to feel it had to take up arms again to respond to get revenge.

Kitsonian Tactics

A frequent eponym that reoccurred in my interviews was "Kitsonian." Particularly, the interviewees, across different groups, used the terms "Kitsonian tactics" or "Kitsonian performance." This eponym comes from the British General Frank Kitson, previously mentioned in the introductory section of this chapter. General Kitson was a

hardened veteran of colonial wars, serving in the British Army in Kenya during the Mau Mau Uprising and in Malaysia during the Malayan Emergency. At the outbreak of violence in Northern Ireland, General Kitson was sent to command the British military there. During his time in Northern Ireland, Kitson published *Low-Intensity Operations: Subversion, Insurgency, and Peacekeeping* (1971). This book outlined his approach to counterinsurgency.

Oddly enough, General Kitson's book was sold in bookshops in Northern Ireland upon its release in the initial years of the conflict. Numerous interviewees, particularly former insurgents, confirmed that the members of the Irish insurgency bought Kitson's book and studied, in Kitson's own words, how Kitson intended to fight a counterinsurgency against them. Most pertinent to this project, Kitson argues that courts and the rule of law, which give the perception of law being implemented fairly to all sides of the conflict, are a valuable counterinsurgency tool for gaining the allegiance of the insurgent population (Kitson 1971, 69). In Kitson's words courts and the rule of law "should be used as just another weapon in the government's arsenal (Kitson 1971, 69)." Kitson also writes about the importance of addressing the grievances of the insurgent population, *especially those being used as a rallying or recruitment point for the insurgency* (Kitson 1971, 51). Kitson's strategy suggests using courts and the rule of law as a weapon to address the grievances of the insurgent population. In the case of Northern Ireland, this meant using courts to address grievances around the human rights violations of the RUC. Notably, in a civilian court, Kitson was later sued for politicizing justice during his time in Northern Ireland. The court documents stated that such actions were

"core to the Kitson military doctrine endorsed by the British Army and the British government (BBC News 2015, McDonald 2015)."

Interviewees often spoke of Kitson's approach. In the words of NIACAD9, a Northern Ireland based historian, stated, "Kitson's book was prevalent here. It continued to be the playbook used by the RUC after primacy and was read by the Irish public, particularly the Irish combatants. Because of that, of course, everyone knew what was happening here. They saw the prosecutions as a cynical Kitsonian tactic. In particular, the prosecutions were less effective due to the lack of guilty verdicts. This reinforced that they were nothing but Kitsonian performances and not legitimate attempts at pursuing justice. Had there been more guilty verdicts, the prosecutions would have been much more effective." NIHURA5, an Irish lawyer, argued "Frank Kitson and his tactics had a massive impact on the strategy of the British here. His tactics permeated throughout the conflict, including his belief of using trials and investigations as a classic counterinsurgency tactic." NIHURA1, a journalist with expertise on the conflict, "Without a doubt, the state viewed courts as a counterinsurgent tool to win the hearts and minds of the public, this started with Kitson coming in during the early 1970s. Investigations and charges were window dressing to look like they were addressing Irish concerns." According to NINSC3, a former senior member of the IRA, "There was a methodology to the British and RUC approach to accountability. It came straight out of Kitson and was meant to win over the Irish community." Interviewees were also keenly aware of Kitson and his use of the counterinsurgency tactics in the wars in Kenya and Malaysia, making frequent references to comparisons between Northern Ireland and these

additional colonial settings.[3] NIHURA6, a human rights lawyer, had a particularly clear expression of this view, arguing "it's also important to understand what happened here through the lens of what happened elsewhere. This is what Britain does in their colonies. They commit atrocities, and then try to make it look like they are holding people responsible for those atrocities to win the colonized over."

Cynical interpretations of Kitsonian tactics not only came from the Irish community but also the British community. Several interviewees from the British community and the British government shared similar views regarding comparisons to British colonial conflicts and the "tea and sandwich" investigations the British military conducted in the 1970s. According to NIHURA3, a British human rights investigator, "tea and sandwich meetings" were where the British military would call in soldiers accused of wrongdoing to eat lunch with an officer while the officer explained to the soldier how what they did wrong wasn't wrong at all. The British military would then present these meetings as being investigations of the wrongdoing to the public. NIACAD8, a Unionist historian, stated "Similar processes in Kenya happened in Northern Ireland. Flawed accountability was down as a counterinsurgent tactic." NICLAW3, a prosecutor for the British government in Northern Ireland during the conflict, argued "tea and sandwich investigations of the Army in the 70s was right of Kitson's playbook. These investigations were a 'put up job.'" NICLAW3 added, "Britain borrowed from recent colonial conflict history to advise how to conduct a

[3] Interviews with NIACAD7, NINSC4, NICLAW4, NIHURA6 and NIHURA2 include such discussions

counterinsurgency. They conducted a similar conflict in Northern Ireland as they did in Aden, Kenya, and Burma."

While Kitson also had an outlined tactic of having the military oversee all local forces in the conflict, including the police, the British military was not able to achieve this level of control in Northern Ireland. Originally, Kitson and the British military were successful in wresting control of the situation from the RUC due to perceived failures of the RUC to manage the situation before the deployment of the British military. The British government saw the request for the British military to intervene by the Stormont regional government as an acknowledgment that the RUC had failed and limited the political power of the RUC in the initial years of the conflict. While Kitson wanted control of the security situation, he believed in recruiting local forces in the counterinsurgency, which he outlined not only in *Low-Intensity Conflicts* (1971) but also in an earlier book called *Gangs and Countergangs* (1960). The continued use of the RUC by the British military before police primacy is in line with Kitson's tactics. According to NIHURA6, a human rights lawyer, the RUC operated under Kitson and the British Army in the 1970s. Kitson and his officers taught the RUC counterinsurgency tactics and strategy. According to NIHURA6, "it was under the Army that the RUC became a de facto military." However, according to NIHURA1, a journalist in Northern Ireland, the British military viewed the RUC with skepticism as they viewed the RUC as being biased against the Irish. On top of strategic concerns, this skepticism of the RUC drove the Army's drive for control.

However, while in previous operations Kitson and the British military had complete control of the security forces and policy, this was not the case in Northern

Ireland due to the RUC and regional authority in Northern Ireland, oversaw by the Stormont Parliament and the Prime Minister of Northern Ireland. It was the Prime Minister of Northern Ireland, Brian Faulkner, who implemented the controversial "Internment policy" in 1971. "Internment" was the mass arrest of Irish Republicans, regardless of any proof of illegal activity. This policy resulted in the arrest of over 1,800 Irish Republicans. The original list of suspects to be arrested came from the RUC, and not the military. Originally, the British cabinet opposed the action, but then British Prime Minister Edward Heath chose to delegate policy in Northern Ireland to the Northern Ireland Prime Minister Brian Faulkner. According to interviewees, the British military opposed the implementation of "Internment," but later followed orders from the British and Northern Irish governments and took part in the arresting and questioning, along with the RUC, of suspects. In the words of NIHURA1, a journalist in Northern Ireland, "the British military opposed Internment in the 1970s as they thought it would do more harm than good when it came to balancing getting information and negative Irish opinion."

While enforcing the "Internment" policy, the British military killed 20 civilians, over 7,000 people lost their homes in fires, and the British security forces lost complete control of the city of (London)Derry for about the next year (Coogan 2002). The Irish residence renamed the city "Free Derry" to "celebrate" the complete loss of control of the city. The aftermath of the implementation of "Internment" was the suspension of the Stormont Parliament, the removal of Brian Faulkner as Prime Minister of Northern Ireland, and direct rule of Northern Ireland by the British government. A British officer serving in Northern Ireland stated: "It (Internment) has, in fact, increased terrorist activity, perhaps boosted IRA recruitment, polarised further the Catholic and Protestant

communities and reduced the ranks of the much needed Catholic moderates (Hamil 1985).” In fact, the year after the British implemented the “Internment” policy had the highest casualty rate of the entire conflict (Sutton 2001). Essentially, “Internment” achieved what the British military had warned it would. While Prime Minister Faulkner thought that “Internment” would further empower his government in Northern Ireland, it had the opposite impact and brought about the end of the regional government in the North.

Another area Kitson and the British military failed to gain control of was the legal process of the conflict. Two key aspects of the law and oversight of the security forces are worth noting. First, there were issues around the enforcement of the law. Before 1972, and the implementation of direct rule and the Diplock court system, the Attorney General of Northern Ireland had to approve charges in Northern Ireland of the security forces before they could proceed. According to NIHURA5, a human rights lawyer in Northern Ireland, “Stormont blocked 90 percent of the charges.” Further, as mentioned elsewhere, the British government enacted secret policy which blocked the legal prosecution of members of the British security forces in Northern Ireland (Duncan 1972).

Combined, these two British policies relating to the law had important impacts on the pursuit of accountability for violations of the security forces. While the first point relates to the enforcement of laws, the second point relates to what laws that were on the books. Even if there was a will to pursue charges, the charge of manslaughter was eliminated beginning in 1974, making prosecutions of state security forces incredibly difficult. Whoever wanted to pursue charges against the British military had to be able to prove murder or “unlawful killing”. According to NIHURA5, a human rights lawyer in

Northern Ireland, "Part of the problem with charging the Army or the RUC came from the fact that manslaughter charges had been banned here. The British government passed a law saying manslaughter was not allowed as a charge in Northern Ireland. So if you were going to try to get the Army or RUC on a death, you had to be able to prove murder, which due to coverups and destroyed evidence was nearly impossible." NILGM2, a nationalist politician and lawyer supported this claim. According to these interviewees, the British government pursued policies to shield British politicians from the domestic fallout that might come from widespread prosecution of members of the British military while fighting "terrorists" in the United Kingdom. Essentially, British politicians thought prosecutions would be unpopular with the British public and wanted to block the possibility of political fallout, regardless of the military belief that such prosecutions could help decrease violence in Northern Ireland.

In total, General Kitson and the British military had a strategic policy of using prosecutions of soldiers for wrongdoing as a counterinsurgency tool but were bound by British government policy to not pursue prosecutions. In the place of prosecutions, the British security forces paid out money to victims and pursued the aforementioned "tea and sandwich" investigations, with the full knowledge that actual prosecutions were impossible. All of this occurred despite the existence of the Diplock Courts in 1972, which were the official courts for wrongdoings on all sides of the conflict, at least on paper. This dynamic of the British government stating their security forces would be prosecuted for any wrongdoings, the presence of a general known for prosecutions of wrongdoings by his forces, the occurrence of very public human rights violations by

British security forces, and yet the lack of prosecutions at fed into the Irish narrative that this was a colonial conflict with the British as the uncaring overlords.

