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The *Journal of International Security and Strategic Studies* is published twice annually—in April and December—and it is supported by the Center for National Security Studies (CNSS) at Utah Valley University (UVU). The *JISSS* publishes timely, insightful articles on critical international security matters, including topics relating to foreign affairs, intelligence, homeland security, terrorism, and US national defense. Submissions may be sent to the Editor-in-Chief at nationalsecurity@uvu.edu.

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The CNSS at UVU was established in January 2016. The Center is the first of its kind in the State of Utah. The CNSS is a nonpartisan academic institution for the instruction, analysis, and discussion of issues related to the field of US national security. The mission of the CNSS is twofold: to promote an interdisciplinary academic environment on campus that critically examines both the theoretical and practical aspects of national security policy and practice; and to assist students in preparing for public and private sector national security careers through acquisition of subject matter expertise, analytical skills, and practical experience. The CNSS aims to provide students with the knowledge, skills, and opportunities needed to succeed in the growing national security sector.

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A Note from the Editor-in-Chief

Samuel D. Elzinga

When thinking about what to write for the introductory foreword to the first issue of the newest journal published by the Center for National Security Studies, I came short for words. What could I possibly say that could encapsulate the level of expertise each of our authors have shown us through publishing this journal? Instead, I will discuss the creation of this journal itself to highlight the labor of love that it is.

The idea to create a professionally oriented journal came a year and four months ago—in January 2020. Little did I or my editing staff know that the pandemic would soon drastically alter our lives, with our routines still regularly disrupted by changes in the situation here in Utah. Each of our authors and staff members has had to readjust their workflow to help make this publication possible. This publication, unlike the student publications I have done in the past, was more intensive, more thorough, and more time consuming than anything our department has undertaken. This publication is not only a testament to the relevant scholarship practitioners have to share with the world, but also the ability for students and graduates to create a journal of this caliber.

This journal, of course, would not have been possible without a team of dedicated editors and faculty advisors. To my executive editor, Mizuki Hassell, thank you so much for your help and support. The hundreds of hours you have put in have not gone unnoticed. Thank you to managing editors, Ethan Elzinga and Jake Stebbing, who managed the creation of not one, but two journals. Thank you to the many content editors, source checkers, technical editors, and the faculty advisors. Greg Jackson, Ryan Vogel, Mike Smidt, and Deb Thornton have been invaluable.

We hope you enjoy this inaugural edition of the *Journal of International Security and Strategic Studies*. We look forward to many more publications.

Samuel D. Elzinga
Editor-in-Chief,
Journal of Security and Strategic Studies

Nation-Building and the Struggle for Political Consolidation

*Keith W. Mines**

Abstract

Among the few bipartisan foreign policy issues in Washington over the past five decades, disdain for nation-building may be the most consistent—it is hated by left, right, and center. And yet, most administrations have ended up doing it, some on a grand scale. The disdain comes from the fact that it is hard, tedious, expensive, and often bloody work that does not seem to be appreciated by the nations we are building. Getting pulled in comes from the simple calculation that failed and fragile states provide a safe haven for a stew of security threats and humanitarian pressures that cannot be ignored—terrorism, pandemics, international crime, weapons of mass destruction, ethnic violence, famine, and mass exodus of refugees. Shoring up the ability of states to control what transpires on their territory through improved consensual governance is the only long-term solution to these issues. Amidst this world of fragmentation and state weakness there is simply no substitute for the hard work of nation-building. Far from the popular myths surrounding the "forever wars," nation-building does not take forever (although it does take a long time), can be supported effectively by outsiders, and does not always involve armed intervention. But it could

Keith Mines retired after 33 years of service as a special forces officer and diplomat, where his final assignment was as director of the Venezuela Task Force at the State Department. His service included Iraq, Afthanistan, Haiti, El Salvador, Israel, Mexico City Somalia, Darfur, and Budapest in a variety of post-conflict and diplomatic assignments. His book, *Why Nation Building Matters: Political Consolidation, Building Security Forces, and Economic Development in Failed and Fragile States*, was published in 2020 by the University of Nebraska.

be done better if it were given a proper architecture, training, and emphasis in the American government's civil-military apparatus.

Introduction

Over the course of a 40-year career in US special forces and the State Department, with brief tenures as an intelligence analyst and UN official, I was an observer of nine failed or fragile states in the throes of violent conflict—fought over ethnicity, religion, economics, and ideology, by armies, insurgents, criminal gangs, and separatists. While the contexts of these conflicts were very different, the solution from my experience was always similar. Security needed to be restored, the economy reset, and basic governing services improved; but what was most needed was consolidating a shared sense of nationhood, in which all citizens had a stake and a sense of belonging. From the perspective of an outsider with an interest in strengthening another state and helping it achieve a more peaceful and prosperous future, these were to be long struggles of political consolidation, "a transformation in the political, social, civic, and economic structures of the territorial state," as international law expert Gabriella Blum put it,[1] not punitive expeditions of selective threat removal. And this has been a difficult lesson for Americans to learn.

The lesson has played out in a number of popular myths about nation-building, which have in turn led to a general frustration with America's role in the world—and in the role of experts in America. We would do well to reconsider these myths, both to enhance our security and to recover the legacy of those who have struggled, at their country's insistence, to carry out often lofty and challenging ambitions. Those ambitions were both more necessary than we have been led to believe and they have been more successful than we realize.

Myth One: Nation-Building Is Unnecessary

Nation-states consist of two distinct components, both political in nature. At a higher level, the "nation" is the result of a political compact that unites a people of a certain territory under a single identity. The "state" consists of the institutions that can manage the business of governing within that nation. The "nation" is more emotional, a sense or feeling, "blood and belonging," as Michael Ignatieff couches

1. Gabriella Blum, "The Fog of Victory," *The European Journal of International Law* 24 no. 1 (February 2013), 392, https://doi.org/10.1093/ejil/cht008.

it, while the "state" is more practical—do I have running water, the rule of law, can I open a small business?

When one side of the equation is weak, the nation-state can break. In 1991 Yugoslavia had good state institutions but no shared sense of nation, while the Somalis were effectively a nation with no state. The near-breakup of Iraq after 2003 led to strong state institutions in Kurdistan, but the Kurds are now struggling with whether to be an independent Kurdish nation or to stay a part of the Iraqi nation. In Afghanistan both the nation and state were frayed. And El Salvador at the end of its civil war recovered a sense of nation, but the state institutions have yet to fully cohere.

In the fall of 2016 I asked a question of a prominent conservative commentator at a forum commemorating the work of a US army battalion that had stabilized a fractious corner of Iraq alongside a team of civilian peacemakers. Their work included all the components of nation-building—economic, security, governance, and the shared vision referenced above. Can't we just call it what it is—nation-building—I asked? The discussion devolved into a near shouting match at the break, where he made clear that whatever the task was, it could not be referred to as nation-building. Institution-building, stabilization, building partner capacity. Anything but nation-building.

I shared the discussion with my former mentor Ambassador Jim Dobbins, who led many of the operations I had participated in, seeking guidance as much as anything because I was writing a book on the topic and planned to use nation-building in the title. He said he had been similarly accosted over his persistent use of the term but had a fourth book on UN operation in nation-building ready to publish. "There is simply nothing else to call it," he suggested, "if we want to be accurate. And we don't do anyone any favors by calling it something that implies a lesser task. It is simply hard work to get right."

The aversion to nation-building first became a political issue in the 2000 campaign when Condoleezza Rice famously said the US military would not be used to escort little kids to school, something she suggested had been a policy of the previous administration. It was an odd accusation since the operation she was referring to, the stabilization of the Balkans, was done with but a single non-battle US casualty, and brought an end to a war that, by the time the US intervened, had killed hundreds of thousands and destabilized the entire southeast corner of

Europe. But it was a clever soundbite.

The plot thickened considerably, of course, when the same administration went on to lead America into nation-building enterprises in Afghanistan and Iraq, the largest of their kind since the end of the Second World War, all while having excised the term nation-building from the bureaucracy's vocabulary. It was a creative semantic exercise but a dismal failure in terms of the mission at hand, which involved building strong political and security institutions and functional democracies that could resist the predations of terrorists and the menace of dictators bent on regional domination.

At the end of the day, assisting countries to have full control of what transpires on their territory and form a viable social compact among citizens is vitally important to the security of the United States and the well-being of the American people. Rather than constituting overreach, it actually lessens the need for overreach by developing internal capacity in partner nations and reducing the need for the US to conduct independent military operations.

Several recent examples of the threat from fragile or collapsing states make the case but there are dozens more:

- In 2004 Thailand was required to kill forty million chickens to get ahead of a global pandemic that could have killed thousands, something only a functioning nation-state could do. The ongoing COVID pandemic makes the case even more clearly—a global health problem that can only be curtailed by the application of state capacity to enforce lockdowns, control travel, and vaccinate populations.
- There are currently tens of thousands of migrants fleeing their homes in Central America because their nations are too weak to provide economic opportunity and curtail violence. Globally, there are 65 million refugees, and the flow of millions into Europe over the past decade has been one factor in the rise of destabilizing political parties. After state failure, tens of thousands of refugees from Iraq, Afghanistan, and Africa came through Syria and Libya.
- In 2001 a global terrorist network attacked the United States from the ungoverned space in Afghanistan that the international community had abandoned after violently competing over it during the Cold War. Then in 2014 a "global caliphate" that attracted tens of thousands of militants and inspired and directed attacks across the globe came from the

> partial collapse of a nation-building project the United States abandoned in mid-stream in Iraq.

It is difficult to see how the United States can stay ahead of key challenges absent a world of strong and capable states that can control their territory and apply local solutions to global problems. As Clare Lockhart and Michael Miklaucic put it, "If the 20th century was consumed by the global struggle between incompatible ideologies—fascism, communism, and democratic capitalism—the 21st century will be consumed by the epic challenge of creating and sustaining viable, effective states."[2] In a similar vein, former State Department policy planning director Stephen Krasner wrote that given its linkages to every other facet of US national security, in particular the simply uncertainties of what transpires on poorly governed territory, "State-building–external efforts to influence the domestic authority structures of other states–is arguably the central foreign policy challenge of the contemporary era."[3] The quality of the nation-state remains the first pillar in American prosperity and security.

Myth Two: Nation-Building Never Works

Citizens must build their own nations. But the international community can be helpful, even decisive, in both nation and state building, generally from a respectful distance. The track record of the international community in this is not as bad as many believe.

Ambassador James F. Dobbins, then special envoy for Afghanistan and Pakistan, describes his efforts in 2002 to extend the reach of NATO forces beyond Kabul to allow the new government space to function. In response, he says, "The NSC staff circulated a paper arguing that "peacekeeping was a failed concept, one proven not to work." He comments that the "assertion was stunningly ill-informed," conceding that whether the concept would work in Afghanistan was an open question.

> But the preceding decade had seen successful peacekeeping operation in Bosnia, Kosovo, Sierra Leone, East Timor,

2. Clare Lockhart and Michael Miklaucic, "Leviathan Redux: Toward a Community of Effective States," in *Beyond Convergence: World without Order*, ed. Hilary Matfess and Michael Miklaucic (Washington DC: National Defense University, 2016), 297.

3. Stephen D. Krasner, "International Support for State-Building: Flawed Consensus," *Prism* 2, no. 3 (June 2011), 65, https://cco.ndu.edu/Portals/96/Documents/prism/prism_2-3/Prism_65-74_Krasner.pdf.

> Mozambique, Liberia, El Salvador, Namibia, Cambodia, Albania, and Macedonia. . . . Tens of millions of people were living at peace—and for the most part under freely elected governments—because UN, NATO, American, or European troops had come in, separated combatants, disarmed contending factions, rebuilt the country, held elections, installed new governments, and stayed around long enough to watch them take root. . . . The NSC staff's counterfactual critique was yet another manifestation of the new administration's resistance to anything that smacked of nation building.[4]

The contention was especially odd since the decisive role of outsiders had already been proven through support for the Bonn process and the resultant Loya Jirga, an event that brought the Afghan people together for the first time in decades in a forum that all Afghans understood and accepted. I was one of the few foreigners inside the tent and found it one of the most remarkable political gatherings in my career. It brought the country a measure of stability and set the course, however imperfectly, for Afghanistan to continue to struggle to fully functional nationhood. It would not have happened without Germany's logistics, UN facilitators, international peacekeepers, and US back-channel negotiators.

This was followed by further assistance, somewhat sporadic and inconsistency delivered, to build the institutions of the state. As one example among hundreds I have been involved with, in 2013 I presided over the graduation in Jawzjhan province of 20 midwives who had been trained by the international community. These midwives were part of a growing public health system in Afghanistan, which led to some of the most dramatic gains in physical health of any people in recent history. Notably, the maternal mortality rate had been cut by 50 percent and the infant mortality rate by 60 percent.

Nation building can work. It is not automatic, and outsiders operating clumsily can collapse states that otherwise would have been marginally functional, as the western powers did in Libya in 2011 through a bombing campaign that took down one regime without the means to

4. James F. Dobbins, *After the Taliban: Nation-Building in Afghanistan* (Washington DC: Potomac Books, 2008), 130; James F. Dobbins, *Foreign Service: Five Decades on the Frontlines of American Diplomacy* (Washington DC: Brookings Institution Press, 2017), 256.

install a new one. Outsiders can also create the conditions that lead to new conflicts, as the US did in Iraq by a premature withdrawal of its forces in 2011 in a rush to bring closure to a nation-building mission that was not yet completed.

But there are times when outside assistance is the essential component in the search for peace and stability.

Myth Three: Nation-Building Always Involves Armed Intervention

Recovering the badly damaged nation-building brand should probably start by making clear that it is not synonymous with invading and governing foreign countries. There are times when military intervention is the only way to excise a menacing dictator or control a threat. And the political dynamic in some countries is so badly damaged that only armed outsiders can restore a peaceful resolution to political conflict. But some of the most successful cases have been done without direct intervention, others with near-bloodless interventions. Armed intervention in fact often extends a conflict by artificially shoring up an unsustainable political dynamic that absent the outside force would have been settled domestically, or by stirring the embers of violent nationalism that would have otherwise lain dormant.

Among the most successful cases of nation-building over the past decades, Colombia stands out. Through a decade of Plan Colombia, in which the United States provided robust military, development, and technical assistance that was matched by the country's own large commitment of resources and manpower, Colombia was able to build new institutions, restructure its economy, and defeat a daunting array of violent non-state actors. This assistance allowed the Colombian state the breathing room to then go on to conduct an internationally facilitated negotiation that led to an historic agreement between the government and the FARC rebel group in 2016.

Colombia still struggles, the ELN has not agreed to reconciliation, violence persists, and the consolidation of the peace is not completed in rural areas. Human rights violations by government and government aligned forces have been, and continue to be, a persistent problem. Still, as nation-building projects go, Colombia is nothing short of inspiring, ending a 50-year civil war and leading to the country's current tourism pitch–"the biggest danger in Colombia today is you won't want to

leave." It was described by US Ambassador to Colombia William Brownfield as "the most successful nation-building exercise the United States has associated itself with in the last 25–30 years."[5] And it was done without a single battle casualty.

El Salvador was a similar case where a nation was "built" with advisors and development, military assistance, and ultimately an internationally managed peace process. After a civil war caused the breakdown of the country's economy and political structure, amidst a backdrop of the Cold War struggle for allies between the eastern and western blocs, the United States supported El Salvador massively, albeit from a respectful distance that allowed the country's leaders to match their opponent's nationalist credentials. It was one of the most comprehensive integrations of political, economic, and security assistance that at the height of the war included a small number of armed military advisors, several of whom were killed, but never combat troops.