Another failure of the British military in regards to implementing Kitsonian counterinsurgency tactics was that the British government refused to acknowledge that the conflict was a conflict at all, preferring to treat the conflict like a police action against criminals. According to NIHURA3, a human rights investigator, "despite the fact the British Army certainly viewed Northern Ireland as a war the British government did not and stopped giving Republican prisoners POW status, despite the British Army wanting the status to stay." In the words of NIHURA2, a human rights investigator, the British military opposed taking away political or POW status for the IRA. NIHURA2 recounted a British officer in Northern Ireland once telling them "Of course it was political, the bastards! That's why we were shooting at them!" Additionally, General James Glover, who became commander of British forces in Northern Ireland in 1979, wrote a report defending his view of the IRA as combatants and as Britain fighting a war. While this report was intended to be private, it leaked to the press, particularly the Irish press, in Northern Ireland. General Glover noted that in the ten years of the conflict the IRA had progressed from being an amateur organization to a well-equipped, financially strong army of some 500 soldiers who were talented and dedicated and "possessed the sinews to wage war for the foreseeable future (The Telegraph 2000)." According to NINSC2, a senior member in the Republican insurgency, this document was well received in Republican circles because it supported the insurgency's view that the insurgents were an army fighting a war, and it signaled to the public in Northern Ireland that the IRA was capable of fighting the British.

The debate between the British security forces and the British government over whether the conflict was a war created legal problems for the British security forces. Either the British could ambush Republicans and kill them without offering a chance to surrender, which would make it a war, or the British had to offer everyone a chance to surrender, which is what normal police have to do. It couldn't be both ways, but the British tried. Issues around the status of the conflict were reinforced by NICLAW4, an Irish Republican lawyer, "The contradiction between this being a war, but not being a war, led to a lot of the issues. Perceptions of abuses grew out of the fact the British government and the RUC said it wasn't fighting a war while using tactics that resembled a war. Either it was a war, and then a lot of what the RUC did was legal and fine, or it wasn't a war, and the actions of the RUC were human rights violations." According to NIHURA3, the British government created the Diplock courts and new laws to "avoid applying the laws of war. Applying the laws of war would have legitimated the IRA, and Northern Ireland would have been seen as YET ANOTHER colonial war."

So far, the story that I've told has focused on the tactics of Frank Kitson and the British Army in the early part of the conflict, yet the main focus of this chapter is on the RUC during the period of police primacy and the Thatcher Administration. This period of the conflict is important to study for several reasons. According to NIACADA10, a historian on policing in Northern Ireland:

"The British military tried to take over oversight of the RUC in the mid-70s as complaints were growing and people were blaming the British government and military. The British military thought that if they were going to be blamed for the RUC actions, they should at least have control of the RUC. However, the RUC was able to block this action through

backdoor politicking and existing legislation, which clearly defined the powers of the RUC in Northern Ireland. These attempts at politicking by the RUC were part of an overall RUC strategy to take control of the conflict from the British military. This led to police primacy and Ultserization."

According to NIACADA10, the British government was receptive to police primacy and removing the British military because of the fact domestic public opinion in the United Kingdom was turning against the conflict due to the high death toll of British soldiers. NICLAW3, a prosecutor for the British government during the conflict, "the British military's mindset was that this was a colonial problem. The military did not want to give up power in Northern Ireland and did not want to give power to the RUC. However, the RUC chipped away at the British military's support with the British government until police primacy began in 1976." Perhaps not surprisingly, according to NIHURA1, a journalist in Northern Ireland, "the British military saw Ulsterization as a tactical mistake that would further damage relations with the Irish in Northern Ireland."

Kitsonian Tactics in the Age of Police Primacy and the Thatcher Administration

While the British military had lost control of security operations in Northern Ireland, British Special Forces armed and trained the RUC on how to fight an insurgency during the early years of the conflict, as part of the transition to police primacy, and after the transition to police primacy (Taylor 2001, 241). According to NICLAW4, a human rights lawyer in Northern Ireland, this training included Kitsonian tactics and approaches to counterinsurgency. In fact, officers of the RUC were sent to study at the Royal College for Defence Studies, which was the primary location of training of officers from the military, not the police, in the UK. Despite this training, for the first six years of police

primacy, there were no prosecutions of the RUC for human rights violations, remaining consistent with the 1972 policy regarding the immunity of the British security forces in Northern Ireland. In line with this counterinsurgency training, according to NICLAW2, a member of the Police Ombudsman's Office, during police primacy, "the police were looking at everything through the lens of counterinsurgency tactic. Everything the RUC did was aimed at beating the insurgency. This meant even accountability was used as a tool in that insurgency to protect informers and tactics, but also to try to win over the Irish community." NINSC1, a member of the Irish insurgency, also shares this view "the RUC did investigations and charged a few cops to make it (the RUC) look good in the Irish public eye." NIACAD4, a former senior Republican insurgent, stated he "doesn't see how they (the British) could do anything else but try to use accountability for state violence as a counterinsurgency tactic. They had to use all tools available to them to beat the insurgency, naturally, they would use performing like they were addressing grievances around state killings."

Despite being trained in "Kitsonian" counterinsurgency tactics, the RUC and British government continued with the 1972 policy of impunity through the initial years of police primacy and the Thatcher Administration, due to constraints from the British government. This policy finally changed in 1982 when prosecutions began for the "shoot to kill" cases, why? According to NIRPRT1, a journalist in Northern Ireland, "RUC used trials in the 1980s to give the perception of accountability." Dozens of interviewees, from all sides of the conflict, repeatedly supported this view. Most clearly this view is summarized by NIACAD1, a lawyer and legal scholar in Northern Ireland, who expressed surprise to questions on if the prosecutions were part of a large

counterinsurgency approach in Northern Ireland and stated "Is this not common knowledge? Because it is across the Irish community. The RUC pursued perceptions of accountability and reform to legitimate British rule in an attempt to lessen public support for the insurgency, weaken the insurgency, and bring the insurgency to the negotiation table."

Additional interviewees referenced the importance of the "perception of accountability" in explaining the change in British policy regarding prosecutions of RUC officers. According to NIACAD8, a historian from a Unionist background: *"Perceptions around accountability were absolutely vital here. The belief that the British state was facing no accountability in the 70s made things worse. Also, the emotional polarization of the conflict has to be taken into account here. Throughout the 70s both sides got more attached their view. The Unionists view that the state was doing nothing wrong, and the Irish view that everything the state was doing was wrong."*

NIHURA4, a human rights investigator, stated "Investigations and charges in the 80s were tools to address grievances and were done for the sake of public relations. They were a tool of political management. They were quite cynical in that they were not done for a desire to have justice, but to win over Irish people. They were about being seen to be doing something, without really doing anything." NINSC1, a former Republican combatant, agreed with this sentiment stating, "Investigations and inquiries were aimed at the Irish to get them to 'stop being uppity.'" Using slightly different language, NIHURA2, a human rights investigator, stated the "Performance of accountability through the prosecution of some members of the RUC was targeted at the Irish in the 1980s." As well, according to NIHURA5, a human rights activist, "The period of proper

investigations that should have happened was the 70s, if the British government was really concerned about justice and the rule of law. But they weren't. They only wanted people to think that they were." Additionally, NIACAD7, a former advisor to the British Secretary of State for Northern Ireland, stated: "Counterinsurgency strategy explained the pseudo-accountability process in the 1980s." Perhaps most authoritatively, Robert Andrew, Permanent Under Secretary for Northern Ireland, stated that decisions around prosecutions of the security forces in Northern Ireland were "made on political grounds (Taylor 2001, 253)."

While universally interviewees support the view that the prosecutions of RUC officers in the 1980s was part of a larger counterinsurgency strategy, a point of debate within interviewees focused around who ordered the prosecution of RUC members as part of a counterinsurgency strategy. One view is that the British government forced the prosecutions on the RUC. Then permanent Under Secretary for Northern Ireland, Robert Andrew, stated that the Secretary of State for Northern Ireland, Tom King, decided on prosecutions of state security forces (Taylor 2001, 253). NICLAW3, a prosecutor for the British government, supported this view and took it further stating, "The British government forced investigations into 'shoot to kill' on the RUC. British government saw shoot to kill allegations as deeply damaging to relations with the Irish community." According to NIACAD8, a Unionist historian in Northern Ireland, Maggie Thatcher's administration began to put pressure on the RUC to increase accountability to appease the Irish after encouraging them to hold the line and defend themselves against allegations in the first few years of her career. In fact, according to NIACAD8 Thatcher personally ordered the Chief Constable of the RUC to address the allegations of abuse. NIHURA1, a

journalist in Northern Ireland, stated that reality of who was behind the prosecutions didn't much matter as the Irish view was that the British government, and not the RUC, was behind the increased prosecutions and that the Irish viewed the prosecutions as a cynical attempt to appease the Irish without "opening the floodgates too much."

Additional interviewees built upon this view of the British government as the driving actor of accountability of state forces. According to NIACADA10, a historian of policing in Northern Ireland, in 1982 the British government starts also giving political cover to the DPP to be able to prosecute the RUC after previously blocking attempts at prosecutions. NIACDA8, a Northern Ireland based historian of the conflict, stated that the "RUC shoot to kill policy in the early 1980s created a perfect storm where the British could prove their credentials to the Irish government and the Irish people in the North. Britain took advantage of this and put pressure on the RUC and the DPP to pursue charges against the cops involved to prove themselves to both audiences." However, NIACADA8 added that the RUC didn't do any of these investigations and prosecutions unwillingly. According to NIACADA8, "If the Secretary of State (for Northern Ireland) had tried to tell the head of the RUC at the time what to do and he didn't agree with what he was being told to do he would have told the Secretary of State to 'fuck off.'" NIACAD2, a Unionist lawyer, stated "The RUC would have sought government approval for decisions around accountability and prosecutions of police officers. Britain only expressed opinion if they disagreed, British government silence on a matter reflected an endorsement of the policy."

Members of the RUC also support the view that the prosecutions from the so-called "shoot to kill" deaths were due to the British government. NIPO4, an officer in the

RUC and later PSNI, argued that the prosecutions were due to pressure from the British government. NIPO4 stated: “British investigations and pressure on the RUC to prosecute were overly influenced by negative press coverage of police actions and occurred because of negative public opinion of the police in the Irish community here, not because the police did anything wrong.” NIPO4 built off this argument that the breaking point for the British government was RUC officer John Robinson’s shocking statements on the witness stand in his trial for “unlawful killing” in one of the “shoot to kill” trials. Robinson admitted that he was ordered to change his statement on what happened and that other witnesses to the shooting were also ordered to change their statements to present the narrative that the murder was legitimate self-defense. According to NIPO4, “John Robinson cracking on the stand was horrible for public relations and forced the British government to request what became the Stalker Inquiry. Either way was a loss for the British though, either he went down for murder, which looked bad, or he acknowledged violating the state secrets act, which also looked bad. Robinson’s public statements during the trial provoked the IRA and played right into Sinn Fein’s narrative hand. It became a rallying point for support and validation of their criticisms. The British government had to respond with a show that it was taking the shoot to kill allegations seriously.” NIPO4 also stated that formally the request for the Stalker investigation came from the Chief Constable John Hermon, but that Hermon was forced to request the investigation by the British government.

Members of the Irish community in Northern Ireland also provided support for the view that the prosecutions were a tactical response from the British government meant to win over the Irish public and weaken support for militant Irish Republicanism.