While El Salvador continues to struggle with poverty, corruption, and criminal violence, the process of concluding one of the region's most bloody civil wars and consolidating democratic governance closed with a model in which the two competing political persuasions compete seamlessly at the ballot box. It led analyst Ellen Moodie to sum up that "postconflict policy analysts have called the Salvadoran case among the most successful peace agreements in the post-Cold War period."[6]

Elsewhere in the region, Peru recovered from a violent insurgency with no outside military intervention, or even support for negotiations, but with modest governance, economic, intelligence, and security assistance. This assistance helped a nation under internal siege to develop a functional nation-state—containing violent insurgents, restoring public order and services, and over time stabilizing the economy, albeit at a high cost in terms of human rights. Other countries in the Southern Cone—Chile, Argentina, Uruguay, and Brazil—contended violently over their national vision and operating model for decades but were eventually brought along on a regional wave of democracy and free markets in the 1980s, in these cases without even the indirect intervention of Colombia and El Salvador.

5. CBS News, "Colombia to Aid U.S. in Taliban Fight," 27 July 2009, https://www.cbsnews.com/news/colombia-to-aid-us-in-taliban-fight/.

6. Ellen Moodie, *El Salvador in the Aftermath of Peace: Crime, Uncertainty, and the Transition to Democracy* (Philadelphia: University of Pennsylvania Press, 2010), 1.

There are other cases like the Balkans, where NATO intervened militarily but only at the end of a long diplomatic process that averted the need for ground combat. It has yielded a jagged but functional peace that has held, allowing these societies to rebuild and integrate into the wider world, surrounded by a high-functioning neighborhood that supported the process fully.

Getting the formula right regarding when to intervene, how long to stay, and when to take a more indirect approach is the art of nation-building. It is not a science, but it certainly would be better served by real artists than by housepainters.

Myth Four: We Cannot Impose Our System on Others

While serving in the US Embassy in Kabul in the spring of 2002, I was tasked with writing a welcome cable for then Undersecretary of Defense Paul Wolfowitz, who would arrive for a check-in visit. I took some license to deviate from the standard political-economic-security overview and added a section in which I suggested that rather than the current strategy of using US forces to attack and eliminate any residual terrorist forces, we would be better off putting our efforts into the long-term building of Afghan security forces that would more effectively do the work themselves, and building up the governing institutions around them that would make of Afghanistan a functional country. I suggested it would be a long-term endeavor, but it could over time yield an ally in a difficult but vital part of the world. It became clear during his visit that the undersecretary did not believe it was either necessary or possible for the United States to shape the future Afghan state and had already begun to turn his attention to Iraq, where a similar short-term punitive expedition was being planned.

The question of whether outsiders can "impose" their system on another country is complex. As I mentioned above, there are times where the clumsy imposition on a country can spark a nationalist backlash, others where the comparting of a complex system (e.g., logistics for security forces) is unsustainable, and still others where political settlements do not take account of historic and cultural reality. Outsiders should tread carefully here. But it is not to say they should not tread at all, since the reason they are compelled in the first place is generally because the local system has broken down or was in many cases the generator of violence and dysfunction in the first place.

The national project of the United States is more generic than we often realize, formed as it was by practical men who needed to blend a disparity of religions and cultures and economic realities into a single nation. It yielded a country where national identity rises above destructive class, or religious, or ethnic exclusion and that shared national identity revolved around core values of individual rights, dignity and opportunity for each citizen, under an umbrella of good governance marked by inclusion and transparency. If the implication is that these things are culturally heavy handed, we should consider the alternative. If that alternative has led to civil war, famine, or widespread human rights abuses, finding some way to apply the liberal model to local conditions may be the only way to achieve long-term stability.

There is one major caveat, however, which is how the recipient country perceives and internalizes outside involvement. Former National Security Advisor Tony Lake recently spoke of his experience as a young foreign service officer in Vietnam prior to the build-up of US forces.[7] He described how he thought he was bringing democracy to Vietnam to ward off communism, only to be outflanked by the North Vietnamese who more effectively built a narrative that the US was bringing a continuation of colonialism while they were fighting for Vietnamese nationalism. And around that narrative much of the war would revolve, independent of the superiority of resources and by US-backed forces.

Rufus Phillips, who similarly served as a young political officer in Laos and Vietnam, put it this way: "We underestimated the motivating power of Vietnamese nationalism, and we failed to comprehend the fanatical determination of an enemy willing to sacrifice its entire people until only the Politburo was left. . . . We thought in conventional World War II battlefield terms, when this conflict was at its heart a political one, a war of ideas and of the spirit."[8]

Four decades after the conclusion of the war, in a somewhat surreal moment, I had lunch with the Vietnamese Ambassador to Israel. He implored me for US military assistance to help Vietnam to stand up to the Chinese, while he lauded the growing Vietnamese free market economic system. It occurred to me that Vietnam had never even gotten

7. Peter Romero and Laura Bennett, "The Shining City on the Hill?" February 18, 2021, in *American Diplomacy Podcast*, MP3 audio, 46:42, https://amdipstories.org/the-shining-city-on-the-hill/.

8. Rufus Phillips, *Why Vietnam Matters: An Eyewitness Account of Lessons Not Learned* (Annapolis: Naval institute Press, 2017), xiv, 305.

to the question of political and economic models because such choices had been completely superseded by that of the emotions surrounding nationalism. When they did, decades later, they leaned our direction.

This issue of which model to implement amidst the overlay of nationalism played out again in both Afghanistan and Iraq, but with added layers of complexity. In Afghanistan the local model in 2000 was violent competition between warlords and Islamic extremists that had pushed a third of the Afghan nation out of the country as refugees. From the Bonn Conference forward, outsiders tried to adapt to Afghan reality, first by adhering to their earlier constitution, then using the Loya Jirga process to form a government. It was hardly a wholesale rush to westernize the country. It might have been worth considering some form of federalism, but it was difficult to see how that could have worked given the lack of local institutions to build from. In short, the country was starting from scratch, and any form of government was going to be difficult to implant.

But as with most measures of progress, considering where the country started, it has made an amazing amount of progress, even as it continues with the most difficult piece, how to include the Taliban in governing without their taking over the whole country. This continues to be a bloody affair that in the end could still fail. But aside from leaving the country in the hands of the same group that actively enabled the 9/11 attackers, it is difficult to see another way. The process of political consolidation simply takes effort and time.

In Iraq, similarly, the United States and its coalition displaced in 2003 what it considered a menacing dictator, which—given the track record of the preceding two decades, where Iraq had been in the docket of the security council in every session, had one of the world's most advanced and reckless programs for weapons of mass destruction, had gassed its own people and brutally attacked two neighbors—was not as unreasonable as is currently portrayed. But the long work of consolidating democratic governance in a country of three historically contentious nationalities and a kleptocratic command economy where order was reinforced by state-sponsored violence was always going to take time to get right.

Formulas for federalism, resource sharing, foreign relations, political engagement between citizens, economic and especially oil development, were technically, culturally, and politically difficult. Outsiders were

often clumsy in their advice, and at times their armed presence added an unhelpful dimension to the political process by sparking nationalism, which often resulted in terrorism applied between domestic actors. But a good deal of this would have been part of Iraq's future with or without outsiders, and it can be argued that the outsiders provided the guardrails to see it through. And their models, over time blended with Iraqi cultural and historic reality, have in the end yielded one of the region's few democracies.

It may have simply been the case that the parties needed to stare over the abyss of losing their country in order to value it. Iraq's future is not secure; Iran menaces, and the three ethnic groups hold only a tenuous peace. But in the world of nation-building, this long process of political consolidation is simply the mission in play, and tenuous peace is often as good as it gets as that process plays out.

Myth Five: Nation-Building Can Be Done Quickly

Between my first posting to Afghanistan in 2002 and my deployment to Iraq in 2003, I took advantage of a little-used State Department channel of communication from my perch in Budapest to write a "dissent cable." I deferred the question of whether we should be going to war in Iraq in the first instance (if asked I would have given the UN inspection process more time to play out) but questioned whether policymakers had fully thought through what the decision would require to see to a successful conclusion. I suggested that there was no real way to achieve long-term stability in Iraq without a focus on the political arrangement that would define the country, and that getting to a place of political consolidation would be a lengthy and difficult process. But it was a process we could not buy or fight our way out of. As US diplomat Lawrence Pezzullo put it, "We're a developed nation that is accustomed to quick answers in almost every other area. But when you throw yourselves into a revolution, there are no quick answers."[9]

In part, this also has to do with the simple context of what we are dealing with, which is not a small "cuts and bruises" clinic but rather the emergency room. And it is usually the emergency room for patients

9."Lawrence Pezzullo, 91, Dealt with Crisis in Nicaragua and Haiti in a Long Career in the Foreign Service," *Washington Post*, obituary, August 4, 2017, https://www.washingtonpost.com/local/obituaries/lawrence-pezzullo-us-diplomat-who-helped-end-nicaraguas-somoza-regime-dies-at-91/2017/08/03/0edac29a-779f-11e7-8f39-eeb7d3a2d304_story.html.

who have been serially abused. The societies in question are undergoing multiple transitions, any one of which would be brutally difficult if done in isolation. From command economies to globalized free markets, from narrow dictatorships to inclusive democracies, from tribally organized to civil societies, from isolation to global connectivity, from secular regimes to newly discovered religiosity, all against a demographic picture that would make Malthus cringe.

None of these societies will have the luxury of managing these transitions in an orderly way; history and geography have thrown everything at them at once. And there are many processes that simply cannot be rushed.

Both Afghanistan and Iraq went about as I and others had predicted, with surges in forces to try to tamp down violence, a belated build-up of security forces, stumbling efforts to develop functional economies, all against a backdrop the halting an evolving political arrangement that left key actors reacting violently to their exclusion. Democracy to the Sunnis of Iraq meant they lost their privileged position, while to many Pashtuns in Afghanistan it meant acceptance of a modern state that would overturn the social and cultural and religious order they valued. In both cases, they were willing to fight the emerging order rather than accept it. It sounds heartless, given the human cost, but it could be argued that this violent competition simply needed to play itself out.

Haiti, where I worked on post-conflict stabilization from 1995–1997, was similarly not receptive to quick or easy solutions. It was a difficult country historically, culturally, and politically. Like Central America, it suffered from isolation, broad-based lack of development, and a predatory ruling class. American efforts to help build a functional state amid the wreckage of the Francois Duvalier dictatorship were honest, important, and reasonably well-managed, although the economic component could have been more patient, the building of governing institutions more directed, and the training and equipping of security forces more comprehensive. But no honest effort could compensate for a political process that simply never cohered. And that was the piece the outsiders had the least control over.

Threats of aid reduction went unheeded, and the aid was cut. Threats of loss of interest went unheeded, and the interest drifted. There were no tools that could inject a sense of nationhood into a country that had been so forcibly divided for so long by a series of

brutal polarizing dictators. The Haitian people simply needed several decades to learn democratic principles and to finally disgorge from the country their beloved but destructive leader, Jean-Bertrand Aristide. The lesson for the outsiders was pacing, with enough inputs to the economy to avert collapse, and enough improvements in governance and security to keep the country on a modestly improving trajectory until the overall political picture improved, which it eventually did.

Somalia was also a case that would require decades of attention, not the months that were initially budgeted. Somalia was the first utterly failed state in recent history; all elements of government collapsed and defied reconstruction. It is perhaps the best example of how intractable social, cultural, and religious factors can conspire to foil well-meaning efforts to raise a people up from a destructive path. Western efforts to stop a famine and build a nation succeeded at first but were stopped cold in the second stage when they became embroiled in the fight for primacy between Somali clans. There were glaring mistakes made in understanding the cultural and political landscape, but in the end it might not have mattered. The Somalis were simply resistant to nationhood, focused far more on the localized interaction of clan and tribe.

After the drama of a sixteen-month intervention, international assistance landed in a more sustainable place for the next two and a half decades, albeit with various surges and withdrawals still to come. A facilitated Somali solution to governance and a slightly improving economy, with some international assistance, are now giving the country a third or fourth chance. Apparently, it was always a question of acceptance of internal reality, a sustainable level of effort, and patience.

The US should obviously not be involved at all in a country whose future is not in its national interest. But if it is involved, and that national interest is compelling and long-term, staying with the country at a sustainable level, with a mix of hard and soft power, will generally yield results over time, even if that time is decades, not years. Kael Weston, who spent seven tough years in Afghanistan and Iraq through the ups and down of surges and withdrawals, believes that Afghanistan was "a marathon, not a sprint. . . . And America got winded too quickly."[10]

10. Rajiv Chandrasekaran, "The Afghan Surge Is Over," ForeignPolicy.com, September 25, 2012, https://foreignpolicy.com/2012/09/25/the-afghan-surge-is-over/.

Myth Six: We Have the Right Architecture for Nation-Building

There is much the United States could do to get better at nation-building, and a number of important steps have been taken in this direction. The Stabilization Assistance Review conducted in 2016–2017 and signed off by the Secretaries of Defense and State and the USAID Administrator recognized that "the performance of U.S. stabilization efforts has consistently been limited by the lack of strategic clarity, organizational discipline, and unity of effort."[11] The Review defined stabilization as "an inherently political endeavor that requires aligning U.S. Government efforts—diplomatic engagement, foreign assistance, and defense—toward supporting locally legitimate authorities and systems to peaceably manage conflict and prevent violence."[12] And it got at the essence of stability by acknowledging that "without first achieving legitimate political stability, longer term development efforts are unlikely to take root and can even exacerbate lingering conflict dynamics."[13]

Building on this work, Congress passed the Global Fragility Act in December 2019.[14] The text of the bill, which passed with bipartisan support, states that "the United States has strong national security and economic interests in reducing levels of violence and promoting stability in areas affected by armed conflict."

The Act goes on to suggest that

> lessons learned over the past 20 years, documented by the 2013 Special Inspector General for Iraq Reconstruction Les-sons Learned Study, the 2016 Fragility Study Group report, and the 2018 Special Inspector General for Afghanistan Les-sons Learned Study on Stabilization, show that effective, sustained United States efforts to reduce violence and stabilize fragile and violence-affected states require

11. U.S. Department of State, "Stabilization Assistance Review: A Framework for Maximizing the Effectiveness of U.S. Government Efforts to Stabilize Conflict-Affected Areas," December 2017, https://www.state.gov/reports/stabilization-assistance-review-a-framework-for-maximizing-the-effectiveness-of-u-s-government-efforts-to-stabilize-conflict-affected-areas-2018/.

12. U.S. Department of State, "Stabilization Assistance Review."

13. U.S. Department of State, "Stabilization Assistance Review."

14. Global Fragility Act, H. R. 2116, 116th Congress, May 21, 2019. The Act enhances stabilization of conflict-affected areas and prevents violence and fragility globally, and for other purposes.

> clearly defined goals and strategies, adequate long-term funding, rigorous and iterative conflict analysis, coordination across the United States Government, including strong civil-military coordination, attention to the problem of corruption, and integration with and leadership from national and sub-national partners, including local civil society organizations, traditional justice systems, and local governance structures.[15]

The Global Fragility Act aims to force greater coordination agencies involved in diplomacy, development, and defense by singling out five high-priority, fragile countries for focus over a 10-year period. It authorizes three separate funds—the Prevention and Stabilization Fund, the Complex Crisis Fund, and the Multi-Donor Global Fragility Fund—and at least $230 million per year for five years to support the implementation of the law.

The act will go a long way towards better coordinating the existing infrastructure of the US government for conflict prevention and nation-building (a phrase it does not use). It builds on the tremendous but largely untapped potential of the Bureau of Conflict and Stabilization at the Department of State and the parallel Bureau for Conflict Prevention and Stabilization, recently inaugurated at USAID, where much of the work to enhance this capacity resides. But it still leaves out several critical components that would make the effort more effective.

Tracking the three main areas of politics, economics, and security, the US could enhance its toolkit in several areas.

Political Action Officers and an International Public Administration Academy

Former DOD undersecretary for policy Michèle Flournoy recalled a meeting in the Embassy in Baghdad during "one of the most difficult moments of the Iraqi government formation."[16] She asked the senior political officer what the US strategy was to help the Iraqis cohere, aware that the United States was not going to dictate the outcome but would be the key player in helping the new government move forward. His response was telling. "Well," he replied, "that's not my job. My job,

15. Global Fragility Act, §2 (7).

16. Alicia P. Q. Witmeyer, "Battle-Tested: Insiders Debate America's Misfires in Iraq and Afghanistan," *Foreign Policy*, March 4, 2013, 56, https://foreignpolicy.com/2013/03/04/battle-tested/.

as the political officer, is to observe and report."[17] To which Flournoy responded, "I'm sorry. We invaded a country. We are occupying this country. Your job is thinking about the political strategy that's going to help put it back together again on sustainable terms."[18] But, she lamented, that's not what we train or resource people to do.

In a similar vein, Rufus Phillips suggests:

> At present, the U.S. is involved in a protracted competition on multiple fronts and with a diversity of adversaries who are opposed to the U.S. and hostile to the core democratic principles that we share along with many of our allies and other actors worldwide. . . . One of the most glaring gaps in the U.S. capacity to meet these challenges is the lack of an adequate . . . "political action" capability. Such a capability would be designated to support stabilization and democratic transitions in vulnerable states as an alternative to exploitable and short-lived authoritarianism.[19]

Phillips envisions a small cadre of diplomats being specially selected, trained, and deployed for a variety of tasks. These would include analysis based on extensive field research of the competitive environment in the country, development of new strategies for being an effective player in that environment, fostering economic and social improvements with a positive political impact, and developing relationships of mutual trust and confidence with local leaders.

The United States is also hardly the only player in this space. The United Nations, because of its larger pool of seasoned senior international diplomats with cultural and language skills, can often bring in better talent, for longer times, than the United States can. A close and supporting relationship with UN field missions is critical, and seconding US officers to UN missions would go a long way to providing them with vital training that is simply not available in our own system. It would also be an opportunity to put into play much of what Flournoy and Phillips suggest.

The US also needs better capacity in the realm of institution building. Ashraf Ghani captures this well in an interview with a woman in

17. Witmeyer, "Battle Tested," 56.

18. Witmeyer, "Battle Tested," 56.

19. Rufus Phillips, "Breathing Life into Expeditionary Political Action," National Strategy Information Center, 2014, http://docplayer.net/124113-Breathing-life-into-expeditionary-diplomacy-a-missing-dimension-of-us-security-capabilities.html.

Northern Afghanistan in 2009. Upon hearing that $4.2 billion would be available for the reconstruction of Afghanistan, she asked that the money not be spent on short-term distribution of food, as "we've been hungry for twenty years."[20] Rather, she said she wanted her "children and their children to have a better life. And the only way for that to happen is for the money to be . . . spent on building an accountable civil service that would be able to provide for their life chances."[21]

There is a need for trained, experienced international civil servants to be able to deploy rapidly to back up and mentor the newly appointed civil service of a reconstituting state until it can stand on its own. To date this has been handled in a very ad hoc way, best exemplified by the reliance on military officers to fill mentoring positions for ministries in Afghanistan, even in areas far afield from their expertise. A standing deployable cadre could fill this gap. It should be rounded out by an International Public Administration Academy, where newly selected civil servants could go for training, coupled with a standing capacity to quickly implant such academies within post-conflict states.

Economic Development Teams with Flexible Funding

On the economic side of transitions, the technocrats and bureaucratic institutions could also be enhanced. Development officers are in short supply and will be even more sparse in the future. They are also less technically capable than previously, as they are largely in the contracting business and are not hired for their skills. A return to more technically capable officers who can spend time mastering the local environment would make them more effective.

Of more importance is having sufficient funds to do what needs to be done in the first place and having it in funding streams that allow it to be rapidly deployed. Stabilization doesn't come cheap. But if there is an either-or choice, it is a whole lot cheaper than fighting. As Nadia Schadlow writes: "Oxford University's Paul Collier has estimated that the cost of a failing state over the entire history of its failure, for itself and its neighbors, is $100 billion, not counting civil wars or the horrors generated by disorder."[22]

20. Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World* (New York: Oxford University Press, 2008), 178.

21. Ghani and Lockhart, *Fixing Failed States*, 178.

22. Nadia Schadlow, *War and the Art of Governance: Consolidating Combat Success into Political Victory* (Washington DC: Georgetown University Press, 2017), 281.

Those attempting to induce stability on the ground will also need flexibility in the funding they are given. The Commander's Emergency Response Program (CERP), which provided flexible funding for military units in the field in Afghanistan and Iraq, was for all its flaws one of the most important tools in the inventory for diplomats and soldiers. It should probably be normalized for future conflicts.

Advance planning and pre-set funding streams should also be developed for job creation during a transition, a critical component to enveloping spoilers and reinforcing positive change in communities. These cross political, economic, and security lines, as they will involve large numbers of security sector jobs that must be politically and ethnically balanced. Funding tools to induce local ownership of programs and allow for local oversight that is often stronger than our own should also be sought in our funding process. The President's Emergency Plan for AIDS Relief (PEPFAR) program has a number of good lessons learned in both coordinating the elements of US assistance and building a sense of accountability and ownership in host country partners at the micro level. Finally, we should think hard about any Buy America policies that require higher-priced and less capable US firms when local options are available and would better serve the greater US interest.

A Bureau of Civilian Security Assistance

Nowhere in the US government is there a standing capacity to build civilian security institutions, backed up by solid doctrine and organizational responsibility. After the missed early opportunity for training and equipping security forces in Iraq and Afghanistan, the United States shifted large numbers of personnel to this mission, where progress was then steady but incomplete. But all the training institutions the United States has built to deliver this assistance are one-time organizations that are disbanded when their mission finishes. The United States simply lacks the institutional means to rapidly train, equip, and mentor the full gamut of military, law enforcement, judicial, intelligence, and security institutions. Shifting some of our combat and law enforcement power (and the resources that are attached to them) to developing a *standing capacity* to build combat power and establish security forces for new allies would pay incredible dividends going forward.

In addition, the US needs a Civilian Security Assistance Agency, with standing personnel, resources, and facilities to quickly and decisively build law enforcement, judicial, and intelligence institutions in

struggling states. This could work alongside a newly empowered Defense Security Assistance Agency that commands a division worth of trainers and stores of equipment ready to be deployed to build capacity in proxies, allies, and friendly institutions.

In short, there is a resource, planning, and personnel gap between the imperative of helping failed and fragile states and the more traditional missions surrounding conventional big power conflict. Closing that gap will enhance US national security and prepare it for the more immediate challenges in a world with 65 million refugees fleeing governing dysfunction, violence, and rapidly declining order.

Conclusion—All Nation-Building Is Local

For the United States and others, whether to engage in support for nation-building is a choice, a choice that can justifiably be deflected based on the experiences of the past decades. But it is a choice that comes with consequences, and those consequences will often hit hard and without warning. If the US determines, as its major agencies and the congress suggest, to engage in nation-building, there is a healthy body of analysis that can now guide its actions in doing it better.

As a final thought, at the end of the day, all nation-building is local. Nobel Prize winner professor and author Roger Myerson, who has turned his considerable talents from economics to state-building, said at a conference in 2020 that "a state-building mission can maximize the chances for political stabilization and for long-term democratic development by promoting a balanced distribution of power between local and national political institutions, with some form of democratic accountability at each level." He called for the cultivation and protection of responsible local leaders in communities throughout the nation, who would work together in a democratic system of political networks that reach out to the entire population.[23]

Analyst Heather Selma Gregg similarly said that

> building or rebuilding a state requires more than developing the capacity of its government or security forces. State-building programs also need to foster and strengthen the popu-

23. Roger Myerson Remarks for University of Chicago Conference on Foreign Assistance for Political Development, May 15–16, 2020; Roger Myerson, "How to Prepare for State Building," *Prism* 7, no. 1, (July 2017), http://home.uchicago.edu/~rmyerson/research/prism2017.pdf.

> lation's sense of common destiny and the need for its various factions to work together to build a healthy, prosperous state. In other words, a state needs a population that coheres and supports the government and other state building institutions for it to flourish. This is national unity building.[24]

A recent example of a leader who understood this may have been Sultan Qaboos, the ruler of Oman who died in January 2020. Qaboos was hardly democratic in his methods, and he left much undone. But one prominent Omani nonetheless called him simply a true "nation-builder," who "took a place of tribal rivalries and a patchwork of regions and gave it a sense of nationhood."[25]

Whatever programs and plans and resources national or foreign governments throw into nation-building, they will not succeed unless they both take account of and serve to cohere a sense of national unity that resonates among citizens locally.

24. Heather Selma Gregg, *Building the Nation: Missed Opportunities in Afghanistan and Iraq* (Lincoln: Potomac Books, 2018), 6.

25. Brian Murphy, "Sultan Qaboos Bin Said, 79, Longtime Ruler Transformed Oman into a Regional Power Broker," *Washington Post* Obituary, January 12, 2020, C8.

The 1917 Houston Incident: Racism, Military Law, and a Crisis of National Security in the First World War*

Dru Brenner-Beck and John A. Haymond

The soldier is the Army. No army is better than
its soldiers. The Soldier is also a citizen.
—George S. Patton Jr.

Abstract

On the night of August 23, 1917, more than one hundred African-American soldiers of the 3rd Battalion, 24th Infantry Regiment seized their weapons and marched into the San Felipe district of the city of Houston. By dawn the next morning, seventeen people were dead. In the Army's view, it was the most serious incident of armed mutiny by American soldiers during the First World War. Allegations of rampant injustice inflamed public debate about the riot and its aftermath, especially after nineteen men were hanged following trials that were tainted by allegations of the inadequacy of the military justice system and racial bias. It also precipitated a national security crisis as it reinforced existing government suspicion of the loyalty of African-American soldiers and civilians. The irony was that the government itself created the crisis and exacerbated it by systemic racism and segregationist policies.

*This evaluation of the events in Houston on 23 August 1917 and the ensuing general courts-martial was researched and prepared by John A. Haymond, MSC, FRSH, MSG (Ret.), U.S. Army & Dru Brenner-Beck, J.D., LL.M, LTC (Ret), U.S. Army. Assistance was provided by the Law Department at the US Military Academy, the students in the Actual Innocence Clinic, and research librarians in the South Texas College of Law. This effort is supported by the NAACP, which has worked for justice for these soldiers since 1917. We would also like to thank the numerous volunteer research librarians, archivists, and researchers across the country, many of them retired military, who assisted us in researching during the COVID-19 pandemic.

A century later, the Houston Incident continues to generate controversy and renewed calls for belated justice. The record of the 1917 Houston Incident and the military trials that followed it is a story of violent racism, bigotry, oppression, systemic abuse of power, police brutality, and a legal process marred by allegations of unseemly haste and a lack of due process. This is much more than just military history—this is a social justice story that transcends the years. It resonates today for its issues of questions of racial inequity in the American military justice system and American society. This article is based on a petition written by the authors in 2020, a petition currently under review by the Secretary of the Army to possibly overturn the unjust results of these courts-martial. The full petition can be viewed at the website of the South Texas College of Law-Houston's special collection on the Houston Mutiny (https://bit.ly/2R3Unp3) and contains far greater detail of the deficiences of the trials that can be provided here.

When the United States declared war on Germany on April 6, 1917, its active Army consisted of only 126,000 soldiers,[1] 10,000 of whom were African-American troops belonging to the four segregated black regiments of the Regular Army—the 9th and 10th Cavalry and the 24th and 25th Infantry—and the various support branches.[2] Over the course of World War I, almost 400,000 African-Americans served in the Army, with approximately 367,710 of these entering through the Selective Draft Act which passed Congress immediately after the entry of the United States into the World War.[3]

On August 1, 1917, the Army approved a plan to create sixteen new black infantry regiments to absorb 45,000 of the newly drafted black soldiers, but three weeks after the violence at Houston on August 23, 1917, which we describe below, Secretary of War Newton Baker withdrew his approval of this plan, instead organizing only one black division (four regiments versus sixteen), and providing minimal train-

1. Jim Garamone, "World War I: Building the American Military," *U.S. Department of Defense News*, March 29, 2017, https://www.defense.gov/Explore/News/Article/Article/1134509/world-war-i-building-the-american-military/ (describing the "the U.S. Army [in April 1916 as] . . . a constabulary force of 127,151 soldiers.").

2. Emmett J. Scott, *Scott's Official History of the American Negro in the World War* (Washington: War Department, 1919), 32.

3. The Selective Service Act of 1917 or Selective Draft Act, Pub. L. 65–12, 40 Stat. 76, May 18, 1917; Joshua E. Kastenberg, *To Raise and Discipline an Army* (Dekalb: Northern Illinois University Press, 2017), 138.

ing in the United States before sending it overseas.[4] Thus, the events at Houston directly impacted the War Department's policies on the mustering of black soldiers, and served to buttress southern protests against the training and arming of large numbers of black Americans as the United States entered the World War.[5] Instead of the robust creation of sixteen black infantry regiments, the revised plan preserved only one division to serve as "a symbol of involvement in the war behind which black Americans, angered by the executions in Houston, could rally."[6] Thus, the violence of one night in Houston, sparked by racist abuse on the part of the Houston police, impacted the national security strategy of the United States in the First World War, and would continue to influence its decisions on the use of African-American soldiers through the Second World War. The national publicity over the violence of the Houston "Mutiny" reinforced the positions of racist politicians who opposed the conscription, arming, and training of the African-American population, and presented the Army with continuing challenges in its mobilization efforts as southern politicians opposed the use of training bases in the Jim Crow south to train African-American conscripts.[7] This strategic impact operated in the midst of a recognition by the Army that the service of African-American soldiers was key to a successful war effort, along with rising expectations of the black pop-

4. Bernard C. Nalty, *Strength for the Fight, A History of Black Americans in the Military* (New York: The Free Press, 1986), 109.

5. Nalty, *Strength for the Fight*, 108.

6. Nalty, *Strength for the Fight*, 108. Ultimately two African-American divisions were formed, the 92rd and 93rd, both of which served under French command, a reflection of official American segregation policies. The vast majority of the other black soldiers drafted into the war served in the labor battalions in the American Expeditionary Force (AEF). See generally Kastenberg, note 4, 142 ("Crowder concluded that because Baker had determined to create a whole division from African American soldiers to send to fight in France, these soldiers had to be confident that the administration of military justice was fairly conducted. Indeed, two divisions were ultimately created of African American soldiers, and although the majority of African American conscripts served as stevedores or in other non combat tasks, the two divisions, numbering roughly fifty thousand soldiers, participated in the major engagements of the war's final summer and fall.").

7. Kastenberg, *To Raise and Discipline an Army*, 102–103, 139, 282–283; C. Calvin Smith, "The Houston Riot of 1917, Revisited," *The Houston Review: History and Culture of the Gulf Coast* 13 (1991), 85 ("Black soldiers were not wanted in the South, because, as Senator James K. Vardman of Mississippi put it, 'whites are opposed to putting arrogant, strutting representatives of the black soldiery in every community.'").

ulation that by "demonstrating a willingness to fight for the United States, . . . wartime military service [was] a vehicle for the betterment of the entire race."[8] Nonetheless, the Army's response to the violence in Houston and its perceived failure to provide justice to the accused soldiers (widespread among the African-American population) affected the nation's ability to effectively mobilize and fed into racist resistance to military service by African-American citizens. Major General Enoch Crowder, the Army Judge Advocate and Provost Marshal General recognized that public perception of the equal application of military justice regardless of race was essential to good order and discipline and the willingness of the African-American population to support the war effort.[9] Contemporary debates on inequities in military justice only reinforce the importance of these earlier events,[10] making a renewed understanding of what occurred during the Houston "mutiny" and its ensuing courts-martial increasingly relevant in 2021.

I: The Unit and The Events[11]

8. Kastenberg, *To Raise and Discipline an Army*, 107; see also W. E. B. Du Bois, "Close Ranks," *The Crisis* 16 (July 1918), 111.