NIACAD4, a former senior member of the Provisional IRA, argued "In no uncertain terms, addressing human rights violations by state forces was a tool used to defeat the insurgency. In the early 1980s, the RUC received pressure to do 'window dressing' investigations and prosecutions by the *British government*." NINSC3, a former Republican insurgent, argues "The *British government* forced the RUC prosecutions to legitimate the system. This allowed the British to say they had been taken to task and that an impartial rule of law was being practiced. Further, the British government was trying to contrast themselves with the IRA. 'See, when we do something wrong we investigate and punish if necessary. The IRA don't. We're the good guys; they're the bad guys. Don't support them, support us.'" Human rights activists I spoke with also shared this perspective. Lastly, NILGM2, a Nationalist politician, stated that "The court and prosecutor system became more interventionist and independent in the early 80s following behind the scenes interventions of the British government due to Irish complaints. This helps explain the start of RUC prosecutions in the 80s." However, the courts would have needed charges recommended by the RUC before they could pursue charges of RUC officer.

Another perspective on why the prosecutions occurred is that it was a bottom up tactic put forward by the Northern Ireland based security forces and supported by the British government. Some argue that the RUC pursued accountability as a counterinsurgency strategy of their own volition, without British input. According to NICLAW3, a prosecutor for the DPP in Northern Ireland, "There was a movement in the early 1980s by senior leadership of the RUC that they had to properly investigate some of the killings to repair relations with the Irish community." NIACADA1 stated that the

"RUC pursued accountability to legitimate British rule in an attempt to lessen public support for the insurgency, weaken the insurgency, and bring the insurgency to the negotiation table." Further, according to NIACAD6, an advisor to the PSNI, "Accountability during the conflict was only ever done to protect the British state's interests. It was never about true justice, but about using accountability to legitimate the RUC and the entirety of the British state." NIACAD2, a British lawyer in Northern Ireland, stated that in the 1980s there was a belief in the RUC that "If we can get the law right, we can get Irish people to give up violence. There began to be an idea in the early 1980s that the law could be used to impact the conflict and used to weaken the insurgency." As well, NINSC1, a member of the Irish insurgency during the conflict, gave credit for the tactic to the RUC.

Members of the RUC also shared the view that the prosecutions of the RUC were an attempt to win over the Irish community in Northern Ireland. NIP03, a longtime member of the RUC and PSNI, credited the RUC for the policy and stated that the RUC felt they "Had to pursue charges in the 'shoot to kill' cases to look like the RUC was listening to grievances of the Irish community." According to NIP03, "The RUC realized in the early 1980s that the Irish community needed RUC accountability in order to be able to support the British state and the RUC. So the RUC gave them it in limited form. The RUC stopped doing it when they felt they had made their point with the Irish." NIPO1, a longtime officer of the RUC and PSNI, supports this view, stating "There were certainly considerations around influencing justice as part of a counterinsurgency strategy. The RUC realized they could use justice to their advantage in fighting the insurgency and winning the public over."

NIPO1 went as far as articulating the strategy of the RUC around prosecutions. According to NIPO1, "There was a tactical mistake made by the RUC in the charges of police for the shoot to kill cases. The intention was for the officers to be charged with murder, but for it to result in lesser charges. This is a normal police tactic, start with more serious charges to get lesser charges. However, the lesser charges never happened for the cops, and the trials ended up being around murder, which resulted in the not guilty verdicts." NIPO1 added that the goal of the lesser charges was to get guilty verdicts, which could be used to win over the Irish. In line with this, Chief Constable of the RUC, John Hermon, stated that the goal of the investigation was to pursue charges for falsifying statements around the "shoot to kill" deaths (Hermon 1997, 155). In fact, Hermon thought charges for murder, as opposed to lesser charges, would backfire and cause more harm than good for the RUC's strategy around the law because they would not lead to guilty verdicts (Hermon 1997, 157). Considering additional members of the RUC, and even the Irish insurgency, credited the British government for the actions of the RUC, we see that even people from the same side of the conflict have a mixed assessment on this aspect of the conflict.

Those that do credit the policy of prosecuting members of the RUC to appeal to the Irish population in Northern Ireland as originating with the RUC often placed the credit directly on the head of the RUC during the 1980s, Chief Constable of the RUC, John Hermon. Hermon was Chief Constable from 1980 to 1989 but had been an officer of the RUC since 1950. Hermon became Deputy Chief Constable in 1976, the first year of police primacy. Further, in 1979, Hermon was sent on a yearlong assignment in England to train under the Ministry of Defense and the British intelligence services (Hermon

1997, 112). Further, Hermon is thought to have believed that the allegations of mistreatment were harming relations between the RUC and the Irish community (Cobain 2010). According to NIPO3, a longtime member of the RUC and later the PSNI, "Chief Constable Hermon was known for being concerned around Irish public perception of the law. Hermon and the RUC brass saw the rule of law and perception of impartial enforcement of it as their greatest tool against the insurgency." According to NIHURA6, a human rights lawyer, "The Chief (Hermon) felt he had to investigate the allegations due to public pressure from the Irish and felt he had to produce the results publicly. He wanted to make it look like the RUC was following the law and being held to account. Perception of the RUC being independent and the good guys who followed the law mattered greatly to the chief at the time." However, those that credit the policy shift to Chief Constable Hermon are failing to recognize the fact that the British state could intervene in the accountability process, meaning that while the policy may have originated with Hermon, the British state had to approve of the approach before it could become reality.

While one perspective is that the decision to prosecute originated with Hermon, the Chief Constable disputes this and offers an explanation more in line with those who suggest the British government was behind the decision. Hermon himself credits the Director of Public Prosecutions (DPP) with the decision to pursue prosecutions for murder in the "shoot to kill" deaths. Hermon also states that the DPP even pursued charges for murder when RUC investigations recommended that charges for murder not be filed (Hermon 1997, 154). Hermon also claims that it was the DPP who requested the John Stalker inquiry (Hermon 1997, 159). Notably, Hermon states that he believes the

DPP consulted with the Attorney-General, a cabinet-level position in the British government, before making determinations around prosecutions involving the RUC (Hermon 1997, 211). Hermon's explanation suggests that while the DPP may have acted on the allegations of human rights abuses by the RUC, he did so with the blessing of the British state and only after the RUC made their recommendations.

Other members of the British state support Constable Hermon's version of the accountability process. NICLAW3, a prosecutor for the DPP's office, built on this interpretation offered by Chief Constable Hermon and added some additional complications to the process. NICLAW3 claimed that "Accusations of cops were vigorously investigated by the DPP office." However, according to NICLAW3, the RUC and Secretary of State for NI intervened and forced the DPP to not pursue charges of RUC officers at times, stating it was actually rarer for the DPP to get authorization from the RUC and Secretary of State for Northern Ireland to pursue RUC related charges. In the version of accountability explained by NICLAW3, the Secretary of State for Northern Ireland and the Chief Constable of the RUC jointly decided when to pursue charges of RUC officers. This suggests that the leadership of both the government and the security forces in Northern Ireland believed such prosecutions would be a useful approach to weakening public support for the Irish insurgency. NIPO3, a longtime officer in the RUC and PSNI, agreed with this perspective and explained RUC and Secretary of State for Northern Ireland interventions to block prosecutions of the RUC as being due to the RUC trying to protect informers and secret counterinsurgency tactics, not because of any nefarious attempts to harm justice. According to NIPO3, "This looked like they were covering up wrongdoing and ignoring grievances, which fueled Irish anger. However, by

exposing those secrets, the IRA would have gained tactically, and people would have died for being informers. So either the state had to give the IRA a public relations win of being able to say there was no justice or give them a tactical win and let them kill people. The state chose to give the IRA a public relations win." Additional research into the issue supports this view, which highlights the depth the RUC went to protect their counterintelligence operations throughout the prosecution process (Taylor 2001, 250-253).

While opinions and actions of RUC officers in response to prosecutions will be explored later in this chapter, it is worth noting that Hermon was so disliked by SOME segments of the RUC due to perceptions around his involvement in prosecutions of RUC members that he was asked NOT TO attend some of the funerals for RUC officers killed during his tenure as Chief Constable, counter to standard practice (*Belfast Telegraph* 2011). In particular, these requests were made by the officers to their families before their deaths. However, not all RUC officers opposed the prosecutions. According to NIPO3, a longtime RUC and PSNI officer, "Police charges around human rights violations were seen as giving into the Irish demands to get them to stop the shooting. It was clever at the time it was done. They had to give us a kicking to pull the extremists in from the cold. Can't be mad about that. It was really quite clever when they figured that out in the 80s and started to do it." NIPO3 felt the British government scapegoated some RUC officers, but that it was a smart move that worked to end the insurgency and reiterated that they "can't be mad about it."

Collectively, interviewees and additional evidence provided suggest that the prosecutions of members of the RUC were a shared effort between the RUC, DPP, and

Secretary of State for Northern Ireland. My research suggests that if either of the three veto players were not supportive of the prosecutions, they might not have occurred. However, worth reiterating is the fact that the Secretary of State for Northern Ireland could block such prosecutions, meaning that the opinion of the Secretary, a member of the UK national government, mattered greater than the Chief Constable of the RUC and the DPP. The willingness to not intervene in the prosecutions of the 1980s, when they had intervened previously, suggests that at the very least the national government approved of such prosecutions and the use of this counterinsurgency tactic. This somewhat mirrors the Bush Administration's actions in the American case, where the administration shifted from originally opposing prosecutions of American service members for human rights violations to not only allowing military prosecutions but actively pursuing civilian prosecutions through the Department of Justice.

The Insurgency and Human Rights Abuses

The Growing Power of Militant Republicanism in the 1970s

While the previous section discussed the British government and RUC during the period of increased prosecutions, what remains unclear is what was occurring in the Irish Republican movement during this period. To understand the growth of militant of Republicanism, it is important to explore two key periods, the 1970s before the Thatcher Administration and after the start of the Thatcher Administration in 1979. Beginning in the 1970s numerous instances of state violence occurred, which contributed to the further strengthening of the militant Republican position. In 1970, the "Falls Curfew" or "Rape of the Falls" occurred in the Falls district of Belfast when the British military attempted to raid suspected IRA weapons caches in the area, and violent protests to the raids broke

out. The incident resulted in the death of three civilians and a journalist, approximately sixty civilians were injured, the arrest of over 300 people, and injuries to 15 soldiers. The British military acknowledged some soldiers used the raid to rob Irish homes and stores (Kirkaldy 1986, 120). Members of the Republican movement have credited the Falls incident with being the initial event that increased support for Sinn Fein and the IRA. Sinn Fein leader Gerry Adams stated, "Thousands of people who had never been Republicans now gave their active support to the IRA; others, who had never had any time for physical force now regarded it as a practical necessity (Taylor 1997, 83)." According to historian Richard English, the Falls incident was the decisive turning point in pushing the Irish community to oppose the British security forces in Northern Ireland (English 2004, 136).