9. Kastenberg, *To Raise and Discipline an Army*, 142 (note 4), and 266 (The National Organization for the Advancement of Colored People, Senator William Calder and Congressman Adolph Sabath "lobbied Crowder to have the War Department publish results of trial [convicting white officer of assault of four African-American privates]. The secretary of the NAACP urged that publicity would be 'helpful in that there is so much discrimination against colored men, and that such publication would have a distinctly beneficial effect on colored people.'").

10. See, e.g., U.S. Government Accountability Office, *GAO-20-648T, MILITARY JUSTICE, DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities* (2020); Kyle Rempfer, "Army Starts 'Comprehensive' Look at Racial Disparity in Its Justice System," *The Army Times*, June 18, 2020; Hearing before the House Subcomm. on Mil. Personnel, "Racial Disparity in the Military Justice System—How to Fix the Culture," June 16, 2020, https://armedservices.house.gov/2020/6/subcommittee-on-military-personnel-hearing-racial-disparity-in-the-military-justice-system-how-to-fix-the-culture; Anna Mulrine Grobe, "Why Do Black Troops Face a Harsher Form of Military Justice?" *The Christian Science Monitor*, July 17, 2020, https://www.csmonitor.com/USA/Military/2020/0720/Why-do-Black-troops-face-a-harsher-form-of-military-justice.

11. The events are largely taken from the Records of Trial in *United States v. Nesbit et al.* (hereinafter "Nesbit ROT"), *United States v. Washington, et al.*; and *United States v. Tillman, et al.* (hereinafter "Tillman ROT"), South Texas College of Law Special Collections, https://digitalcollections.stcl.edu/digital/collection/p15568coll1. A short description of the 24th Infantry Regiment's history is available in the clemency petition available at https://nimj.org/topics/military-justicelaw/

One of the famed "Buffalo Soldier" regiments, the 24th Infantry was formed in Texas in 1869 by the consolidation of two of the original infantry regiments set aside for African-American soldiers following the Civil War. The unit served with distinction on the western frontier during the 1880s and 1890s in Texas, New Mexico, the Indian Territories, Utah and Wyoming. Six members of the unit were awarded the Medal of Honor during this period. In addition to the 9th and 10th Cavalry and 25th Infantry, the 24th Infantry deployed to Cuba in 1898, fought on the battlefields of El Caney and San Juan Hill, and nursed other soldiers stricken in the yellow fever epidemics that followed. Between 1899 and 1915 the Regiment completed three tours of duty in the Philippines, assisting in the defeat of the Philippine Insurrection and the ensuing pacification of the islands. During this time, their stateside assignments included postings to Utah, Wyoming, Washington, Montana, and Alaska. In 1916 the 24th Infantry deployed to the US–Mexican border to join the Punitive Expedition led by Brigadier General John Pershing against the Mexican guerrilla forces of Pancho Villa after Villa's attack on Columbus, New Mexico. Subsequently deployed in August 1917 on a seven-week mission to guard the construction of Camp Logan, the 3rd Battalion of the 24th Regiment would face a far more potent enemy: Houston, the "nest of prejudice" that served as Jim Crow's home town.

The Army was already aware of the virulently racist attitudes prevalent in Houston. Black soldiers of the US Army were particularly resented by white Texans, and between 1900 and 1917 at least five major incidents of racially motivated violence involving black soldiers occurred in the Texas cities of El Paso, Del Rio, San Antonio, Brownsville, and Waco. When ordered to Houston, Lieutenant Colonel William Newman, the commanding officer of the 3rd Battalion (who was reassigned to a new assignment shortly after arrival in Houston), tried to have the Texas assignment changed. Having personal experience with the dangers his soldiers faced from the Jim Crow authorities of south Texas, he reported, "I had already had an unfortunate experience when I was in command of two companies of the 24th Infantry at Del Rio, Texas, April 1916, when a colored soldier was killed by a Texas Ranger for no other reason than that he was a colored man; that it angered Texans to

houston-mutiny-clemency/.

see colored men in the uniform of a soldier.[12]

Although this hostility was well known at the War Department, the Army did nothing to insist that its soldiers—the 653 men of the 3rd Battalion, 24th Infantry Regiment—be recognized as members of the US military who should be accorded the respect due their uniform. Compounding the problem, the Army sent the battalion's most senior non-commissioned officers to officer candidate school at Des Moines, leaving the battalion without its backbone of leadership.[13] It did not take long for the conflict between the pervasive racism of the Jim Crow south and the pride of soldiers serving their nation to reach the point of implosion on the night of August 23, 1917; approximately 100 of these soldiers seized weapons and ammunition, disobeyed an earlier order to remain in camp, and marched into the San Felipe district of the city. Following the orders of a senior non-commissioned officer, these soldiers marched out to engage what they believed was a mob advancing to attack their camp. That they reacted to this threat is unsurprising considering they had endured weeks of racist provocations and physical violence, particularly at the hands of Houston's notoriously brutal police force. Facing threats that one of their unit would be lynched before the unit left Houston, events had come to a head earlier that day when two policemen shot at, beat, and arrested one of the battalion's non-commissioned officers, Corporal Charles Baltimore, who was acting in his official capacity as a duly appointed and conspicuously identified provost. Even after Baltimore was returned alive but bloodied to camp, the increasing anger and fear resulting from this latest episode of racist violence fed into the tension that gripped the 3rd Battalion camp that dark rainy August night.

At the 6 p.m. retreat formation, the newly appointed battalion commander, Major Kneeland S. Snow, ordered that all members of the unit were to remain in camp that evening. After 8 p.m., when acting First Sergeant Vida Henry informed Snow of increasing unrest in the unit, Snow ordered that the men to assemble and turn their weapons in to

12. Smith, "The Houston Riot of 1917, Revisited," note 8, at 87–88, citing "Investigation into the Disciplinary Conditions in 3rd Battalion, 24th Infantry, While on Duty in Houston, Texas, July 26 to August 25, 1917." Colonel George O. Cress, October 5, 1917. Record Group 407, Records of the Adjutant General's Office, 1917–1925, Box 1277, Folder 4, National Archives.

13. Robert V. Haynes, *A Night of Violence, The Houston Riot of 1917* (Baton Rouge: Louisiana State University Press, 1976), 36.

the supply tents. Interrupting the completion of this process—Corporal Baltimore was in the process of handing in his rifle to the I Company supply tent—a sudden cry that a mob was coming was followed by gunfire. In the resulting panic soldiers rushed the supply tents to retrieve their weapons. Non-commissioned officers established hasty defensive positions within the camp, distributed ammunition to defend the camp from the perceived attack, and protected their officers as a twenty to thirty minute outbreak of gunfire ensued. During this outbreak, one soldier was mortally wounded by friendly fire. Captain Bartlett James, the commander of L Company, established a skirmish line in the company street, and with the help of his non-commissioned officers retained control of his company. In contrast, Major Snow abandoned his battalion in a panic, fled toward town and left his company grade officers to attempt to regain control of the situation.

In the absence of officer leadership, as the shooting subsided, Sergeant Henry, the I Company First Sergeant, ordered his unit to fall in. All most all soldiers within earshot complied. Believing that the unit was under attack by a mob, Sergeant Henry ensured that his troops had water and ammunition and then, in columns of fours, marched his unit from the camp toward the San Felipe district, the old black freeman town district of Houston. One element of the group attempted to induce L Company to join the column moving to meet the threat to the camp, but because of Captain James' leadership, his company stayed within the bounds to their camp and prepared to defend it.

Some non-commissioned officers argued that the better tactical decision was to defend the camp in situ. However, Sergeant Henry, well aware of the deadly threat of racist mobs, instead chose to march out to meet the threat directly. The soldiers who left camp under his leadership believed they were advancing to defend against an external attack. The actual violence that night lasted approximately three hours, during which time the soldiers fired at several houses as they passed (apparently to shoot out porch lights to give themselves tactical concealment in the darkness), and shot at several vehicles that approached them in the dark streets. In one of these cases, they fired on a vehicle occupied by men in uniform whom they mistook for policemen. In that incident an Army National Guard officer, Captain James Mattes, was killed, and an Army enlisted man was mortally wounded. Shortly afterward, the soldiers abandoned their march and attempted to return

to camp. The Army later determined that six of the sixteen casualties of that night were killed by random gunfire from the initial gunfire in camp prior to the column marching out toward Houston. The concept of an advancing armed white mob was far from being a figment of the soldiers' imagination—martial law was declared in Houston on 24 August, in large measure to prevent armed mobs that formed the night of 23 August with the stated intention of attacking the 3rd Battalion's camp. The next day, the entire battalion—652 men, including those whom the Army knew had remained in camp—was disarmed, and loaded on trains to Columbus, New Mexico.

II: The Rush to Judgment and Procedural Failures

As soon as the 3rd Battalion arrived in Columbus, the Army's flawed quest for accountability commenced. A Board of Investigation began its inquiry and interrogated all the soldiers. Those men against whom charges were preferred were separated and placed under close confinement. A prosecution team headed by Colonel John A. Hull, a senior judge advocate appointed to try the case, joined them by mid-September at Fort Bliss, Texas, where the soldiers accused of mutiny were held. In violation of Army regulation and law, this board threatened soldiers with execution if they did not cooperate. Less than two weeks before trial commenced, Major Harry S. Grier was appointed to represent all 63 accused soldiers in the first of three courts-martial. Grier was not an attorney, nor have we identified any evidence of extensive trial experience in his background.

Fundamental to the American concept of due process of law are three precepts: that the defendant shall be presumed innocent until proven guilty; that the burden of proving the guilt of the defendant falls upon the prosecution; and that every defendant is entitled to an individual determination of guilt and that the prosecution must prove guilt beyond a reasonable doubt. These requirements were also fundamental to the military justice system of 1917. The three courts-martial convened to try a total of 118 soldiers accused of offenses in the Houston Incident were required to weigh the evidence presented on the most serious crimes that can be charged under both military and civilian law—mutiny, willful disobedience of orders, murder, and assault with the intent to commit murder. In each of these courts-martial, the combination of the nature of the charges and the mode of proof chosen

by the prosecution resulted in a reversal of the burden of proof and erasure of the presumption of innocence for the majority of convicted soldiers. Equally as concerning was that the Army itself, in the persons of the officers who served as the convening authorities, prosecutors, and judicial reviewers in the process, did not uphold the standards of justice to which all soldiers are entitled by American military law.

Although the proceedings largely complied with the requirements of the 1917 Manual for Courts-Martial (MCM or Manual),[14] an in-depth review of the three trials discloses significant violations of military law in the investigation and prosecution of the cases. Although a true assessment of the effect of these faults on the fairness of the trial is difficult to fully resolve more than a century later, their existence raises grave doubts that justice or fairness were achieved in the trials. These failures fall into three categories: (1) processes that, although legal under the law in 1917, nonetheless produce a visceral conclusion that justice failed; (2) undeniable defects that arise from violations of the laws governing courts-martial by the prosecution; and (3) fundamental flaws that followed the courts-martial—due process flaws arising from the denial of fair consideration of the soldiers' clemency petitions to which they were entitled under law and regulation, and the Army's failure to seek complete accountability for the events in Houston.

Of these visceral faults, the rush to try 118 soldiers of the 3rd Battalion in joint trials, the most troubling are these: the immediate execution of the first 13 soldiers sentenced to death without any outside review or the opportunity to seek clemency,[15] and the representation of all soldiers by a single officer. Although technically legal under military law circa 1917, these factors were undeniably problematic and continue to resonate, producing fundamental doubts that such trials led to a just result. This conclusion is reinforced when viewed in light of the racial violence that underlay the events of the night of August 23, 1917.

14. U.S. War Department, *Manual for Courts-Martial, 1917* (hereinafter "1917 MCM," "MCM" or "Manual").

15. Modern military law recognizes that "the post-trial review and the action of the convening authority together represent an integral first step in an accused's climb up the appellate ladder. This step is oftentimes the most critical of all for an accused because of the convening authority's broad powers which are not enjoyed by boards of review. . . . It is while the case is at the convening authority level that the accused stands the greatest chance of being relieved from the consequences of a harsh finding or a severe sentence." *United States v Wilson*, 26 C.M.R. 3, 6 (C.M.A. 1958).

Compounding the doubts raised by these fundamental defects are several instances of prosecutorial misconduct in the investigation and prosecution of the cases which violated either the letter or spirit of the prevailing law. These included illegalities in the investigation of the case by the Army that were accepted, directed, or furthered by the prosecuting judge advocates; the failure to prove the specific intent required for mutiny under military law for the vast majority of the accused soldiers; a reversal of the burden of proof requiring the accused soldiers to prove that they were not part of the mutiny; and finally, the prosecutor's obstruction of the presentation of matters in extenuation and mitigation. Furthermore, the record discloses that the Army did not meet its own standards when it failed to both review and act upon the soldiers' clemency requests in good faith and to apply its justice system in an even-handed way to ensure accountability for all those men who were actually responsible for the Houston violence.

First, all 118 court-martialed soldiers were represented by a single officer, Major Harry S. Grier, who although trained in the law, was not an attorney. Under the 1917 MCM, it was accepted practice for defendants, even in a general courts-martial, to be represented by an officer (not required to be a lawyer) appointed to present their case, and although defendants had the right to be represented by civilian lawyers at their own expense, civilian counsel was rare in courts-martial. Nonetheless, because it was common for a defendant to not have formal legal counsel, the MCM required the judge advocate (the prosecutor) presenting the case to protect the rights of the soldier-defendants, particularly as to their rights against self-incrimination.[16] Because the 118 soldiers in the Houston courts-martial were represented by Major Grier, the responsibilities of the prosecutor to protect the rights of the defendant were diminished, but not eliminated.[17] Military law required the

16. For example in trials where the soldier was not represented, the Manual required the Judge Advocate to inform the soldier of the accusations against him; of his right to have counsel, of his right to testify on his own behalf, and to have a copy of the charges. 1917 MCM, ¶ 96.

17. William Winthrop, *Military Law and Precedents*, 2nd ed.; rev. ed. (Washington: Government Printing Office, 1920), 199 ("where the accused is provided with capable counsel, . . . the relation of the judge advocate toward him is so far modified that the former may be required, in the interests of justice, to assume a controversial if not an aggressive attitude. It will then indeed be his duty to resist the introduction by the accused of objectionable testimony, to contest any inadmissible pleas or unreasonable motion made by him, and generally, while courteous in his

prosecutor to act as a minister of justice, to include "facilitat[ing] the accused in making such defence or offering such matter of extenuation as may exist in the case."[18] The judge advocate was required to focus on the attainment of justice, not mere conviction.[19]

Because of the rush to trial in the aftermath of the events in Houston, Grier was required to investigate and try three successive courts-martial with no investigative support and minimal time to prepare, with the first two trials of 78 soldiers concluding after less than 34 days of proceedings.[20] Representing all 63 soldiers in the first trial, United States v. Nesbit, et al., Grier was given only two weeks to prepare and consult with the accused soldiers and earn their trust—a formidable task. Facing him was a prosecution team of two experienced criminal lawyers, judge advocates Colonel John A. Hull and Major Dudley V. Sutphin, who had been detailed to this case at the request of Major General John Ruckman, the Southern Department Commander and Convening Authority.[21] In its preparation of the case from 24 September onwards, the prosecution worked closely with the ongoing regimental Board of

treatment of him and strictly fair and considerate of his rights, to maintain with the zeal and energy of a champion the cause of the United States."); Winthrop, *Military Law and Precedents*, 294.

18. Winthrop, *Military Law and Precedents*, note 18 at 193; note 18, at 285.

19. Canon 5 of the 1908 American Bar Association Canon of Professional Ethics echoed this requirement: "The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible." See 1908 *American Bar Association Canon of Professional Ethics* (hereinafter "1908 ABA Canon of Professional Ethics"), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf.

20. Although a letter from the Secretary of War to the House Military Affairs Committee claims that Grier was provided "clerical" support, the historical record is absent of the provision of any other support to Major Grier's defense. And to the contrary, Major Grier's investigative efforts appeared limited to sending written requests to the units of possible witnesses in order to seek evidence for use in the trials.