An additional previously mentioned turning point was the beginning of the "Internment" process in late 1971. As previously noted, "Internment" was a policy and tactical disaster for Brian Faulkner's government in Northern Ireland and resulted in the direct rule of Northern Ireland by the British government. Following the implementation of "Internment," militant Irish Republicanism recruitment increased well above levels previously seen (Coogan 2002, 152). A British officer in Northern Ireland at the time stated: "It (internment) has, in fact, increased terrorist activity, perhaps boosted IRA recruitment, polarised further the Catholic and Protestant communities and reduced the ranks of the much needed Catholic moderates (Hamill 1985)." Further, Irish insurgency caused deaths rose 150 percent from 1971 in 1972, in response to "Interment". A key moment in the "Internment" was the Ballymurphy Massacre, where the British military killed 11 civilians at the start of the "Internment" raids. Included in this list of civilians

were a woman and a Catholic priest. According to Sinn Fein leader Gerry Adams, had the British government investigated and charged the soldiers at Ballymurphy the armed struggled would have "fizzled out" (Murray 2015). Though whether this comment reflects reality is worthy of scrutiny.

Abuses by the British security forces continued after the Ballymurphy Massacre. In 1972, the same unit involved in the "Internment" related Ballymurphy Massacre in 1971 was also involved in what became known as Bloody Sunday in (London)Derry.[4] During a nonviolent protest, the British military opened fire on marchers, killing 14 and injuring another 12. Members of the British military also ran over two additional protesters, injuring them. In the aftermath of the incident, the British military claimed the troops were responding to gunfire and nail bomb attacks from the protesters, but protestors and international journalists covering the protest disputed this fact. A quickly organized inquiry, the Widgery inquiry, cleared the military of any wrongdoing and supported the military's account of events. However, years later the British government acknowledged that the protestors, in fact, had not fired guns or thrown bombs and that the British military had acted "inappropriately." Bloody Sunday became a massive recruitment tool for militant Republicanism. Two former members of the Republican movement, NINSC3, and NINSC4, a senior leader of the Provisional IRA, confirmed Bloody Sunday's impact on increased recruitment to the IRA and support for militant Republicanism.

[4] Officially the city is named Londonderry, but there is disagreement between the two communities in Northern Ireland over the name, with the Irish community preferring Derry.

On top of these high profile instances, another contributing factor to the growth in support for militant Republicanism was the use of torture by the British security forces. Most notably of the methods of torture used are known as the "five techniques": extended standing in stress positions, loud music, sleep deprivation, sensory deprivation, and the withholding of food and water. The British security forces used these techniques alongside beatings and waterboarding, according to several for Republican insurgent interviewees of this project. While most likely occurring sparingly prior, the British began torturing Irish prisoners more widely beginning in 1971. In 1976 the European Commission of Human Rights ruled that the interrogation tactics of the British constituted torture. However, in 1978 the European Court of Human Rights ruled that the tactics were "inhuman and degrading" but were not torture. The ruling was in part based upon the lack of evidence that the British government authorized the techniques. Notably, in 2014 it was revealed that these tactics were approved by members of Prime Minister Edward Heath's cabinet at the time (Hennessey 2014). Despite the British government's defense that the techniques did not constitute torture, domestic courts in the mainland UK occasionally sided with victims of torture by the RUC and required the state to pay compensation for "maltreatment" by the RUC (Curtis 1984, 57).

Interviewees support claims that the lack of accountability of the British security forces and the use of torture by the security forces contributed to increased support for militant Republicanism in the 1970s. NIACAD2, a British lawyer in Northern Ireland, stated "Human right violations by the RUC and Army further aggrieved the Irish community and pushed support from non-violent nationalism to violent Republicanism in the early 1980s. In turn, increased accountability of the police and independent reviews

of Northern Ireland related policy and tactics allowed for the airing of Irish grievances and lessened support for violent actions in the 1980s." NILGM2, a Nationalist politician, argued that the "Fuel of the conflict was torture, abuse, killings, and other violations of the state. These all inflamed the insurgency and support for Sinn Fein." NIHURA3, a human rights activist in Northern Ireland, argued "The torture of prisoners, and lack of punishment, in the 1970s fueled the insurgency and hunger strikers in the late 70s and early 80s. Had torture stopped and been investigated properly, including prosecutions, the insurgency would have lost strength and faded away." NIACAD8, a British historian in Northern Ireland, stated: "Abuses by the state in the late 70s and early 80s helped the IRA and Sinn Fein gain support from the moderate public. The alarm around the strengthened IRA and militancy more broadly contributed to the British government perception of the need for accountability." Lastly, NINSC4, a senior member of the Republican insurgency, supported this view as well.

Building off additional interviewees who highlighted the importance of state abuses for the strengthening of the insurgency, NIHURA1, an author and journalist in Northern Ireland, stated "(The) Lack of punishment of British forces led to nastier tactics by the IRA as revenge and increased support for the IRA from the Irish community. If the state could do what they were doing and no one was punished for it, why couldn't the IRA do the same right back?" According to NIRPRT1, a journalist in Northern Ireland, "If there's no justice, there's a want for retribution. The IRA gave the Irish community a possibility of retribution since the state wouldn't give them justice." NINSC1, former Irish insurgent, did not originally support militant Republicanism, but after abuse enacted upon him by the RUC and lack of punishment the interviewee joined the Republican

insurgency. The interviewee was later arrested for involvement in the insurgency and was beaten by the RUC. The interviewee stated they understood being arrested and didn't hold it against the RUC, arrests were part of the agreed-upon rules of the conflict, but the beatings by the RUC pushed the interviewee to be even more militant. NINSC3, another former Irish insurgent, supported this view. Their siblings joined the IRA after Bloody Sunday. Other siblings and the interviewee joined after the torture of a sibling by the British security forces for taking part in the hunger strikes. NINSC4, a former senior member of the Provisional IRA, joined in response to Bloody Sunday. Lastly, according to NIACAD8, a historian from a Unionist background, and similar to the insurgency in Iraq, Republican insurgents "had a strategy of provoking a violent response from the state for the purposes of their own PR war. The IRA knew that if they could provoke state agents to commit atrocities that this would push the Irish community to support the IRA. State actions played into this plan, and lack of accountability early on made it more effective."

The Hunger Strikes and Bobby Sands

In the early 1980s, two key events occurred, which drastically altered the tactics of the Irish Republican movement and increased public support for the movement. The first is the 1981 Hunger Strikes, which was the culmination of five years of non-violent protests of Irish Republican prisoners. In 1976, Irish Republican prisoners lost "special category status," also known as "political status," which was a term for "prisoner of war" in Northern Ireland. This status meant Republican prisoners did not have to wear prison uniforms or do work in the prison. As mentioned elsewhere, this was part of a British

attempt to normalize the situation and treat members of the Irish Republican movement as common criminals.

In response to this change, the Irish Republican prisoners began a series of protests to regain their "special category status." First, Republican prisoners refused to wear the newly issued prison uniforms, and when the prison guards took their civilian clothes, the prisoners either chose to stay naked or to fashion clothing out of blankets from their beds. This protest evolved into a "dirty protest" where the Republican prisoners refused to bathe or clean out their prison cells, including their toilets. These protests led some of the Republican prisoners going on hunger strikes in 1980. These hunger strikes resulted in the British government conceding to return "special category status" to the prisoners. However, after a few months, the British government still had not returned "special category status," and the Republican prisoners decided on a second series of hunger strikes in spring of 1981. Some evidence suggests that the British government attempted to meet the demands of the prisoners, but that the staff at the prisons in Northern Ireland refused to, which led to the second series of hunger strikes (Taylor 2001, 236).

During this time, one of the few Republican members of parliament, Frank Maguire, died resulting in a special election for his seat. Leaders in the Republican movement decided that the leader of the hunger strikers, Bobby Sands, would be the Republican candidate for the seat. Sands won the seat, becoming a member of the British parliament while also being a Republican prisoner and on hunger strike. This electoral victory, combined with the hunger strikes, brought increased attention on the Republican movement. However, unlike the 1980 hunger strikes, Prime Minister Maggie Thatcher's

administration refused to negotiate with the Republican prisoners. Thatcher stated "We are not prepared to consider special category status for certain groups of people serving sentences for crime. Crime is crime is crime, it is not political (BBC 2006)." In fact, following Sands victory, the British government passed a law banning prisoners from running for parliament. As Bobby Sands condition continued to worsen, the British government refused to change their position. The British Secretary of State for Northern Ireland, Humphrey Atkins, stated "If Mr. Sands persisted in his wish to commit suicide, that was his choice. The Government would not force medical treatment upon him."

On May 5th, 1981 Bobby Sands died due to starvation while engaging in the hunger strike. As mentioned in the introduction to this chapter, approximately twenty percent of the Irish population in Northern Ireland turned out for Bobby Sands funeral. Two weeks after Bobby Sands' death, three more hunger strikers died. Six more hunger strikers died during the summer. However, the Thatcher administration did not budge on "special category status." During this time a special election was held for Bobby Sands seat in the British parliament and was won by a Republican candidate. The 1981 hunger strike was called off in October of 1981, and three days later the new Secretary of State for Northern Ireland granted nearly all of the aspects of "special category status" without using that term. The only condition not meant was the right to refuse to do work in the prison.

The Power of the Hunger Strikes for Irish Republicans

The hunger strikes, Bobby Sands electoral victory, the deaths of the hunger strikers, and the callous response of the Thatcher Administration all combined to empower militant Irish Republicanism (English 2005, 224). RUC Chief Constable John

Hermon stated that after Bobby Sands' death he "Recognized that hatred, with a frightening vehemence, was emerging in Republican and even in less extreme Nationalist areas. Clearly, this was to the benefit of the Provisional IRA, the Irish National Liberation Army, and Sinn Fein (Hermon 1997, 123)." In an attempt to expand their political power, Irish Republicans, most notably the IRA and Sinn Fein, expanded their tactics to include increased resources and effort in elections. This strategy is known as "the Armalite and the ballot box" strategy after a speech given by senior IRA commander Danny Morrison. "Armalite" being a reference to the AR-15 rifle, widely used by the IRA, and was meant to signify violence more broadly.

Numerous interviewees support the claim that the hunger strikes empowered the militant Irish Republican movement. According to NIACAD4, a former Republican combatant, "The hunger strikes reinvigorated the IRA. Had Britain treated prisoners better, protecting their civil liberties and human rights, the IRA would have been dead on the vine." NIACAD5, a Northern Ireland lawyer from a Unionist background, argued, "Post-hunger strike environment was a watershed moment for Irish Republicanism. Even the British state saw post-hunger strike empowerment of Irish Republicanism as a game changer." According to NICLAW4, an Irish Republican lawyer, "The importance of the hunger strikes on the whole conflict cannot be understated. Sinn Fein used the Hunger Strikes to reorganize politics, gain political power, and gain support for the IRA. Bobby Sands death pushed support away from the SDLP to Sinn Fein and the IRA."