21. Tellingly, in the Army of 1917, the Judge Advocate General's Corps changed drastically from April 1917 to December 1918, growing from seventeen officers on April 6, 1917, to 426 officers in December 1918. William F. Fratcher, "Notes on the History of the Judge Advocate General's Department, 1775–1941, *The Judge Advocate General's Journal* 11 (June 15, 1944), 1. At the time of the Houston courts-martial, the Manual specifically stated that any judge advocate was unavailable to serve as counsel for a defendant. See MCM, ¶ 108.

Investigation at Fort Bliss. Extensive trial testimony raised significant questions as to whether the officers who conducted this investigation complied with military law under the 1917 Articles of War (A.W.), particularly as to their methods in questioning the accused soldiers when they were in detention at Fort Bliss.

The first trial, *United States v. Nesbit, et al.*, began on November 1, 1917, and concluded 30 days later. The review of the record of trial was accomplished in only three days, and on December 10, 1917, Major General Ruckman rejected the court-martial panel's clemency recommendation for one soldier, approved all adjudged findings and sentences, and ordered the immediate execution of the thirteen death sentences. Two additional trials followed. On December 17, 1917, the second trial, *United States v Washington, et al.*, convened to try the case of 15 additional accused mutineers. That court was in session for five days and produced 10 sentences of imprisonment and five death sentences. The third, *United States v. Tillman, et al.*, followed on 18 February 1918, to try an additional 40 soldiers. That trial resulted in dismissal of charges against 1 defendant (on grounds of insanity), two acquittals, 26 prison sentences, and 11 death sentences. Because of the national outcry in the aftermath of the execution of the first thirteen condemned soldiers with no outside review, the Army had implemented General Order No. 7 in January 1918, requiring that all death sentences be reviewed by the president. Of the 16 additional death sentences adjudged, President Wilson approved only six after receiving hundreds of letters supporting clemency.

The Trials

One week prior to the first trial, Captain Bartlett James, the L Company commander who was a key fact witness on the events in camp on the night of August 23, 1917, was found dead in his quarters, depriving the defendants of his testimony on their behalf. Although the Army determined that James' death was by suicide, that conclusion is subject to considerable dispute. As a result of James' death, Captain Haig Shekerjian, who had been detailed as assistant defense counsel for the accused soldiers, recused himself after being designated as a prosecution witness, leaving Grier as the sole counsel representing all 63 defendants. Grier had no independent investigative support to prepare for trial or investigate the events of August 23rd and he was required to immediately take up the representation of an additional 15 accused

soldiers in *United States v. Washington, et al*., seventeen days after the completion of the first trial, only one week after the first thirteen soldiers were executed at dawn on December 11, 1917. And the third court-martial, *United States v. Tilman, et al*., was delayed only until February 18, 1918, to allow for the prosecution to draft charges against an additional 40 soldiers in a trial that commenced approximately seven weeks after completion of the second trial.

It is still uncertain why Grier did not seek a delay of the trials to better prepare his defense—the inadequacy of two weeks to prepare for a capital murder trial of 63 joint defendants is self-apparent—and the omission is even more puzzling given the recognition that continuances should be granted liberally whenever necessary to protect the substantial rights of an accused soldier.[22] Perhaps he assessed that because the high ranking officers who comprised the specially requested panel were available only because they were in transit between pressing war time assignments, such a request for delay would probably not have been favorably considered. Even so, he was ethically obligated to pursue every possible benefit for his clients and any reasonable assessment of the circumstances would have required such a request. The inadequacy of the defense to both simultaneously investigate and try three on-going courts-martial involving 118 defendants, with the first two trials of 88 men being completed in just 58 calendar days—to include the Christmas holidays—needs no explanation. Although joinder was permitted under military law for joint offenses such as mutiny,[23] one

22. See *Hearings on S. 3191, Revision of the Articles of War*, S. Rpt. No. 130, Hearing before the S. Subcomm. on Milit. Aff., 64th Cong. 1st Sess. 47 (1916) (In February 1916, MG Enoch Crowder testified before the Senate that continuances are granted liberally in military trials, "for we are a little bit chary of denying applications of an accused. There have been many instances where the reviewing authorities set aside proceedings, instances where it is thought the substantial rights of an accused have not been preserved."), https://www.loc.gov/rr/frd/Military_Law/pdf/RAW-vol1.pdf; Articles of War (A.W.) 20, reprinted in 1917 MCM ("Continuances- A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just."); 1896 Winthrop, *Military Law and Precedents*, note 18, at 358 n. 2 ("A refusal by a court to grant a continuance therefor is exhibited, while it will not affect the legal validity of the proceedings, will, if the accused appears to have been thus prejudiced in his defence, or to have otherwise suffered injustice, 'properly constitute good ground for disapproving the sentence, or for mitigating or partially remitting the punishment.'") (quoting *The Digest of the Opinions of the Judge Advocate General*, 109 (1880–1895)).

23. Winthrop (1896), note 18 at 208–09; Winthrop (1920) note 18, at 145–46

counsel could never adequately defend the individual interests of 63 defendants. The impossibility of such a task was further compounded by the deleterious impact of the prosecution's theory of the case and the resulting imposition on each defendant to individually show that he was not a participant in the mutiny, a clear reversal of the burden of proof required by military law. It is also certain that representing 63 individuals with far different roles in the events of August 23rd would create significant conflicts of interest for a single counsel.

Equally concerning, the historical record discloses a significant conflict of interest on the part of Major Grier that raises substantial questions about his commitment to his clients. On January 11, 1918, in the break between the completion of the second and the beginning of the third trial, Colonel Hull, the prosecutor in the first two trials, wrote to the Southern Department Judge Advocate, Colonel George Dunn:

> *I intend to make a recommendation that a strong letter be given to Major Grier. He is one of the ablest, most conscientious and high classed officers of his rank in the Service. He never loses sight of his obligations to the Government, and wherever he may be placed, he will bring to the discharge of his duties, experience, a right discretion and a pleasing personality. You of course appreciate fully the opportunities he had as counsel to raise race questions and so forth, which, while they might not have helped his clients, certainly would not have helped the interests of the service.*[24]

Major Grier kept an extract of this letter, initialed by Hull, in the scrapbook that he created on the Houston courts-martial. This is not to suggest that Grier was complicit with the prosecution, but it does raise serious concerns about Grier's independence. As already stated, though Grier was trained in law he was not an attorney. Although he may not have been technically subject to the ethical requirements of zealous advocacy or loyalty to his clients,[25] the Manual imposed an

("Whether in-a case in which there may properly be a joinder, the accused shall be charged and tried jointly or separately, is a question of discretion, to be determined upon considerations of convenience and expediency, and in view of the exigencies of the service, by the commander authorized to order the court.").

24. Scrapbook of Harry S. Grier, The Harry S. Grier and James L. Grier papers, 1906–1944, US Army Heritage and Education Center, Carlisle Penn. (copy available from authors) (hereinafter "Grier Scrapbook").

25. In 1908, the American Bar Association adopted its first Canon of Professional Ethics, which articulated the duties of lawyers recognized that a lawyer, having undertaken the defense of a criminal case, "is bound by all fair and

identical requirement on any officer fulfilling his role:

> *An officer acting as counsel before a general or special court-martial should perform such duties as usually devolve upon the counsel for a defendant before civil courts in criminal cases. He should guard the interests of the accused by all honorable and legitimate means known to the law, but should not obstruct the proceedings with frivolous and manifestly useless objections or discussions.*[26]

His dedication to the Army as an institution, as recognized by Colonel Hull, created fundamental conflicts for Grier as a non-attorney representing these 118 soldiers in high-profile courts-martial garnering national attention, conflicts not offset in his case by the ethical requirement of the legal profession. His failure to make an issue of the racial hostility experienced by these soldiers in Houston deprived them of the mitigating evidence recognized by the MCM in cases where crimes were "committed under some special stress."[27] Given the Army's fore-

honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty without due process of law. See Canon 5, 1908, *ABA Canon of Professional Ethics*, *supra* note 20. Canon 6 stated that "it is unprofessional to represent conflicting interests. . . . The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences." Canon 15 states that "the lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' tor be withheld from him, save by the rules of la, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. *Id.*

26. MCM ¶ 109. This is a long standing requirement in military law. See Howland, *Digest of Opinions of the Judge Advocate General* (Washington: US Government Printing Office, 1912), 505 ("VG4 By use of the term counsel in General Order No. 29, Adjutant General's Office, 1890, without qualification, it was undoubtedly intended that officers detailed as such should perform for an accused all those duties which usually devolve upon counsel for defendants before civil courts of criminal jurisdiction, in so far as such duties are apposite to the procedure of military courts. It would be proper for an officer so detailed to invoke every defense which the law and facts justify, without regard to his own opinion as to the guilt or innocence of the accused. Military law does not any more than the civil assume to punish all wrongdoing, but only such as can be ascertained by the methods of justice which the law and customs of the service prescribe.").

27. *Manual for Courts-Martial*, ¶ 340; see also "Echoes from Houston," *The New York Age*, New York, (December 22, 1917), 4, https://www.newspapers.com/clip/3348330/1917-captain-bartlett-james/. The Houston Police Department of the

knowledge of the virulent racism its soldiers faced in Texas, this defense was particularly relevant and compelling, and one to which the soldiers were entitled under military law.[28] Why Grier did not press this point is an unanswered question.

Further demonstrating disloyalty to his clients, on the second day of the first trial Grier made a public statement to reporters "that the testimony of Major Snow, unless rebutted, established the fact that a mutiny occurred, although the participants were not identified."[29] Such a public statement of the ultimate issue to be determined by the court-martial to the detriment of his clients clearly violated the duties imposed upon him by the MCM. Because his statement was made in the public press it was likely to affect the adjudication of the court-martial panel. This type of impermissible public statement was exacerbated by other public statements from Army commanders that further negatively affected the presumption of innocence to which the soldiers were entitled by law. Major General George Bell Jr. was the commander of the 33rd Division, the command under which the 3rd Battalion operated when deployed to Houston. Referring to the investigations of the violence in Houston in his first statement after officially taking command on August 25, 1917, Bell told the *Denver Post*: "There is but one punishment for mutiny; it is death."[30] These comments were improper, ad-

time was relatively new and inexperienced at that time—so reliance on "community" [mob] for enforcement was not uncommon, and soldiers' fear of mob violence was rooted in contemporary fact.

28. Five separate incidents of racial violence involving black soldiers occurred in Texas in the 17 years before Houston: El Paso, 7 February 1900; Brownsville, 12–13 August 1906; San Antonio, April 1910; Del Rio, 8 April 1916; and Waco, 23–24 July 1917. Each of these incidents were cited in the Annual Reports submitted to the War Department every year. Lieutenant Colonel William Newman, who commanded the 3rd Battalion when it was first posted to Houston, told the Army Inspector General, "When I took my battalion to Houston, I knew that the Texan idea of how a colored man should be treated was just the opposite of what these 24th Infantrymen had been used to." See statement of William Newman, September 20, 1917. Records of the Inspector General, File 333.9, RG 159, FRC.

29. Grier Scrapbook, note 25; "Negro Soldiers on Trial for Mutiny on Houston Aug. 23," *Houston Daily Post*, November 2, 1917.

30. Grier Scrapbook, note 25, *The Denver Post*, August 25, 1917: "The state of Texas does not intend to allow the negro rioters to escape punishment. In the information filed by Mr. Crooker [Harris Co. DA] the thirty-four negroes are accused of being responsible for the murder of seventeen persons, four of them policemen. Texas officers will ask the release of other negroes that they may be

versely affected the presumption of innocence to which the soldiers were entitled, and were prejudicial to the ability of the ensuing courts-martial to impartially try the case or adjudge an appropriate sentence.

The racial conflicts that contributed to the outbreak of violence in Houston were clearly relevant to material issues before the courts-martial, and were far from frivolous or manifestly useless. They were specifically relevant to the charge of mutiny and to matters in extenuation and mitigation, as will be discussed below. The long history of abuse experienced by black soldiers in Texas were well known to the soldiers of the 3rd Battalion, and to Army leadership. This violence-filled history was reinforced by escalating conflicts with local citizens and police, threats that a 3rd Battalion soldier would be lynched, including direct threats made by local workers against the soldiers on guard duty in reaction to which the non-commissioned officers implemented additional security measures, and rumors conveyed by the local Houston black population to the soldiers that violence was likely against the soldiers of the 3rd Battalion. One of the defendants later described the foreboding atmosphere leading up to 23 August, saying, "The feeling was running high against us and one could almost feel it in the air."[31] Over the next two decades the convicted soldiers consistently presented their explanations of the events leading up to the night of August 23, 1917, in petitions for clemency presented to the Army as authorized under the Manual and regulations. Yet, Major Grier only presented an anodized, curtailed version in a prearranged agreement with Colonel Hull, the prosecuting Judge Advocate.[32]

The uncontested evidence presented at trial shows that at approximately 8 p.m. on the rainy night of August 23, after Sergeant Vida Henry, I Company First Sergeant, informed Major Snow that some men were stealing ammunition, Snow ordered the unit to fall in. A de-

tried for murder in the civil courts here. . . . With the arrival of Maj. Gen. George Bell Jr. investigation of the shooting was scheduled to begin. 'There is but one punishment for mutiny; it is death,' Major General George Bell Jr. said today. It was his first statement after officially taking command of the Thirty-third army division, in which the fatal race riots and mutiny of negro troops occurred.").

31. James Robert Hawkins, "How Houston Citizens Started Bloody Riot: True Story Told for First Time by 24th Infantryman," *The Chicago Defender*, National Edition, March 17, 1934, A9 (copy at Annex C); Claude Barnett, "Houston Riot Prisoners Tell Their Own Story," *The Chicago Defender*, National Edition, January 26, 1918, A1, A11.

32. Nesbit ROT, note 12, at 8–13.

tail was ordered to collect the arms in each company while the soldiers remained in formation in their company streets. The details worked to the north end of the company street when a shot rang out, causing the soldiers to drop to the ground or seek cover. Someone shouted that a mob was coming and soldiers rushed the supply tents in panic to seize their weapons, and unrestrained firing erupted and continued for nearly 20–30 minutes. Although the soldiers' belief in an approaching mob was ridiculed by the prosecution during trial, the pattern of race violence prevalent in Texas, the gruesome race massacre in East St. Louis that had occurred only seven weeks before, and killings of black soldiers in Texas in the previous 16 years were all relevant evidence of the reasonableness of the 3rd Battalion's belief that they were under attack.[33] The evidence also conclusively establishes that in the midst of the confusion and unrestrained firing, the 3rd Battalion's non-commissioned officers formed hasty defensive lines within the camp in response to what they believed was a viable threat,[34] and finally that Sergeant Henry, in the absence of most of the officers of the Battalion and I Company (Major Snow had abandoned his post and fled from the camp as the initial firing commenced), ordered I Company to fall in to march out to meet what they believed was an advancing mob. In this context, a defense counsel who placed the interests of the Army over that of the accused soldiers, failed to live up to the requirements of military law under the 1917 MCM, a failure made even more chilling in the defense of capital charges.

Second, the convening authority, Major General Ruckman, rushed

33. Both the Army Military Intelligence Bureau and the precursor to the Federal Bureau of Investigation were well aware of the contemporaneous reports on this massacre. Copies of Ida B. Wells' article on the East St. Louis massacre were included within the files of these two organizations as they monitored ongoing race violence and its effect on the war effort. See Black Studies Research Sources, Microfilms from Major Archival and Manuscript Collections, August Meier and Elliott Rudwick (General Eds), Federal Surveillance of Afro-Americans, (1917–1925) Reel 19, National Archives and Records Administration, RG165 War Department: General and Special Staffs- Military Intelligence Division; File 0423Casefile 10218-60: Race Riots, East St. Louis, Illinois, Ida B. Wells-Barnett, "The East St. Louis Massacre," 1917–1918, 24 pp. (hereinafter "Federal Surveillance Collection").

34. Nesbit ROT, note 12, at 1301-35. The soldiers of the 3rd Battalion were well aware of the violence of the St. Louis race riot earlier that summer, and Sergeant Henry and the unit's chaplain's assistant George Singleton had collected relief funds for the victims and written to The Crisis on the Battalion's efforts. *The Crisis* (October 1917) 14, 284, 307–09.

the investigation, trials, and executions in the Houston cases, and the Army approved his actions. Capital charges were preferred in the *Nesbit* case on 30 October and trial commenced the following day. The trial ended on November 30, 1917, after 29 days of proceedings. Although the Southern Department's Judge Advocate, Colonel George Dunn, claimed he reviewed the 2169-page transcript as the trial proceeded, he actually detailed a subordinate lawyer "from civil life" in his office to conduct the daily review.[35] Dunn's final legal review was completed and forwarded to the convening authority for action on December 3, 1917. On December 10, 1917, Major General Ruckman rejected the panel's clemency recommendation for one soldier, approved all findings and sentences adjudged by the court-martial, and ordered the approved death sentences for the thirteen soldiers executed. As the sun rose the next morning at 0717, the thirteen soldiers—Sergeant William Nesbit, Corporal Larnon J. Brown, Corporal James Wheatley, Corporal Jesse Moore, Corporal Charles W. Baltimore, Private First Class William Breckenridge, Private First Class Thomas C. Hawkins, Private First Class Carlos Snodgrass, Private Ira B. Davis, Private James Divins, Private Frank Johnson, Private Riley W. Young, and Private Pat McWhorter—a group that included every non-commissioned officer among the original 63 defendants, were executed on a hastily constructed gallows by the bank of Salado Creek. Because the country was then in a legal state of war, Ruckman was not required to forward the record

35. Hearings, Subcomm. of the S. Comm. on Mil. Aff., 66th Cong. 1st Sess, on S. 64: "A Bill to Establish Military Justice" (1919), Appendix, (hereinafter "Hearings Appendix on S. 64) 1124–1126 (Testimony of Colonel John A. Hull) (Colonel Hull testifies that a copy of the daily evidence was "given to the judge advocate of the Southern Department, and a copy was sent to the Judge Advocate General [in Washington], . . . Col. Dunn, the judge advocate of the Southern Department, detailed an assistant of his, a lawyer from civilian life, to review this case, and this officer had no other function except to carry on a current review of the case as the case was tried. . . . I gave to Col. Dunn, informally a copy of the findings and sentence at the same time I was entering them in the record, so his review could be brought up to date."), https://www.loc.gov/rr/frd/Military_Law/pdf/appendix.pdf. Thus, rather than a senior judge advocate with experience in military law conducting this "on-going" review as had been conveyed to Congress and the American public, a more junior lawyer from "civilian life" did the actual review, It is further disturbing that Major General Ruckman in his public January 1919 dispute with the President of the American Bar Association falsely asserted that he conducted this daily review. "The Ruckman Defends Texas Hangings," *The Boston Globe*, January 5, 1919, 2.

of proceedings to the President for confirmation of the death sentences. On his signature alone, and without any external review, the thirteen soldiers were executed. The men were given no opportunity to petition for clemency, or even to say goodbye to their families. Although authorized by the Articles of War, this rush to execution was not mandated; Article 51 of the MCM authorized Ruckman to suspend execution of the sentence "until the pleasure of the President shall be known."[36] The provisions for hasty executions was never intended to operate outside a theater of war, and certainly not within the domestic boundaries of the United States. Ruckman's reasons for carrying out the death sentences so quickly and under such secrecy are still unclear.[37]

This abuse of military law led Lieutenant Colonel Samuel Ansell to write a December 17, 1917, letter to The Judge Advocate General, castigating General Ruckman and Colonel Dunn:

> *Subject: Evidence of inefficiency of Maj . Gen. John W. Ruckman, commanding the Southern Department, headquarters at San Antonio, Tex., and of Col. George M. Dunn. Judge Advocate General's Department, the judge advocate upon the staff of Gen. Ruckman. . . .*
> *1. I feel it my duty to call to your attention what I conceive to be evidence of the incompetency of the two officers of the Army who are the subject of this memorandum with the intention and purpose that these views be brought by you to the attention of the Chief of Staff and the Secretary of War. . . .*
> *3. Yesterday we were apprised, through the public press and for the first time, that Gen. Ruckman had proceeded summarily to execute the sentences of death in the case of 13 negro soldiers recently tried in his department. I shall not allude to this case further than to say that, under the circumstances surrounding this case which were such*

36. A. W. 51 (1917) reprinted in 1917 MCM; MCM ¶ 391.

37. But see Kastenberg, *To Raise and Discipline an Army*, note 4, at 328 (Discussing May 1919 advice given by Colonel George Dunn to Army Chief of Staff Peyton March that the Army search all "negro soldiers" before they embarked from France to return to the United States, "March, moreover, should have realized that it was not the first occasion on which Dunn accused African Americans of disloyalty. Following the "Houston Riot" trials, he urged General Ruckman to quickly approve the verdicts and death sentences in order to stem a planned 'negro uprising, formented by the IWW and negro subversives.' Crowder and Mayes concluded that given that DuBois and other leading African Americans criticized the [24th Infantry Regiment] soldiers' conduct, Dunn's advice to Ruckman in 1917 was baseless as well.").

> *as to reveal themselves in all their bearings to a man of ordinary prudence and care, a man possessing the poise and sanity of judgment that should be necessary concomitants of the rank which this officer holds, could, not have summarily carried into execution those sentences. Under the circumstances of this case the action taken by this commander was such a gross abuse of power as justly to merit the forfeiture of his commission.*
> *4. I must assume that this general officer has sought and acted upon the advice of his judge advocate, Col. Dunn, and that this officer therefor has, in the same degree with Gen. Ruckman, manifested his incompetence at a critical time.*[38]

Compounding these fundamental defects are several flagrant instances of prosecutorial misconduct in the investigation and prosecution of the case which violated either the letter or spirit of the prevailing law. The records of the three courts-martial prove that the rights of the soldiers being held in confinement pending trial were not respected by the Board of Investigation appointed to determine the facts of the events of August 23, 1917, or by the two Judge Advocate officers appointed to prosecute the cases as they acted to coordinate the efforts of the investigatory Board. Military law clearly prohibited involuntary confessions from being received in evidence at a court-martial, and confessions, if voluntary, were admissible against only an accused or accomplice. Because of the nature of the mutiny charge, incriminating statements by an accomplice could be received against the remaining defendants. Despite significant evidence that soldiers of the 3rd Battalion were threatened by the Board to obtain evidence for trial, the two judge advocates prosecuting the courts-martial relied heavily on witnesses pressured to turn state's evidence as a result of the Board's threats.

Coerced and devious interrogations violate military law. Immediately following the mutiny, the Army commenced two regimental Boards of Investigation on August 24th as the entire 3rd Battalion, 24th Infantry Regiment was disarmed and loaded on trains out of Houston under guard, despite the Army's knowledge that less than a quarter of the 653 men had potentially been involved in the events of 23 August. Upon arrival in Columbus, New Mexico, on 27 August, the two boards were replaced by a single regimental Board of Investigation consisting of

38. Hearings Before the S. Subcomm. on Milit. Aff, *Establishment of Military Justice, Proposed Amendments of the Articles of War*, August 26, 1919, 130–131, https://www.loc.gov/law/mlr/pdf/08_26.pdf.

Captain Homer N. Preston, Captain William Fox, and Lieutenant Alexander Levie,[39] and the 156 soldiers suspected of participation in the alleged mutiny were moved and detained at the stockade at Fort Bliss where the Board began its interrogation. In an early September 1917 telegram to Colonel Cress, the Southern Department's Inspector General who was conducting a separate investigation into the events in Houston, Captain Preston described the Board's conduct as resorting "to various and devious methods, all proper however."[40] The transcripts of the Board have yet to be found in the Archives, but numerous defendants testified that the officers on the Board had screamed and cursed at them, and threatened them with the noose if they did not cooperate.[41]

In addition to prohibiting the introduction of involuntary statements, military law at the time prohibited this type of investigatory conduct, particularly if designed to elicit involuntary confessions, and specifically when employed against enlisted soldiers. Contemporaneous

39. Nesbit ROT, note 12, at 1098.

40. George O. Cress, "Investigation of the Trouble at Houston, Texas, between the 3rd Battalion, 24th Infantry and the Citizens of Houston," August 23, 1917. Records of the United States Army Continental Commands, Southern Department, Headquarters File 370.61, Box 364 (RG 393 NA).

41. Representative of this testimony is that of Private Harry Richardson stated in response to a cross examination question asking if he had not told the Board of Investigation a different story:

> Q You don't remember telling the Board of Officers up at El Paso that you stopped there and talked with a boy by the name of Will, of "L" Company, from your home town?'
>
> A No, sir.
>
> A No, sir, because I couldn't remember half I did tell them, they hollered at you, and cussed at you, and told you were going to get hung, and all that, and you didn't know what half you did tell them up there. . . . When I told them what I did, they told me they knowed I was lying and said I was going to get hung, and all like that, and they told me I never put my foot out of that door, that would be the last time I put my foot in that door.
>
> Q Did they make any threats toward you?
>
> A No mora than say I would get hung, that's all, I was scared, they said I was going to get hang, and said I knowed I was lying. I never said any more.

Nesbit ROT, note 12, at 1458, 1469–1470; Testimony of Private Harry Richardson, *id.* at 1469–1470; see also testimony of Private Douglas T. Bolden, *id.* at 1829 (same); testimony of Private Grover Burns, *id.* at 1868 (same).

military treatises, including Winthrop, as well as legal opinions summarized in the Digest of the Opinions of the Judge Advocate General, make clear that not only was the admission of involuntary statements prohibited, but also the behavior of the superior military authorities extracting them. Several contemporaneous reviews of courts-martial confessions obtained in this manner condemned this behavior as "a defiance of the spirit of our laws."[42]

Furthermore, military law placed the onus on the Judge Advocate trying the case to show the voluntariness of confessions—"The "most familiar requisite to the admissibility of a confession is that it must have been voluntary, and the onus to show that it was such is upon the prosecution in offering it." In the Houston courts-martial, to meet this burden, Colonel Hull merely asked the President of the Board of Investigation, Major Preston, to testify denying the reports of threats of the noose, cursing, and berating, and sought additional testimony from the cooperating witnesses that they had "volunteered" to assist the prose-

42. See *Digest of the Opinions of the Judge Advocate General, 1912–1930*, §1292, which describes conduct that violates this requirement in roughly contemporaneous cases ("After the accused had been placed in the guardhouse he was questioned by his commanding officer. He was not warned that he might refuse to answer questions, or that what he said might be used against him. He was told that he had lied, that one of the two men charged with the crime was to be hung and the other to get 20 years in the penitentiary, and otherwise threatened. It is too plain for discussion that this examination was a gross violation of the accused's rights and to a high degree discreditable to the officers concerned in it. The confession so obtained was inadmissible. He may or may not be guilty. If he is in fact guilty, the failure of justice in this case is attributable to the illegal methods employed by the judge advocate in his efforts to convict him. . . . C.M. 124907 (1919). . . . An officer to whom a confession was made testified that he warned the accused that anything he said might be used against him, and that he used no threats or promises to secure the confession. It was shown, however, that the accused had been in solitary confinement for 10 days prior to the date of the confession, during which time a confession was sought and not obtained, and that he was still in solitary confinement by order of the officer to whom the confession was made; that accused had been denied the right to communicate with friends or counsel; that during the interrogation the officer required an answer 'Yes' or 'No," to a question not satisfactorily answered; that the officer told the accused he was very shrewd,; that he felt the accused was not telling the truth and that he was reluctant. The warning in words and then following this with treatment such as shown constitutes a defiance of the spirit of our laws. Confessions thus obtained are not voluntary, and are incompetent. There being no other evidence connecting the accused with the offense, conviction should be disapproved. C.M. 131194 (1919).")

cution. The Manual, however, required that "in view of the authority and influence of superior rank, confessions made by inferiors, especially when ignorant or inexperienced and held in confinement and close arrest, should be regarded as incompetent unless very clearly shown not to have been unduly influenced."[43]

Evidence from the trial shows that not only did the Board participate in the extraction of confessions from the cooperating witnesses while conducting its investigation, but it then became an integral part of the prosecution team, to include engaging with the accused soldiers up to the Sunday before trial commenced.[44] The improper techniques employed by what was supposed to have been an investigatory board, and their participation as part of the prosecution team up to and during the trial, further compounds the fundamental inequality of arms between the prosecution and the defense where a single officer was required to defend all 118 accused soldiers in three back-to-back courts-martial with no assistance.[45] Additionally, the records reflect that Colonel Hull, the prosecuting Judge Advocate, compounded this violation after the first trial when he "interviewed all the soldiers who had been tried, and secured considerable information"[46] to use against the defendants of the next two courts-martial. No records show Major Grier's response to this post-trial interrogation which was used by Hull to gather evidence for use in the third trial, but given that he was representing the remaining 55 soldiers he should have protested vociferously against it.

The evidence did not establish the voluntariness of the cooperating witnesses' confessions. Although confessions were admissible in evidence only against an accused or an accomplice, to be admissible the confession must, nevertheless, be "voluntary."[47] Under military law, "voluntary" in the legal sense meant "when it was not induced or materially influenced by hope of release or other benefit or fear of pun-

43. MCM ¶ 225, *accord* 1920 Winthrop, note 18, at 329; Winthrop, 1896, note 18, 497.

44. Nesbit ROT, note 12, at 1198–1200, 1200–1202 (Testimony of prosecution witness Private Elmer Bandy).

45. Our review of the historical record discloses no investigatory or trial support provided to Major Grier in any of the three trials.

46. Letter from Col. J. A. Hull to Col. Wm. O. Gilbert, Office of the Judge Advocate, 8th Corps Area, Fort Sam Houston, Texas (December 16, 1921), https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2025/rec/2.

47. 1917 MCM, ¶225(b).

ishment or injury inspired by one in authority, or, more specifically, where it is not induced or influenced by words or acts, such as promise, assurances, threats, harsh treatment, or the like, on the part of an official other person competent to effectuate what is promised, threatened, etc., or at believed to be thus by the party confessing."[48] Citing Winthrop, the 1917 Manual states that "the reason of the rule is that where the confession is not thus voluntary, there is always ground to believe that it may not be true."[49] This concern applied equally to the testimony of immunized witnesses cooperating to avoid the noose around their own necks. Military law also explicitly recognized that even if a soldier was warned that a confession could be used against him, subsequent coercive acts by the investigatory official could nonetheless result in an involuntary confession.[50]

Specific Intent Required for Mutiny. To understand the due process violations that occurred in the prosecution of these three trials, it is critically important to understand the offense of mutiny and its specific requirements under military law. First, because mutiny is considered a crime of conspiracy, once it was established that a soldier joined the mutiny, he was criminally liable for all acts committed by the participants in the mutiny,[51] to include any alleged acts of murder and attempted murder committed during the mutiny.[52] This liability resulted regardless of a particular soldier's violent acts or even if he lacked any knowledge of acts undertaken during the mutiny—it was a conspiratorial liability. In the Houston courts-martial the prosecution bootstrapped the remainder

48. 1917 MCM, ¶225(b).

49. 1917 MCM, ¶225(b).

50. *Digest of Opinions of the Judge Advocate General, 1912–1930*, §1292 (describing 1919 review).

51. 1920 Winthrop, note 18, at 583 ("Joining in a mutiny is the offence of one who takes part in a mutiny at any stage of its progress, whether he engages in actively executing its purposes, or, being present, stimulates and encourages those who do. The joining in a mutiny constitutes a conspiracy and the doctrines of the common law thus become applicable to the status-*viz.* that all the participators are principals and each is alike guilty of the offence; that the act or declaration of any one in pursuance of the common design is the act or declaration of every other, and that, the common design being established, all things done to promote it are admissible in evidence against each individual concerned.") (footnote omitted), https://www.loc.gov/rr/frd/Military_Law/pdf/ML_precedents.pdf ; see also Closing argument Maj Sutphin, Nesbit ROT *supra* note 12, at 2056-2050 (same).