In addition to linking the hunger strikes to increased support for militant Irish Republicanism, interviewees linked this increased support for militant Irish Republican to the pursuit of prosecutions for RUC officers. NICLAW3, a prosecutor for the Director of

Public Prosecutions in Northern Ireland, stated that part of the motivation for increased prosecutions of the RUC was concern over the growing strength of the IRA following the hunger strikes. NIACAD7, a former advisor to the Secretary of State for Northern Ireland, argued that the "Hunger strikes impacted state attitude towards accountability because there was also more attention on state killings after hunger strikes and increased support for militancy in the Irish community." NICLAW1, an employee of the Police Ombudsman's office, stated:

"*In the 1980s, the RUC started doing legitimate and complete investigations. Prior to that, they did light surface investigations. In the early 1980s, the RUC started seeing lack of legitimate accountability as a problem in the conflict and that it was fueling opposition to the state and support for the insurgency. A compelling argument to be made that in order to get peace you must address grievances, whether real or perceived. RUC and British government figured that out. Dissidents feed off grievances if not properly addressed.*"

Additional interviewees stressed the importance of the hunger strikes for the Republican movement. NIACAD5, a Northern Ireland scholar of the conflict, supports the sentiment of NICLAW1 arguing, "After witnessing the increased power of the IRA and Sinn Fein post hunger strikes, The British began taking steps to try to weaken the militant Sinn Fein and IRA wing of the broader Irish movement. The British government began to understand that even if it was only for the most cynical reasons, there was a benefit to addressing the grievances of the Irish community." NIACAD2, a lawyer from a Unionist background, supported this view arguing, "There was an attempt by the British state and the RUC to give the perception of addressing Irish grievances post-Bobby

Sands death. This led to an increase in charges for police wrongdoing." Lastly, NIACAD9, a historian of the conflict, stated: "The goal (of the prosecutions in the 1980s) was to stop Irish people in the North from supporting Sinn Fein and the IRA and to get the Republic to cooperate more on solving the conflict."

Interviewees from the Irish community also support the perspective that the prosecutions of the RUC were pursued to weaken growing support for militant Republicanism. NIACAD4, a former leader in the Republican insurgency, stated "One could argue that the hunger strikes empowered Sinn Fein and the IRA and the state needed to pursue accountability to weaken Sinn Fein and IRA. There were concerns in the British government over 'Irish alienation' due to the RUC/British military killings without accountability. They were concerned support was shifting to the militancy of Sinn Fein." According to NILGM2, a Nationalist politician, "The Irish people needed a truly shocking moment to get the British government to start pursuing accountability. The Hunger Strikes and the Shoot to Kill deaths provided that. These events were so shocking the British had to put pressure on the RUC to punish some officers. Britain intervened in the courts in response to the Irish community's pressure following shoot to kill and the hunger strikes." NICLAW4, an Irish Republican lawyer, stated "The growth of Sinn Fein and the weakening of the SDLP sparked fear and put pressure on the British government to address Irish grievances around police killings to weaken the foundation of support for Sinn Fein. Due to these concerns of the British government, there was a veneer of accountability in the 80s. Britain wanted to use the process of laws as a tool to win over the Irish people to the moderate position and prevent further strengthening of Sinn Fein. Britain controlled the judiciary as a counterinsurgency tactic, previously they aimed it at

using the courts to arrest Irish people to weaken the insurgency but then they moved to using the courts to win the Irish over." NICLAW4 added, "Accountability of the RUC in the 1980s was Kitsonian in nature based on the idea of winning hearts and minds of the Irish, as laid out in Kitson's book." Lastly, NINSC3, a former Republican combatant, argued that the period of 1981 to 1986 was a big period for the IRA regarding "gear and armaments." According to NINSC3, the RUC was outgunned by the IRA at this point and knew it. According to NINSC3, the "shoot to kill" prosecutions were an attempt to counter this increased strength.

Members of the RUC not only linked growing insurgent strength to prosecutions, in some cases, they surprisingly praised the decision. NIPO1, a longtime member of the RUC and PSNI, argued "The combination of the hunger strikes and 'shoot to kill' empowered Sinn Fein and the IRA. Sinn Fein and the IRA, in turn, teamed with human rights activists to promote the perception of abuse. This perception was powerful and forced the RUC's hand. The British government and the RUC were alarmed by increased support for Sinn Fein and the IRA in the early 1980s after the hunger strikes, and they felt the need to counter the narratives around human rights abuses that were fueling this shift." According to NIPO3, a longtime RUC and PSNI officer, "Police charges around prosecuting human rights violations were seen as giving into the Irish demands to get them to stop the shooting." Lastly, Chief Constable Hermon frequently cites growing insurgent strength, insurgent violence, and even Sinn Fein electoral support when discussing his decision making in the 1980s in his autobiography (for example, see Hermon 199 171 as well as Chapters 11, 14, and 15). Though, Hermon never clearly links these factors to decisions to prosecute members of the RUC.

Accountability and Politics

Electoral Goal of The Shift to Prosecutions

In the introductory section of this chapter, I highlighted a correlational relationship between not only the violent action of the Republican movement and prosecutions of the RUC but also between Republican electoral strength and prosecutions of the RUC. Additional evidence suggests that one of the motivations for the prosecutions of RUC officers was to shift electoral support back from Sinn Fein to the non-violent nationalist Social-Democratic Labour Party (SDLP). Peter Taylor, a longtime journalist of the Northern Ireland conflict, described the British government's strategy in the period of the early to mid-1980s as trying to "stem the rise of Sinn Fein" and trying to boost the SDLP (Taylor 2001, 260). According to NIHURA4, a human rights activist in Northern Ireland, "in the early 1980s, there was growing recognition by the British government that improved perceptions around accountability would help solve the conflict. There was a growing concern within the RUC and government that state wrongdoings were pushing people from the middle to the extreme. Accountability, in the form of a few charges and inquiries, was an attempt to pull people back to the middle, back to the SDLP from Sinn Fein." NIACAD5, a Northern Ireland based historian of the conflict, argued that "the British began taking steps to try to weaken the militant Sinn Fein and IRA wing of the broader Irish movement. The British government began to understand that even if it was only for the most cynical reasons, there was a benefit to addressing the grievances of the Irish community. The British wanted to use prosecutions to shift support back to SDLP."

NIHURA2, a long time British human rights activist in Northern Ireland, and NIHURA1, a journalist in Northern Ireland, agreed with the view that the RUC was trying to use prosecutions of the RUC in the 1980s to lessen the damage of the hunger strikes on increased strength of militant Republicanism and increase support for the peaceful nationalist approach.

Those that worked with the British government also shared these views. For example, NIACAD7, a former advisor to the Secretary of State for Northern Ireland argued that "Counterinsurgency strategy explained the pseudo-accountability process. A goal was to consolidate the Irish community into the non-violent nationalist camp, and away from the militant camp."NIACAD6, an advisor to the PSNI, argued "the police used accountability in the early 1980s to sway Irish people away from Sinn Fein and the IRA towards the SDLP and non-violent approach. Nothing would be able to say otherwise. This policy was used to sway moderates away from the militant approach." NIACAD6 went on to explain the logic of the approach, "The policy would have never worked on the diehards, but would have worked on the community that could form their support base. You take away that community's support, and it becomes harder for the hardliners to make violence and wage an insurgency. So while the policy would not have worked on the hardliners, the hardliners were the real target through taking away their potential support base." Police in Northern Ireland also shared this view. NIPO3, a longtime officer in the RUC and PSNI, argued: "moderate Irish people were encouraged by the prosecutions and were convinced to keep being moderates as opposed to shifting their support to Sinn Fein."

An important part of understanding prosecutions of the police in Northern Ireland is not only why they began in the early 1980s, but also why they stopped in the late 1980s. NIACAD9, a historian of the conflict in Northern Ireland, further explained why the prosecutions stopped. According to NIACAD9. "Around this time (1987) the growth of Sinn Fein stabilized after growing rapidly beginning in 1981. This decreased the need to win over the Irish community in the mind of the British government. British policies in the early to mid-80s stabilized the SDLP and stopped the growth of Sinn Fein. These policies include the Anglo-Irish Agreement (AIA) and the additional pressure on the RUC to pursue prosecutions of their officers. SDLP and Irish government would say that the AIA and prosecutions helped empower the SDLP and weaken support for Sein Fein."

Other interviewees articulated similar views as NIACAD9. NINSC3, a former Republican combatant, argued "knowing what the British were doing, thanks to everyone having read Kitson's book, made accountability more effective with moderates. The moderates in the Irish community knew that the Brits were trying to win them over. They recognized the effort the Brits were putting in and rewarded them for it by moving away from Sinn Fein and the IRA."NIACAD2, a lawyer from a Unionist background, gave credit to the weakening of Sinn Fein and the IRA in the late 1980s to the "Irish community feeling like the British government was listening to grievances around human rights violations." NIACADA2 specifically credited the prosecutions of members of the RUC for murders and the Anglo-Irish agreement as contributing to the feeling that the British government was listening to Irish grievances. NIACAD9, an Irish historian on the conflict based in Northern Ireland, supported this view, stating: "Once Irish grievances

around human rights abuses were being addressed, there was less of a perceived need in the Irish community to support Sinn Fein and the IRA."

Members of the Irish Republican insurgency also shared the view that the prosecutions were a strategy to weaken the political position of Republican political parties and strengthen the position of the SDLP. NIACAD4, a former leader in the Republican insurgency, stated "They wanted to increase Nationalist power and decrease Republican power. They legitimated the SDLP approach and tried to use carrots of accountability to pull people in that direction and away from Sinn Fein." According to NINSC2, a former leader in the Republican insurgency, "Oddly enough, increased support for the IRA actually strengthens the SDLP's hand with the British." NINSC2 put the argument of the SDLP as "You better talk to us and get people to support us because we're more reasonable to deal with than the IRA." NINSC1, a former Republican combatant, supported this view as well. NINSC1 also argued that the British military proposed a similar approach in the 1970s, but the RUC did not agree and used what political power they had to get police primacy in 1976 to avoid prosecutions. Further, NINSC1 argued that in the 1980s the RUC learned the same lessons the British military did in the 1970s and decided to apply the same tactics in the 1980s.

"Walking The Tight Rope"

A remaining reoccurring theme in interviews and additional research in Northern Ireland is the balancing act played by the British government and the RUC towards the Unionist/Loyalist community during their attempts to appeal to the Irish community. Further, the British government and the RUC leadership had to balance their attempts to appeal to the Irish community with angering, demoralizing, or isolating members of the

RUC. This section looks at these attempts to balance appealing to the Irish community and increased political costs from angering Unionists and members of the RUC. This balancing act helps to understand why prosecutions of the RUC suddenly stops in 1987, the political costs of conducting prosecutions and appealing to the Irish community became too high to continue.