52. Additionally murder under A.W. 93 was broadly defined to encompass the concepts of felony and recklessness murder. See MCM, ¶442.

of its case—specifically the charges of murder and aggravated assault with the intent to commit murder—on the joint liability resulting from a finding of mutiny. Because no victim or non-cooperating witness was able to identify any soldier as committing an act of murder or assault beyond reasonable doubt, this joint liability was critical to the prosecution of the case. Only by relying on the concept of group complicity was the prosecution able to prevail when unable to provide evidence beyond a reasonable doubt that any particular soldier committed a criminal act.

Making the circumstances of the racial animosity in Houston even more relevant in these courts-martial, military law recognizes differing degrees of culpability in a mutiny, particularly as to mitigation of the sentence.[53] Thus, the role of a particular soldier or his rank has been held to justify mitigation or enhancement of the adjudged sentence. Additionally, although not legally a defense, military law has recognized that abusive acts by a commanding officer, while not justifying mutiny, might lead to mitigation of the sentence.[54]

The prosecution in the Houston courts-martial endeavored to show that a mutiny had occurred, because under that legal construct, they were then excused from proving that any particular soldier engaged in the violence that resulted in the 16 dead and 8 wounded during the night of 23 August 1917.[55] Under this theory of group liability, the

53. "In the military practice all accused persons are treated as independent offenders. Even though they may be jointly charged and tried, as for participation in a mutiny for example, and each may be guilty of a distinct measure of criminality calling for a distinct punishment, yet all are principals in law." 1896 Winthrop, note 18, 148–49.

54. 1920 Winthrop, note 18 at 397; George B. Davis, *A Treatise on the Military Law of the United States, Together with the Practice and Procedure of Courts-Martial and other Military Tribunals* (New York: J. Wiley, 1898), 390 (hereinafter "Davis Treatise"), ("In a case where a brief mutiny among certain soldiers of a colored regiment was clearly provoked by inexcusable violence on the part of their officer, the outbreak not having been premeditated, and the men having been prior thereto subordinate and well conducted, advised that a sentence of death imposed by a court-martial upon one of the alleged mutineers should be mitigated and the officer himself brought to trial. Similarly advised in the cases of sentences of long terms of imprisonment imposed upon sundry colored soldiers who, without previous purpose of revolt, had been provoked into momentary mutinous conduct by the recklessness of their officer in firing upon them and wounding several in order to suppress certain insubordination which might apparently have.").

55. Compounding these errors, the review of the Tillman trial, Colonel James J.

prosecution was also excused from proving that a particular soldier had the necessary *mens rea* to be held criminally liable for murder or assault. The prosecution premised its case on the theory that a wide-ranging overt conspiracy took root among the soldiers of the 3rd Battalion in the early afternoon of 23 August when false reports of Corporal Baltimore's death at the hands of local police made their way back to camp and which continued until the group marched out of the camp after the pandemonium that resulted when the cry that a mob was coming was raised.

The evidence, however, shows just the opposite—the men of the 3rd Battalion responded as a trained and experienced combat unit to what they believed was an attack on their camp by a hostile mob, and, responding to the orders of their First Sergeant, some of them subsequently marched from the camp in military formation to meet that perceived threat.[56] Non-commissioned officers were established as rear guards under the prevailing (and current) military doctrine to prevent stragglers in the column.[57] The evidence shows that after its departure from camp, the column realized that there was no mob to repel. This likely occurred after the initial halt of the unit near Shepards Dam bridge. Prior to this point, both criminal intent and the specific intent to join a mutiny is absent for the majority of men in the column who were present under the direct orders of their First Sergeant in a fluid tactical situation. After this halt, significant numbers of men in the column began to fall out and return to camp. By the time the column

Mayes, acting Judge Advocate General, concluded, "There is little or no doubt but that [civilians] Carstens, Butcher, Thompson, Gerado, and the Misses Reichert and Miller were struck by stray bullets fired during the fusillade in the company streets in the direction of, and immediately prior to the march upon the city. All the other acts of violence were committed by the soldiers after their departure from camp." Review of Record of Trial, *United States v. Tillman, et al.*, at 12, https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2117/rec/4. Even assuming the existence of mutiny when the soldiers marched from the camp in the column (the point at which the reviews concluded mutiny existed), deaths that occurred during the initial pandemonium in camp would not have been properly attributed under the law to the alleged mutineers.

56. Nesbit ROT, note 12, at 131 (Captain Shekerjian testified that as the firing in camp quieted one soldier entreated him "Captain, for God's sake, help me hold the ammunition, that is the only way we can hold them now.").

57. *Infantry Drill Regulations: United States Army, 1911, with text corrections to May 18, 1916; changes no. 14* (New York: Army and Navy Journal, War Department, Document No. 453, Office of the Chief of Staff, 1911).

reached the corner of Arthur and San Felipe Street, a witness counted only 49 soldiers remaining in the column.[58] Although actions later in the night did involve egregious criminal acts, particularly as the column encountered police, the advancing column did not fire indiscriminately even when passing through white neighborhoods. They allowed several civilians and two military officers to depart the street where they stopped them, and otherwise exercised weapons discipline, with the majority of the early volleys of fire aimed at lights. There was no evidence that the column departed the camp with the intent either to override military authority or to march on the city of Houston to harm its inhabitants. In fact, rather than following the most direct route into the city, the column instead marched to the historic black district, which historical precedent had shown would also be at risk if a racist mob was forming. While criminal intent may have developed later among some soldiers who remained in the diminished column, the departure from camp, particularly in the absence of any officer authority to the contrary, did not demonstrate the specific intent to join in a mutiny for all but possibly two of the participating soldiers. The prosecution's theory and presentation of the case led to a reversal of the burden of proof and a violation of the presumption of innocence, relying largely on reports of threats made by soldiers earlier in the afternoon after false news of Corporal Baltimore's death at the hands of Houston police reached camp and on the inadequate checks held in camp after the departure of the column.

In light of this governing law, a review of the trial proceedings discloses three intertwined flaws that infect the prosecution of these cases: (1) the evidence relied upon by the prosecution to prove identity and participation in the mutiny was unreliable and underinclusive and resulted in a reversal of the burden of proof; (2) the prosecution failed to establish the specific intent necessary to prove mutiny for the majority of soldiers; and to the contrary, (3) the evidence unrefutably shows that the column that left the camp that night was ordered to fall in on the command of Sergeant Vida Henry, I Company's acting First Sergeant, and marched in military formation from the camp—such evidence does not present mutiny. In the face of the abdication of all commissioned officer authority in the I Company area, the soldiers responded to their noncommissioned officers, the only military authority operating in the

58. Nesbit ROT, note 12, 587–88.

aftermath of the chaos that resulted after shouts that a mob was coming, and sounds of gunfire resulted in the entire unit assuming a hasty defense of their camp. This proof is inconsistent with the establishment of any intent to override military authority required for a mutiny.[59] Major Snow had run away from camp after the pandemonium erupted after the call that a mob was coming,[60] and as a result of his desertion of his post and the absence of other officers in the I Company area, no military authority existed at the time the unit departed the camp.

As recognized above, and significant to analysis of these courts-martial, military law in 1917 established that the offense of mutiny requires specific intent, "defined as consisting in an unlawful opposition or resistance to, or defiance of superior military authority, with a deliberate purpose to usurp, subvert, or override the same, or to eject with authority from office." Military law has long differentiated even violent acts, insubordination, or willful disobedience from the heightened intent necessary to constitute mutiny. A soldier could not be guilty of mutiny absent proof beyond a reasonable doubt of this specific intent. Interpretations of this provision explained,

> To charge as a capital offense under this article a mere act of insubordination or disorderly conduct on the part of an individual soldier or officer, unaccompanied by the intent above indicated, is irregular and improper. Such an act should in general be charged under articles 20, 21, or 62.[61]

Thus, the failure of proof of the specific intent required for mutiny undermined the entire trial process, allowing guilt by association to control the outcome.

59. Memorandum, 4th Endorsement to Secretary of War, War Department, J.A.G.O., July 16, 1919, from LTC E. A. Kreger to Secretary of War and handwritten note by COL King, September 12, 1919, (hereinafter "Kreger 16 Jul 1919 memo"), recognizing unreliability of prosecution witnesses and inadequacy of proof on specific intent for mutiny.

60. Report of Major K. S. Snow to General John S. Hulen, Report of the Circumstances attending the routing, August 24, 1917, (on file with authors), available in clemency petition at www.nimj.org.

61. Howland, *Digest of Opinions of the Judge Advocate General* XXIIA, 123; Hearings Appendix on S. 64, note 36, 776–77, Exhibit 5 War Department, Memorandum from Office of the Judge Advocate to The Adjutant General, October 30, 1917, (in-depth discussion of the specific intent required for mutiny, distinguished from mutinous conduct), https://www.loc.gov/rr/frd/Military_Law/pdf/appendix.pdf.

Failure of accountability for officers of 3d Battalion, 24th Infantry. Both senior Inspectors General (IG) who investigated the events in Houston—Brigadier General John L. Chamberlain, the Army IG, and Colonel George O. Cress, the Southern Department IG—severely castigated the actions of Major Kneeland Snow, the battalion commander, and they recommended that charges be brought against him and Lieutenant Silvester, another of the unit officers, once the courts-martial of the soldiers concluded. These assessments were unanimous. In addition to the scathing observations of General Hullen's aide, who interviewed Major Snow early in the morning of August 24th, contemporary witnesses describe Snow's actions in fleeing camp disparagingly.[62] However, disregarding these recommendations from two senior and experienced officers, the Army took no disciplinary action against either Major Snow or Lieutenant Silvester, and promoted Snow to Lieutenant Colonel on July 30, 1918. Snow's behavior in photographing his accused soldiers for souvenirs during the trials is similarly discrediting to the solemnity of the capital courts-martial. Similar rewards were provided to Major Grier, Colonel Hull, and Major Sutphin, whose career trajectories improved after their participation in the trials.

Race: Substantial evidence shows that racial prejudice affected these trials despite the Army's repeated assertions to the contrary. The Manual for Courts-Martial was race neutral with one small exception,[63] but the civil and military societies in which these trials occurred was far from unprejudiced. The Army officially segregated its units, and the casual and pervasive race prejudice that permeated civil society also operated within the military, directly affecting the fairness of the trials and subsequent reviews provided to these United States soldiers. Both the Bureau of Investigation (which later became the Federal Bureau of Investigation) and the Military Intelligence Bureau (MIB) surveilled

62. Report of Major K. S. Snow to General John S. Hulen, Report of the Circumstances attending the routing, 24 August 1917 (on file with authors); Testimony of William M. Nathan, L. E. Gentry, R. R. McDaniel, Frank Dwyer, Captain Roth Rock, and BG John A. Hulen, in Houston Civilian Board of Inquiry, https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2057/rec/1.

63. 1917 MCM at ¶ 204 ("Illustration of the difference between good and bad circumstantial evidence. The accused is charged with stealing clothes from the locker of a comrade. The following circumstances are not admissible as circumstantial evidence . . . (5) he belongs to a race or enlisted in a locality that does not entertain very strict notions of right and wrong as to the manner of acquiring possession of property.").

black military units, suspicious of their loyalty even while they trained for deployment to France in World War I. In one contemporaneous document, the Army even contemplated removing colored units from White House duty because of a perceived fear of disloyalty.[64] When one of the original thirteen soldiers' bodies was returned to his family for burial in Washington DC, a military MIB official visited his mother to urge a quiet funeral in which the events of Houston were not discussed. He then invited himself to the funeral to ensure compliance with the Army's requests.[65] The government also failed to address the increasing race violence across the country that can be seen in the race massacres in East St. Louis in 1917 and Tulsa in 1921, the race riots that broke out in Chicago, Washington DC, and elsewhere in 1919, and the Ku Klux Klan's overt campaign to lynch and burn returning African-American First World War veterans.[66] The records of trial for the three courts-martial also evidence the fear and intimidation of local black witnesses who may have been able to meet the exacting standard established by the prosecutor Colonel Hull in order for the accused soldiers to prove that they were not participants in a mutiny.[67]

Significant to the treatment of the 3rd Battalion soldiers was the far different treatment accorded to another group of white Texas mutineers brought to trial in 1917 at Fort Bliss, Texas. Their case was reviewed by the War Department's Judge Advocates. After this review Brigadier General Ansell, the acting Judge Advocate General,

> set aside the judgment of conviction and the sentence in the ease of each of these several defendants, and recommended that the necessary orders he issued restoring each of them to duty. This set off the Ansell-Crowder controversy.

64. 0557, Washington, DC 1917, 1919, Negroes. 1917–1924, Reel 16, National Archives and Records Administration, RG 60 Department of Justice cont. Federal Surveillance, note 34.

65. 0498, Casefile 10218-102: Negro Subversion, Race Riot Aftermath, Houston, Texas, 1918. 1 p. Reel 19 National Archives and Records Administration, RG165 War Department: General and Special Staffs-Military Intelligence Division, in *id.*

66. Equal Justice Initiative, *Lynching in America: Targeting Black Veterans*, 2016, https://lynchinginamerica.eji.org/report/; Vincent Mikkelsen, "Coming From Battle to Face a War: The Lynching of Black Soldiers in the World War I Era," (PhD diss., Florida State University, 2007), https://fsu.digital.flvc.org/islandora/object/fsu:180643/datastream/PDF/view.

67. Martha Gruening, "Houston: A NAACP Investigation," *The Crisis* 1 (November 1917), 14–15; see also Nesbit ROT, note 12, at 1323–24.

> Significant to his inquiry was the in-depth analysis of the specific intent required for the military offense of mutiny, and its distinction from mere mutinous conduct.[68]

In stark contrast, discussing the Houston mutiny court-martial, the Department of War Inspector General Report, without any examination of the law of mutiny, states merely that:

> *There was no opportunity for appeal in these cases. This action was denied the accused by their summary execution. The entire action was regular and lawful . No error was later found in the records of trial. The possibilities of injustice, incapable of future correction, were, however, so exemplified in these cases that G.O. No, 169, War Department, 1917, were issued on December 29, 1917, providing that, after the commanding general of a territorial deportment or division confirms a sentence of death, the execution of such sentence shall be deferred 'until the record of trial has been received and reviewed in the office of the Judge Advocate General and the reviewing authority informed by the Judge Advocate General that such review has been made and that there is no legal objection to carrying the sentence into execution. Thus the principle of automatic appeal was established, and henceforth all death sentences were stayed until careful review could be had of the records of trial in the office of the Judge Advocate General.*[69]

Thus in a general courts-martial of white NCOs, the Army carefully examined the record to determine not only if mutiny under the law had occurred, but also examined the triggering conduct on the part of the officer in charge of the NCOs.[70] No such searching query occurred in the case of the 3rd Battalion, 24th Infantry.

Colonel Cress's disparaging comments in his IG investigation of the violence in Houston simultaneously reflect both the prejudice confronting these soldiers and the inability of the Army to rise above this prejudice and meet the asserted standards of the United States Army:

> *That the tendency of the negro soldier, with fire arms in his possession, unless he is properly handled by officers who know his racial characteristics, is to become arrogant, overbearing, and abusive, and a menace to the community to which he happens to be stationed. . . . That for the proper administration of negro regiments, it*

68. Hearings Appendix on S. 64, note 36, 728.
69. Hearings Appendix on S. 64, note 36, 733.
70. Hearings Appendix on S. 64, note 36, 776–77.