Beginning with understanding the impact of increased pressures from the Unionist/Loyalist community, NIHURA1, an author and journalist in Northern Ireland, "Increased Loyalist violence started in 1987. This led to the British state stopping the use of politicized justice to try to win of the Irish and shifted their focus back to trying to contain the conflict. By using justice to win over the Irish, they were angering Unionists. Unionists saw the attempts by the British to use accountability to win over the Irish as the British turning against the Unionists." NRPRT1, a journalist in Northern Ireland, supported NIHURA1's assessment, NIACAD8, a historian in Northern Ireland from the Unionist community, "The late 1980s spike in loyalist violence made the British government back off from pushing to appease the Irish anymore. Further, British felt they had proved their point to the Irish community that they would address their grievances around state violence by the late 80s. So the British felt like it was doing them harm with one community and felt they had done enough to satisfy the other community, pressure for the RUC to investigate and prosecute went away. This explains the large drop off in accountability in this period."

NICLAW3, a former prosecutor for the DPP, argued "Members of the RUC were victims of loyalist violence for the first time in 1987. The RUC and the British government felt that by appeasing the Irish grievances, they were losing the loyalist

community. They felt that they had to let off probing the RUC to appease loyalists and keep their support." According to NIACAD2, a Unionist lawyer, "Loyalist violence increase in the late 1980s because Loyalists were feeling like the British government wasn't listening to their grievances anymore and were focusing too much on Irish grievances." NIACAD10, a historian, and expert on policing in Northern Ireland stated "Loyalists start turning on the British in the mid to late 80s. This causes Britain to put a stop to trying to appeal to the Irish community with policies and overtures. Loyalists felt abandoned and start taking this out on the police, which startles the RUC. British cave to this pressure and pivot away from the Irish community. Accountability was a propaganda tool of the British to fight the insurgency. They turned it on when the insurgency was gaining strength in the 80s and turned it off when the Loyalists became a problem."

In addition to growing discontent from the broader Unionist/Loyalist community, there was also growing concerns within the British government and RUC leadership regarding the attitudes of RUC officers. According to NICLAW3, a prosecutor in the DPP's office, "The RUC leadership wanted to do more, to continue their policy of using prosecutions to win over the Irish community but felt that politically they couldn't. Widespread RUC charges on the level that Stalker found would have destroyed the morale of the RUC and caused a revolt, literally." According to NICLAW3, Loyalist violence was already increasing, and the idea of members of the RUC joining with Loyalist militias in mass in response to charges was a terrifying thought to the British government and RUC leadership. NIACAD9, a Northern Ireland based historian of the conflict, supported this view stating:

"*The RUC Chief Constable (John Hermon) knew what could and couldn't be done though. He knew he could also go so far with pursuing charges in the most appalling cases, but couldn't go further with additional charges if he wanted to. This resulted in some slaps on the wrist in the form of written reprimands and forcing a few cops to retire early when the Chief Constable wanted to pursue additional unlawful killing charges after Stalker. The Chief Constable had to maintain morale though and didn't want officers retiring in protest or worse, going rogue and getting involved with loyalist paramilitaries. The Chief Constable went as far as he could.*"

NICLAW4, an Irish Republican lawyer, also expressed that the RUC leadership went as far as they could, arguing, "Post-Stalker (meaning after 1987), top brass in the RUC wanted to prosecute officers for wrongdoing but politically they couldn't. So the RUC did what they could in the form of low levels of accountability. RUC did what they could do in the late 80s to continue its policy of using accountability to win the Irish over, but were more limited." NIPO3, a long-time member of the RUC and PSNI, argued that there were two different camps in the RUC, complicating the situation further. According to NIPO3, within the police moderates were encouraged by the prosecutions and saw it as helpful in fighting the insurgency, but that extremists in the RUC opposed prosecutions. It was the concerns by the RUC leadership over what these extremists would do that caused accountability to stop. NIPO3 stated that at the time he was shocked by the increased charges of police in the early 1980s, but didn't oppose the charges and saw the charges as decreasing what he perceived were abuses by his fellow officers.

Some of the opposition within the RUC didn't originate in opposition to the charges on their own, but because the pursuit of charges, and the Anglo-Irish Agreement,

were causing the Loyalist community to begin targeting the RUC and their families. In short, members of the RUC began to oppose the prosecutions because they feared the Loyalist community turning against the RUC and attacking not only the RUC but their families as well. In fact, according to Chief Constable Hermon, members of the RUC had to move in response to Loyalist violence aimed at the homes and families of RUC officers (Hermon 1997, 193). Further, according to Chief Constable Hermon, Loyalists would obstruct ambulances with injured RUC officers from getting to the hospital (Hermon 1997, 196). According to NIACAD10, Loyalists saw RUC actions around accountability and the RUC's support for the Anglo-Irish Agreement as betrayals of the Loyalist community. These attacks from Loyalists essentially scared some members of the RUC into opposing the prosecutions, which pushed the RUC away from prosecutions. In fact, Loyalist violence against officers and their homes became widespread in 1986, the last year an officer of the RUC was prosecuted (Bowcott 2008).

One understanding of why the Unionist/Loyalist community reacted so negatively to prosecutions of the RUC lies in how the community perceived the RUC. Particularly, the Unionist community viewed the RUC as encapsulating the Unionist community. NIACAD7, a former advisor to the Secretary of State for Northern Ireland, expressed this view in saying "human rights accountability was seen as attacking the Unionist/Loyalist community, not just the cops or the state. The Unionists took the allegations of wrongdoing personally." NICLAW2, an employee of the Police Ombudsman's office, argued that for 30 years Unionists were taught that they had to support the RUC, no matter what and that any criticism of the RUC was "unpatriotic." NICLAW5, also an employee of the Police Ombudsman's office, described the Unionist community as

seeing the RUC as "*OUR* police force." Oddly enough, this Unionist/Loyalist view of the RUC belonging to the Unionist community and not Northern Ireland more broadly is quite similar to the views expressed by the Irish community, as discussed earlier.

Within this discussion of the balancing act, a reoccurring theme with a number of interviewees was the belief that the RUC strongly controlled the accountability process and only allowed the process to go to a certain point. NIACAD1, a lawyer and legal scholar in Northern Ireland, argued that the "RUC tried to control accountability and keep it internal so they could control how far it went. The RUC wanted to give the perception of pursuing accountability, without having to actual risk real accountability." NIHURA3, a human rights investigator, "British tried to ride two horses at the same time by doing some forms of accountability, without actually allowing substantive accountability to take place." Members of the Irish insurgency also shared these views. NIACAD4, a former senior member of the Provisional IRA, supports this claim, arguing that this drive for control explains why they only prosecuted those accused in the "shoot-to-kill" policy cases. NINSC1, a member of the Irish insurgency, argued that "British behavior was 'doublespeak' of giving the appearance of giving people justice, without actually giving people justice. State-controlled inquiries to act like they were pursuing justice, but not having to risk real accountability."

Accountability and the Good Friday Agreement

A final key part of understanding decisions around the accountability of state forces in Northern Ireland is the relationship between accountability and the Good Friday Agreement, which largely ended the conflict. While this is after the period of Prime Minister Thatcher's administration, due to the importance of the Good Friday Agreement

to the conflict these dynamics are worth exploring. NIACAD7, a former advisor to the Secretary of State for Northern Ireland, argued that "Bloody Sunday inquiry as part of the Good Friday Agreement was the single most important event. It was a very "expensive" signal to the Irish community that the British were taking accountability seriously as part of a peace attempt." NIACAD8, a Unionist historian, argued that the "British offer to investigate previous violations in the build-up to the Good Friday Agreement was done to appease the Irish and keep the IRA at the table and to sign the agreement." NIHURA4, a human rights investigator, argued that accountability was "Sinn Fein's 'fig leaf' that they could wave around in the build-up to the Good Friday Agreement" to rally support from the Irish community. NIHURA1, a human rights investigator, supported this view stating, "The human rights violations of the British security forces were used as pawns by both sides during the Good Friday talks. The British government used the promise of accountability to get Sinn Fein to the table. Sinn Fein used the low levels of accountability to gain public support before the talks." NIACAD5 (a Unionist Lawyer), NIHURA2 (a human rights investigator), and NIACAD7 (a former advisor to the Secretary of State for Northern Ireland) supported this view of Sinn Fein using accountability to strengthen their negotiation hand. NILGM2, a Nationalist politician, argued that it was John Hume, leader of the SDLP, who suggested to Prime Minister Tony Blair that there needed to be a confidence-building gesture to move the talks along and get Sinn Fein to the table. The need to build IRA and Sinn Fein confidence in the process resulted in Blair publicly authorizing investigations into state wrongdoings during the conflict.

According to NILGM2, part of this strategy of getting Sinn Fein to the table was Labour adopting human rights in their manifesto in 1997. In the words of NILGM2, "This was a huge narrative signal aimed at the Irish community and Sinn Fein supporters in specific." NILGM2 argued that it was the combination of the adoption of human rights in the Labour platform and Blair announcing investigations into prior wrongdoings by the state security forces that finally brought Sinn Fein to the table for the talks. While not crediting John Hume for the idea, NIACAD8, a Unionist historian, argued that Labour thought adopting strong human rights platforms in their party manifesto would strengthen their position with the IRA for the peace talks. NIACAD4, a senior leader of the Provisional IRA, offered a similar perspective suggesting that Labour's adoption of a human rights platform "greased the poles to make conversations with Sinn Fein easier to make happen." Lastly, numerous interviewees also confirmed that the IRA refused to begin decommissioning their weapons as part of the Good Friday Agreement until investigations into wrongdoings by the state security forces during the conflict officially began.

Chapter Conclusions

This chapter demonstrates the key role that strategic considerations played in decisions by elites in Northern Ireland to pursue prosecutions of state forces. Evidence provided in this chapter suggests that early on in the conflict, British military leadership wanted to pursue a policy of accountability of state forces as part of a larger counterinsurgency approach but the British government blocked such actions. The government did this through a secret policy of not allowing accountability of state forces by the British government, who were concerned with the impact of prosecutions on

elections in Great Britain. In fact, growing concerns about the impact of high death tolls of British soldiers on elections in Great Britain led to the British government to adopt a policy of "Ulsterisation" and "police primacy." Under this policy, the local police in Northern Ireland, the Royal Ulster Constabulary (RUC), were transformed into a counterinsurgency force and given control of fighting the conflict. In 1979 Maggie Thatcher became Prime Minister of the United Kingdom, and the conflict escalated. Part of the escalation of the conflict was the so-called hunger strikes, where Irish Republican combatants in British custody began to starve themselves in protest of their treatment in custody. One of these "hunger strikers" Bobby Sands was also an Irish Republican member of the British parliament. His death and the death of the other hunger strikers became a rallying point for the militant Republican movement. These deaths led to increased support and capabilities of the Republican movement, which resulted in greater levels of Republican violence and increases in Republican electoral success in the early 1980s.

In response to growing strength and support for militant Republicans, the evidence provided in this chapter suggests the leadership in Great Britain and Northern Ireland pursued prosecutions of members of the RUC for human rights violations, namely that of summary executions or "unlawful killing." The British state pursued these prosecutions despite the continued existence of British government policies around impunity of state security forces. This finding is in line with the primary hypothesis of this project, which argues that increases in strength of insurgents increase the likelihood of prosecutions of state security forces. Initial evidence provided by interviewees and election results also suggests that this increase in accountability of the state security

forces for human rights violations may have been effective in shifting support away from the militant Republican movement towards the non-violent Nationalist movement, though further research into this question is needed. This shift in public support decreased the ability of the Republican movement to engage in violence and decreased electoral support for Republican political parties.

During this period of prosecutions, from 1982 to 1986, the British government negotiated the Anglo-Irish Agreement with the Republic of Ireland, which increased the role of the Republic in the domestic affairs of Northern Ireland. The combined occurrence of prosecutions of the RUC and dissatisfaction with the Anglo-Irish Agreement caused the Loyalist community in Northern Ireland to begin turning against the British state in Northern Ireland, including the RUC. Included in this turn of events was the intentional targeting of RUC members and their families for violence. Evidence provided in this chapter suggests that the Loyalist community was angry because the prosecutions of the RUC felt like an attack on the entire Loyalist community, though future research will want to further explore these dynamics. Following this decrease in support for the Republican movement and increased opposition from the Loyalist community, prosecutions for members of the RUC ceased, in line with the theoretical considerations of this project. Simply put, the cost of accountability no longer outweighed the benefits, due to weakening Irish support for Republicans and the British state was losing the Loyalist community. The possibility of accountability by the British state for violations in Northern Ireland did not occur again for another decade, during peace talks the finally bring the conflict to its end, finding support for the second

hypothesis of this project, which suggests peace agreement talks increase the likelihood of prosecutions of state security forces.

CHAPTER 6

CONCLUSIONS

Implications

The theoretical approach adopted in this project, focusing on the strategic nature of elite decisions around prosecutions for human rights violations by state security forces, builds upon other recent works (Simmons 2018; Lake, Loken, and Cronin-Furman 2018). Like these works, this dissertation views the likelihood of prosecutions of state forces for human rights abuses as in part a strategic choice adopted by political and military elites when they believe they will gain militarily or politically from such actions. Specifically, in the context of counterinsurgency settings, the theory explored in this dissertation argues that elite perceptions of prosecutions of state security forces for human rights abuses drive the decision-making process.

Elite views that human rights abuses by state security forces are contributing to shifts in public support away from the state security forces towards the insurgent populations shape elite action regarding accountability. Further, this dissertation moves research that focuses on the strategic nature of elite decisions regarding prosecutions from historical case studies, which occurred before the establishment of international law and human rights norms, to more recent cases during the so-called "justice cascade." In older cases in which domestic human rights prosecutions of state forces occurred, questions remain around whether the dynamics of strategic considerations in response to internal political costs hold up to the post "justice cascade" environment. This study also moves beyond recent case studies of weak states to contexts involving great powers,

which seemingly have fewer incentives and need to adhere to international pressures around prosecutions.

By focusing on the balance of power and public opinion in target audiences, the theory presented in this dissertation builds on existing understandings of why such prosecutions may occur. While existing research into why domestic human rights trials occur strongly emphasizes the rule of law or human rights norms, this project complicates that relationship further. As explained in Chapter 2, these factors are not enough to elucidate such dynamics, particularly during times of conflict and threat for states when elites frequently suspend or modify laws to their benefit, or when leaders meet allegations of wrongdoing by state forces with skepticism. Further, while human rights laws and human rights norms may act to motivate state behavior, they rarely change over the course of a conflict and are thus limited in their ability to explain variations within such settings regarding prosecutions of state security forces for human rights violations.

This project has built on existing research on such dynamics. Previous researchers explored their theories in historical contexts, before the development of international law and norms around human rights, and or in weak states which will be more susceptible to outside pressures that are often the driving power behind the impact of international law and human rights norms on state behavior. Instead, my theory suggests that microdynamics of conflicts help explain when and why elites may enforce human rights laws and norms in such situations. As well, analyzing these microdynamics assists scholars in better understanding variation in the willingness and timing of prosecutions for human rights violations by state security forces during conflicts. Lastly, by looking at internal dynamics of conflicts, which have increased influence over well-developed great

powers, we get a sense of why strong states may engage in behavior counter to their preferences to avoid potential embarrassment or legal condemnation of the tactics of their security forces during a conflict.

In both the American case and the Northern Ireland case, political and military leaders adjusted their attitudes and policies towards impunity of state security forces for human rights abuses in response to shifts in perceptions around the political and military strength of insurgencies, though these were not the sole concerns of elites. In both cases, prosecutions of state security forces for human rights abuses increased when elites perceived a growing threat of increased public support for insurgents, brought about at least in part by the previous impunity. In the American occupation of Iraq, initially, the American overthrow of the Saddam Hussein regime was welcomed by a large segment of people in Iraq. However, as the US-led presence continued on Iraqi dissatisfaction grew, due in part to grievances around abuses by occupational forces. This discontent led to increased Iraqi support for the anti-occupation insurgency and decreased occupation control in Iraq. In an attempt to halt this loss of support among the Iraqi people and the growing violent opposition, the US military began to pursue a counterinsurgency strategy to win over the Iraqi people, with part of this approach focusing on the use of military trials for human rights violations by US security forces.

In the case of Northern Ireland, mounting concern over not only the increasing strength of the armed Irish insurgency but also over the growing electoral success of the insurgency's political party drove the British government and Royal Ulster Constabulary to pursue trials of police officers for unlawful killings of Irish Republicans. Notably, in the Northern Ireland case, the British state ceased the pursuit of prosecutions of their

officers once they believed they had weakened support for militant Irish Republicanism and were also beginning to inflict harm on support for the RUC and the British government in the Unionist community. Thus, in line with the proposed theory in this dissertation, as insurgent activity increased the British elites pursued a policy of accountability for human rights violations, but as insurgent activity weakened and other political costs increased, the British government and the RUC ceased pursuit of this strategy of culpability.

The cases analyzed in this dissertation illustrate the relationship between the increased strength and support for insurgencies and increased likelihood of prosecutions of state security forces. Despite serious questions about how successful the US invasion and occupation of Iraq was, the US military, at various times in conflict, succeeded in establishing a semblance of control in Iraq and weakened the ability of the insurgency to inflict violence or challenge the occupation and the occupation-backed Iraqi government. The figure in Chapter 4, which presented the levels of insurgent violence and US prosecutions in Iraq highlights this ebb and flow of occupation control and the strength of the insurgency. We can also see that prosecutions ebb and flow as well, with levels of prosecutions shifting over the course of the conflict. Within in the shifts in insurgent strength came changes to the approach of the US military in the mission in Iraq and the adoption of counterinsurgency tactics, to win the "hearts and minds" of the Iraqi people through addressing grievances, particularly around human rights abuses by US security forces, and providing better governance.

In a similar vein, while the Northern Ireland case featured significantly lower deaths, financial costs, and prosecutions of state security forces comparable dynamics

were at play. In both cases, elites began prosecuting members of their security forces following increases insurgent strength. Both settings analyzed in this dissertation suggest that militaries facing unruly populations should carefully consider the grievances of the populace and adopt strategies that mitigate the ability of those criticisms to motivate opposition to the governing power, whether the domestic state or an occupational state.

The two cases also highlight the level of control elites have in regards to who is prosecuted by the state once elites begin to pursue such accountability. In each of the cases analyzed, we see that even when elites were willing to pursue punishment of members of their security forces, the trials only went so far up the security force hierarchy. In each case, the prosecutions were limited to low to mid-level members of the security forces when a tradition of command responsibility and additional evidence pointed towards a need for accountability of those higher up in the hierarchy.

While some criticize these low and mid-level trials as being "scapegoat" trials in each of the cases discussed, others within each case study pushed back at such claims, including those belonging to the security forces under scrutiny. While those higher up the hierarchy may have avoided prosecutions in each of the situations analyzed, there were frequent uses of forced retirements/resignations, fines, and the loss of ranks or command posts for commanding officers associated with instances of violations. The presence of these other forms of punishment in each of the cases suggests an additional need for the creation of a measure which captures a scale of accountability, as discussed later in this chapter. Lastly, such control over the level in which prosecutions occurs further complicates our picture of self-punishment to include not only if victors pursue punishment, but also who is selected when they do.

Despite a significant number of similarities in the American and British cases, there are some fundamental differences between the two, beyond differences in the size and scale due to a difference in the populations and troop levels in the two cases. The most notable difference between the two cases is that in the American case it appears that once the decision was made to use prosecutions of the security forces as a counterinsurgency strategy, American military elites, at least during the Bush Administration, did not deviate from the new approach. In the British case, elites shifted away from the policy of prosecuting state forces after the political costs of the trials became too high with the pro-British population in Northern Ireland. Some notable differences between the two cases may help explain such differences. Perhaps if the American-led occupation had pursued accountability of the Iraqi or Kurdish allies, for example, we might have seen similar dynamics due to the direct relationship between the local populations and Iraqi or Kurdish allies.

Another crucial difference between the two cases lies in the additional importance of elections as measuring insurgent strength within Northern Ireland, while similar concerns appear to be missing from the American case, at least at this stage of analysis. This variance, of course, may be due to the institutional differences between Northern Ireland and Iraq. Northern Ireland had a long tradition of elections, though flawed. Further, the residents of Northern Ireland could also vote in the broader United Kingdom elections, even during periods of direct rule. Meanwhile, Saddam Hussein's autocratic regime in Iraq meant that Iraqi's had no prior experience with elections. Additionally, there were only two national elections, both in 2005, in Iraq during the Bush Administration. In comparison, there were seven elections in Northern Ireland, and

supplementary local elections, in Northern Ireland during the Thatcher Administration. It's possible that if there were more elections in Iraq, the US-backed occupation would have been more influenced by them due to the possibility of public support empowering insurgents not only through violence but control over local governing structures. Lastly, these concerns may be explained by the fact insurgent groups boycotted the elections in Iraq, compared to Northern Ireland where after 1981 Irish Republican militants put substantial effort and resources into elections.

The theory and findings of this project should not be taken as a call to encourage state security forces to intentionally cause grievances that can be addressed by the state in an attempt to win over local populations. Additionally, this is not a call for states to engage in scapegoat trials of innocent members of a state's security forces. Instead, this project adds complexity to which scholars of international law, international human rights norms, and conflict processes should consider when trying to understand numerous topics. This project should encourage scholars to more closely study enforcement of law and human rights norms, elite decision making towards prosecutions of state security forces for human rights violations, and the addressing of additional grievances of unruly populations in such contexts.

Future research should, therefore, consider the role of internal dynamics in creating incentives for elite decision making regarding prosecutions. In particular, researchers should expand our analysis to include not only unruly audiences in aggrieved areas or communities but audiences within the countries or groups in which the elite decision makers belong. These expansions should account for public opinion, electoral

politics, and social movements within an elite's selectorate as possibly influencing elite decision making separately, or in conjunction with, unruly populations.

Future research should likewise expand our focus to additional mechanisms of accountability. Prosecutions of state security forces is a high threshold and do not account for other methods of responsibility which could be pursued by elites. For example, in both the American and Northern Ireland cases significant effort was put into making payments to victims who survived abuses at the hands of state security forces or the surviving family of those who were not so fortunate. Such payments occurred even in cases in which both governments denied any wrongdoing. Why did these payments happen? What explains variation in their use within each conflict? How were such payments viewed by those from the victim community?

Researchers have also yet to explore why forms of accountability which entail the firing, forced retirement, or demotion of members of state security forces following human rights violations occur and the implications of their occurrence. In fact, scholars may want to begin to think of accountability as a scale which moves from no accountability mechanisms pursued to prosecutions of senior leadership, with reparations, lustrations, low-level trials, and the like being different points on the scale. Within this, researchers will want to build theories around who receives charges when elites decide to pursue punishment of their forces. Perhaps not all individuals or ranks within the security forces are treated equally by the state once prosecutions begin to occur. Lastly, while this project only looks at state security forces, future research will want to look at accountability mechanisms of insurgent groups and their implications.

Some potential criticisms of the findings of this dissertation are worth addressing. Existing research suggests that more frequent violence from insurgents may not reflect increased levels of support from the public or levels of resources provided by the public due to the increase in public support. Instead, some researchers argue that when insurgents increase their level of attacks, this is a sign of growing weakness and desperation, not strength. Therefore interpreting increased insurgent violence as increasing insurgent strength, which would necessitate a government response may be problematic. However, while this research may be accurate, what such arguments may not account for is how state security forces interpret such actions. While this may not reflect reality, state actors may understand such actions by insurgents as being a sign of increased strength. This understanding may be especially true if state actors are considering the violence alongside other measures of insurgent strength, such as electoral strength or public opinion.

For example, the American case study of this project demonstrated that military elites viewed increased insurgent violent activity and the willingness of the local population to cooperate with or work with the US-led forces as capturing decreased support for the occupation and increased support for the insurgency. In the Northern Ireland case, primary and secondary evidence provided suggests the British state and Northern Ireland security forces considered additional factors beyond the violence of the Irish insurgency when deciding to pursue prosecutions of the security forces. These elites also considered the electoral support for militant Irish Republicanism when measuring support for the insurgency, seeing both as significant measures of the insurgency's strength. In short, additional evidence provided in this dissertation suggests that state

actors, at least in these particular cases, view increased insurgent violence as a sign of strength, not weakness, and this interpretation influences their behavior.

Additional criticism of this project and its findings may center on how the target community received the prosecutions and if such accountability is a successful counterinsurgency tactic. This project only marginally addresses this point, through the perception of members of the state security forces. While this criticism is valid, whether these tactics were effective was not the question of this project. What is at the heart of this project is whether elites believed such tactics to be effective and pursued those tactics due to their beliefs. However, if a goal of political science research is to inform policymakers, better understanding the impact of policy decisions should be central to our analysis. With that in mind, future research will want to address this shortfall of the project.

This dissertation has discussed extensively on the application of a theory of strategic decision making of governing elites driving decisions to pursue accountability for alleged human rights violations by state security forces. The cases discussed are two well-established countries in the so-called "global north." These countries had long democratic traditions with strong democratic institutions, established rules of law, military and economic strength, protected and established media, and superior governmental capacity. These differences leave open the question of how well the theory presented here applies to developing, transitioning, or authoritarian settings. Numerous researchers have demonstrated how developing states are more vulnerable to international pressures and international actors when it comes to motivating domestic accountability mechanisms for allegations of human rights violations *during conflicts*.

However, this research primarily focuses on the ability of international pressures to motivate developing or transitioning states to punish rebels or the previous authoritarian regime. When such studies do explore human rights related prosecutions of state forces, or the victors of the war, they primarily focus on the use of international pressures to motivate these elites to cooperate with international legal institutions such as the International Criminal Tribunal for Yugoslavia. They also focus on the post-conflict setting, as opposed to the ongoing conflict setting that this dissertation explores. What might influence these developing or transitioning states to initiate domestic prosecutions of their security forces during conflicts? It's entirely possible international dynamics help motivate such decisions, but are perhaps additional domestic factors related to the conflict at play?

Another setting that this dissertation has briefly referenced in places is that of non-democratic regimes. The question of why a non-democratic government would pursue prosecutions of state security forces during a conflict is especially puzzling due to the fact non-democratic systems often rely more heavily on the state security forces to remain in power than in democratic regimes. Further, if it is already viewed by researchers, human rights activists, and pundits as rare for state security forces in democracies to be held accountable for human rights, then this process should be even more surprising in non-democratic regimes. Especially in non-democratic regimes who violated human rights with impunity before such prosecutions and continued to do so after such prosecutions. Despite continued abuses, we occasionally see accountability in non-democratic regimes. The military junta of El Salvador in the late 70s and 1980s pursued domestic prosecutions of members of the El Salvadorian security forces in some

cases. Further, as mentioned elsewhere in this dissertation, the Russian state and security forces pursued prosecutions of members of the Russian security forces for human rights violations committed during the Second Chechen War.

In each of these two cases the security forces regularly violated human rights with impunity before the prosecutions and continued to do so after the prosecutions, yet within each of these two settings trials occurred during ongoing conflicts. Why? How might the overarching theory of audiences and audience costs during conflicts explored in this dissertation apply in such settings? Considering the different constraints, or lack thereof, and incentives in non-democratic regimes compared to democratic governments do audience costs related to insurgencies and counterinsurgencies still matter? If they do, are there different audiences for non-democracies or democracies, even within similar counterinsurgency settings? What role might international actors play in influencing elite behavior in these contexts? There is, of course, existing research which looks at why non-democratic countries use courts, but this literature heavily focuses on the use of courts in non-democracies against enemies of, or potential threats to, the ruling regime and does not explain why non-democracies may turn the gunsights of courts to their loyal military forces.

The theory put forward and the cases analyzed in this dissertation highlight the complex interplay between war strategy and justice. Both suggest why these dynamics may be more closely linked than previously thought by scholars, particularly in explaining the pursuit of prosecutions of state security forces by their leaders. These findings add additional depth to existing research on the interplay between domestic factors and international law and human rights norms. By revealing the contexts of when

elites may be more sensitive to the enforcement of law or human rights norms, we can see why justice for human rights abuses by state security forces occurs in highly contested and violent settings. Much work is needed to explore accountability for human rights violations by state security forces more fully, beyond the setting examined here. This dissertation highlights the importance of such prosecutions and encourages more research into these types of trials. This project was never meant to be the final statement on such trials, but a start from which additional research can build on. There are many more aspects to look at before we can have a complete picture of justice in the during conflict setting, but this project has hopefully encouraged researchers to take more seriously elite decision-making and agency in determining when and why domestic prosecutions of state security forces occur.

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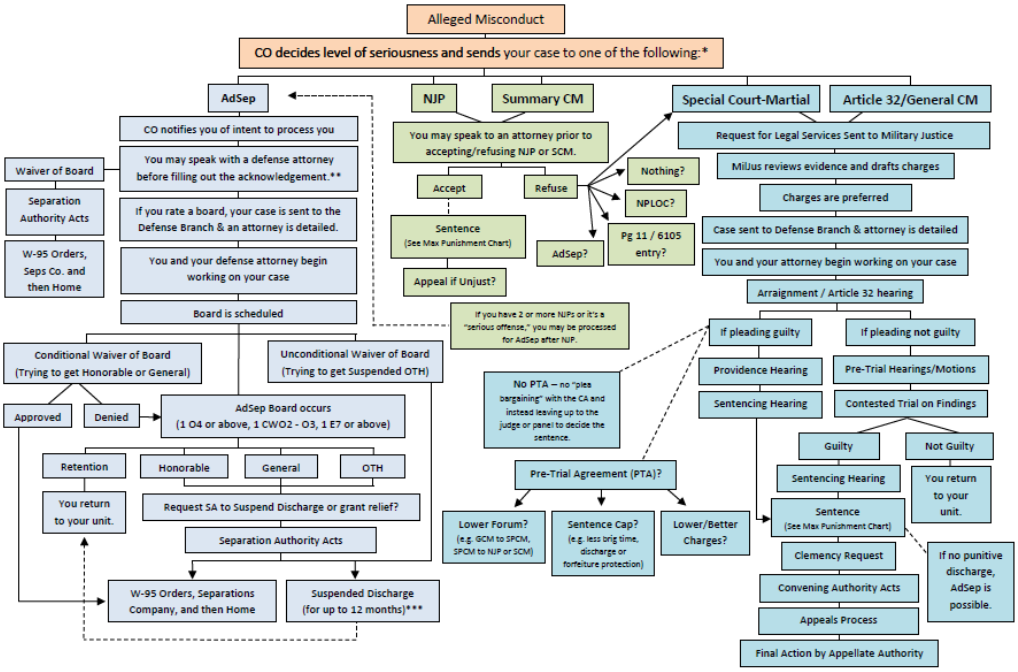
APPENDIX A
COURT MARTIAL FLOW CHART


Alleged Misconduct
CO decides level of seriousness and sends your case to one of the following:*
AdSep
NJP
Summary CM
Special Court-Martial
Article 32/General CM
CO notifies you of intent to process you
You may speak to an attorney prior to accepting/refusing NJP or SCM.
Request for Legal Services Sent to Military Justice
Waiver of Board
You may speak with a defense attorney before filling out the acknowledgement.**
Accept
Refuse
Nothing?
NPLOC?
MilJus reviews evidence and drafts charges
Charges are preferred
Separation Authority Acts
If you rate a board, your case is sent to the Defense Branch & an attorney is detailed.
Sentence
(See Max Punishment Chart)
AdSep?
Pg 11 / 6105 entry?
Case sent to Defense Branch & attorney is detailed
W-95 Orders, Seps Co. and then Home
You and your defense attorney begin working on your case
Appeal if Unjust?
You and your attorney begin working on your case
Arraignment / Article 32 hearing
Board is scheduled
If you have 2 or more NJPs or it's a "serious offense," you may be processed for AdSep after NJP.
If pleading guilty
If pleading not guilty
Conditional Waiver of Board (Trying to get Honorable or General)
Unconditional Waiver of Board (Trying to get Suspended OTH)
Providence Hearing
Pre-Trial Hearings/Motions
No PTA – no "plea bargaining" with the CA and instead leaving up to the judge or panel to decide the sentence.
Sentencing Hearing
Contested Trial on Findings
Approved
Denied
AdSep Board occurs (1 O4 or above, 1 CWO2 - O3, 1 E7 or above)
Guilty
Not Guilty
Retention
Honorable
General
OTH
Pre-Trial Agreement (PTA)?
Sentencing Hearing
You return to your unit.
Lower Forum? (e.g. GCM to SPCM, SPCM to NJP or SCM)
Sentence Cap? (e.g. less brig time, discharge or forfeiture protection)
Lower/Better Charges?
Sentence
(See Max Punishment Chart)
You return to your unit.
Request SA to Suspend Discharge or grant relief?
Clemency Request
If no punitive discharge, AdSep is possible.
Separation Authority Acts
Convening Authority Acts
Appeals Process
W-95 Orders, Separations Company, and then Home
Suspended Discharge (for up to 12 months)***
Final Action by Appellate Authority