> *is vitally necessary that there should be on duty with them a full complement of experienced field officers and captains. . . . That the negro soldiers of the 24th Infantry showed a spirit of insubordination and lack of proper discipline in that they failed to observe in proper spirit the segregation laws of the State of Texas.*[71]

However, the United States Army, and particularly its system of military justice, since the Civil War consistently acknowledged that African-American troops are soldiers first and foremost:

> *All the legislation since the date of these acts, in regard to the enlistment, pay, bounties, &c., of colored troops, aims at placing them upon the same footing, both as to their duties and their privileges, with white soldiers. 3d. The employment of colored troops, as the hirelings of private individuals or corporations, and in a lower and more servile class of labor than that which white troops are called upon to perform, would be injurious to their discipline, and degrading to their morale, and is therefore incompatible with their status as United States soldiers. 4th. The sentiment of all loyal citizens is in favor of the elevation of the colored race, and their reception into the military service is one of the very measures, which, in the public expression of this sentiment, have been resorted to as a means of promoting the desired end; and any measure which tends to degrade the colored soldier, or to distinguish him disparagingly from his white comrade in arms, does violence to this sentiment and defeats, so far, the worthy purposes of loyal men.*[72]

The soldiers of the 3rd Battalion, 24th Infantry were "loyal men," and as such were due the same considerations, protections, and respect of all other American soldiers.

Perhaps the most telling evidence of the failure of the Army to accord these soldiers their rights is the method of their execution and burial. The 1917 Manual instructed that "for the sake of example, and to deter others from committing like offenses the death sentence may, when deemed advisable, be executed in the presence of the command." It further explained that "death by hanging is considered more ignominious than death by shooting and is the usual method of execution designated in the case of spies, of persons guilty of murder in connection with mutiny, or sometimes for desertion in face of the enemy; but

71. Report of Colonel G. O. Cress, Recommendations, Records of Inspector General, File 333.9, RG 159.

72. *Digest of the Opinions of the Judge Advocate General*, 1866, 53–54.

in case of purely military offense, as sleeping on post, such sentence when imposed is usually 'to be shot to death with musketry.'"[73]

Despite the fact that Fort Sam Houston offered three secure, appropriate sites for such a solemn ceremony, Major General Ruckman instead chose to hang the original thirteen condemned men at dawn, with only a few solitary witnesses, and no ceremony. Their bodies were buried in hastily dug graves by the banks of Salado Creek, and rather than burying the bodies with their dogtags as was required by Army regulation, the bodies were buried with the names of the soldiers written on scraps of paper which were placed within glass bottles.[74] Such ignominy was not in accordance with military law, Army regulation, or the customs of the service.

In his annual report to Congress in 1918, The Judge Advocate General recognized that

> the rights and obligations of every man in the Army, from private to general, are well defined and established by laws exacted by Congress or by the common law. Every offender against the military code is subject to trial by court-martial according to a definite procedure prescribed by law. All this procedure is safeguarded by law and no soldier can be punished except according to the law.[75]

In extolling the work of the Judge Advocate General Department, the TJAG recognized that in conducting its reviews of courts-martial, it "passes upon 'the most sacred questions of human rights which, in the very nature of things, can neither be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged according to law.' "[76]

Clemency. Although the initial thirteen executed soldiers were not afforded the right to seek clemency and ignominiously executed with no outside review, there was an immediate and sustained effort among the African-American community to seek clemency on behalf of the remaining soldiers convicted in the three courts-martial, efforts that succeeded in the commutation of ten of the death sentences awarded

73. 1917 MCM ¶ 346.

74. "Testimony of C. E. Butzer," *Houston Post*, December 13, 1917, 1.

75. *Report of the Judge Advocate General*, War Department 227, 231 (September 26, 1918).

76. *Report of the Judge Advocate General*, War Department, September 26, 1918, 227, 231.

in the last two trials. In the face of continued requests for clemency from both the soldiers themselves, and a large number of citizen groups across the country,[77] in December 1921 the Undersecretary of War directed Colonel John A. Hull (the prosecutor of the first two cases) "to study the individual cases and records and to submit such recommendations in each case as my knowledge and judgment dictated."[78] The employment of the prosecutor of these cases to conduct this review raises the specter of a lack of impartiality and a concomitant lack of good faith on the part of the Army in the conduct of this review. In fact, Hull's participation contradicted the position of the Judge Advocate General in which he stated that the reviewing judge advocates fulfilling an appellate function would be separate from the trial judge advocate.[79] The timing of these events also supports the inference that

77. See, e.g., United States. War Dept. Office of the Judge Advocate General, List of communications relative to the Court-Marital case of the 24th Infantry, https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2073/rec/10.

78. John A. Hull, War Dept. Office of the Judge Advocate General, Memorandum to the Secretary of War, *Subject: Houston Riot* (Hull memo), August 8, 1922, https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2032/rec/10.

79. Office of the Judge Advocate General, *Military Justice During the War: A Letter from the Judge Advocate General of the Army to the Secretary of War in Reply to a Request for Information*, 27–28 (January 1919) ("the distinction between the staff judge advocate regularly attached as legal advisor to the staff of the reviewing authority, and the trial judge advocate specially detailed for the prosecution of general court-martial trials in the various units within the division, it will be perceived that these two functions are in practice exercised by different persons. The trial judge advocate does indeed perform the duty of prosecuting attorney; he is supposed to conduct the prosecution, not indeed with the ruthless partisanship frequently to be observed in civil prosecuting attorneys, yet with the thoroughness suitable to a proper performance of his duties. But the staff judge advocate, in whose hands the record of the trial subsequently arrives and who reviews the record and advises the reviewing authority as to its legality, is a different personage and is in no way hampered by having formerly acted as prosecuting attorney in the same case. . . . But so far as concerns the actual administration of military criminal justice, it ought to be plainly understood that military law does not tolerate the anomaly of expecting the same man to be both appellate judge and prosecutor, and that in the practice of the present war (as above pointed out) the trial judge advocate acting as prosecuting attorney in general courts-martial is a different person from the staff judge advocate regularly attached to the staff of the reviewing authority as a judicial officer and quasi appellate judge."), https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t2h70b734&view=1up&seq=1. And even in this official publication addressing Military Justice During the War, Major General Crowder, the Judge Advocate General, incorrectly stated that in the

Hull was involved in drafting the demonstrably misleading and inaccurate December 6, 1921, response to Congress, in which the Army falsely informed Congress that "in each of these three trials the defendants were represented by Major H.S. Grier, of Pennsylvania, Inspector General of the 36th Division, a lawyer of experience, specially assigned by the Government as counsel for the defendants."[80] Even Hull, however, acknowledged, "We find here men, who, by the nature of their offenses, have merited the most severe punishment but have as a group had less clemency extended to them than any other group of prisoners that the United States now has in custody."[81]

In the months of military mobilization between America's entry into the war and the tragic events that August night in Houston, African-Americans across the country were confronted by two conflicting opinions: on one hand, the hope that answering their country's call to military service might finally provide them a path to equality, and, on the other, the question of whether they should imperil their lives for a nation that refused to treat them as equal citizens. The overt racism the soldiers of the 3rd Battalion encountered in Houston, and the government's racist handling of the trials of the accused mutineers, threw that question into an even starker contrast. At a moment of national crisis, when the United States needed the support of all its citizens in response to the war, endemic racism and distrust of a people who had repeatedly demonstrated faithfulness and loyalty despite the repeated injuries from a government and society that disenfranchised and marginalized them, was a threat to national security created by the US government itself. If there is anything to wonder at in this tragic story, it

Houston case; "It may be confidently asserted that (except in a few special cases) no staff judge advocate attached as judicial advisor to the commanding general has acted during the present war as trial judge advocate (or prosecuting attorney) in a court-martial trial. The few exceptions to this statement occurred in special cases (such as the Houston riots and murders in 1917) where a staff judge advocate was specially detailed to conduct the prosecution, *and where also the accused were aided by counsel consisting of specially detailed officers of high rank and legal experience or by civil counsel of their own choice*, but in such case the judge advocate was brought in from a different department or division," 28 (emphasis added).

80. Report No 53, Houston Riot Cases, December 9, 1921, 67th Cong. 2d Sess. Committee on Military Affairs.

81. John A. Hull, War Department Office of the Judge Advocate General, Memorandum to the Secretary of War, "Subject: Houston Riot" (Hull Memo), August 8, 1922, https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2032/rec/10.

is that the African-American soldiers of the US Army, and the civilian communities that supported them, remained steadfastly loyal when that loyalty was both doubted and abused. The Army's failure to ensure that its military justice system, even as it existed in 1917, would provide impartial and race-neutral justice to all soldiers, impacted not only the ability of the United States to mobilize for the war but also impeded the full employment of African-American citizens as equal members of the armed forces. The lessons of Houston should not be lost; they still resonate today.

Looking at 9/11 and Its After-Effects through Terror Management Theory

Trevor Williams

The United States is getting close to the twenty-year anniversary of the war in Afghanistan. The invasion, which was in direct response to the terrorist attacks of September 11, has bloomed into a much larger, widespread conflict spanning over different countries and spreading to threats beyond Al-Qaeda. Interesting has been the studied effects that September 11 has had on Americans and their feelings towards related policies, especially when considering ideas such as Mortality Salience and Terror Management Theory. These concepts can be potentially insightful when considering how terrorism fits into the everyday American's life and foreign policy perspectives for going forward as the United States continues to have a presence in Afghanistan and Iraq.

First, Mortality Salience and Terror Management Theory will be introduced and explained. Thereafter the political crossovers with September 11 will be examined and some of the policies that were made in response. The efficacy of these policies will then be discussed as well as what insight might be provided for future policymaking.

Terror Management Theory and Mortality Salience

Terror Management Theory is the idea that "human beings share with all other forms of life a basic biological predisposition toward

Trevor Williams obtained his bachelor's degree at Utah Valley University in Integrated Studies with emphases in Peace and Justice Studies and Social Science. He then went on to graduate with a master's degree from the School of International Relations at the University of St Andrews in Terrorism and Political Violence.

survival,"[1] though we are separated by a "profoundly complex set of intellectual abilities."[2] This unique aspect of "sophisticated cognitive capacity for abstract symbolic thinking and self-reflection," is what leads humans "to recognize the ultimate futility of this basic biological imperative" of survival.[3] Being able to contemplate the "inevitability of death and the fact that it can occur at any time for reasons that can never be anticipated or controlled" can lead us to sensations of "overwhelming terror."[4] Our "capacity to wonder why we exist and to consider the possibility that the universe is an uncontrollable, absurd setting" causes us to naturally try to cope with and insulate ourselves from these feelings of terror.[5]

This mechanism consists of "a dual-component anxiety buffer consisting of a cultural worldview and self-esteem."[6] Cohen et al. define cultural worldviews as "shared, humanly constructed beliefs about reality that convey a sense that the world is meaningful, stable, and orderly."[7] Examples of cultural symbols in the United States could be "government officials, churches, monuments, flags, currency, religious and historical artifacts," where closely cultural rituals could be seen as "singing the national anthem, going to church, visiting historical locations and theme parks, following news and sports events, fashion, and entertainment."[8] Of course, cultural symbols and rituals are extremely subjective; therefore, these general hallmarks listed for Americans are by no means conclusive or exclusive, but they provide a good benchmark of things to look for and are relevant for later observations as well.

1. Florette Cohen, Sheldon Solomon, Molly Maxfield, Tom Pyszczynski, and Jeff Greenberg, "Fatal Attraction: The Effects of Mortality Salience on Evaluations of Charismatic, Task-Oriented, and Relationship-Oriented Leaders," *Psychological Science* 15, no. 12 (2004): 846, https://doi.org/ 10.1111/j.0956-7976.2004.00765.x.

2. Jeff Greenberg, Tom Pyszczynski, and Sheldon Solomon, "Terror Management Theory of Self-Esteem and Cultural Worldviews: Empirical Assessments and Conceptual Refinements," in *Advances in Experimental Social Psychology*, ed. Mark P. Zanna, vol. 29, 64.

3. Cohen et al., "Fatal Attraction," 846.

4. Cohen et al., "Fatal Attraction," 846.

5. Jeff Greenberg, Tom Pyszczynski, and Sheldon Solomon, "The Causes and Consequences of a Need for Self-Esteem: A Terror Management Theory," in *Public Self and Private Self*, ed. Roy F. Baumeister (New York: Springer), 196.

6. Cohen et al., "Fatal Attraction," 846.

7. Cohen et al., "Fatal Attraction," 846.

8. Greenberg et al., "The Causes and Consequences," 199.

According to Terror Management Theory, "People are consequently strongly motivated to maintain . . . faith in their cultural worldviews and to defend both of these structures against threats."[9] Though there are some aspects of this theory that are somewhat assumptive about evolutionary adaptations that researchers admit would be difficult to test, essentially, the mortality salience hypothesis is that "if a psychological structure provides protection against the potential for terror engendered by knowledge of mortality, [then] reminding people of their mortality should increase their need for the protection provided by that structure."[10] Therefore, bringing awareness to this in one would expectedly result in a "need for validation of their sense of self-worth and their faith in the cultural worldview."[11]

It may be easy to think that one may be immune to these sorts of impulses and thoughts, as the claim that we are "merely transient material organisms clinging to a clump of dirt in a purposeless universe fated only to die and decay" may seem a bit distant from the average person's mental sphere.[12] However, there have been more than 175 published experiments that corroborate the mortality salience hypothesis, which is that if you prime people with reminders of their own inevitable mortality, you can expect that they will cling tightly to their cultural worldview in defense.[13]

In these studies, (with some allowance for variation among them), subjects are told they are participating in an investigation of the relationship between "personality traits and interpersonal judgments."[14] Among the questions of the test group are two open-ended questions that they answer by writing several sentences in response. The questions are "what they think will happen to them when they physically die, and the emotions that the thought of their own death arouses in them."[15] These questions alone seem to stimulate consequential responses.

For example, it has been found in multiple studies that "mortality

9. Greenberg et al., "Terror Management Theory," 66.

10. Greenberg et al., "Terror Management Theory," 72.

11. Greenberg et al., "Terror Management Theory," 72.

12. Tom Pyszczynski, Sheldon Solomon, and Jeff Greenberg, *In the Wake of 9/11: The Psychology of Terror* (Washington DC, American Psychological Association, 2003), 17.

13. Cohen et al., "Fatal Attraction."

14. Greenberg et al., "Terror Management Theory," 78.

15. Greenberg et al., "Terror Management Theory," 78.

salience engenders anti-Semitism among Christian subjects" and in another that it "increased the extent of American college students' agreement with the statement that 'the Holocaust in Nazi Germany was God's punishment for the Jews.'"[16] Another study showed that "American subjects evaluated a pro-American author more positively and an anti-American author more negatively,"[17] after making mortality salient, with another showing that Americans became more "uncomfortable when treating an American flag inappropriately."[18] In other studies, mortality salience was "shown to incite aggressive behavior against those who impinge on one's worldview."[19] Another study found that it "can increase the accessibility of nationalistic cognitions."[20] In another, municipal court judges were separated into test and control groups and were given a hypothetical case involving an alleged prostitute and asked to set a bond. Consistent with other findings, "mortality judges set higher bonds for alleged prostitute than control subjects (mean bonds of $455 and $50, respectively)."[21] The suggested reasoning being that when mortality is made salient, people are more likely to react more strongly to things that are generally considered deviations from the standard culture.

Looking at 9/11 with Insight from Terror Management Insight

The unexpected terrorist attacks on September 11, 2001, tore a hole through the fabric of America, in what could be described as the world's foremost superpower, as roughly 3,000 people were killed in the attacks. Though this might be a trivial percent of the United States' population, the psychological effect that it had on the American people should not be understated and largely cannot be overstated.[22]

16. Greenberg et al., "Terror Management Theory," 81.

17. Greenberg et al., "Terror Management Theory," 80.

18. Mark J. Landau et al., "Deliver Us from Evil: The Effects of Mortality Salience and Reminders of 9/11 on Support for President George W. Bush," *Personality and Social Psychology Bulletin* 30, no. 9 (2004): 1139, https://doi.org/10.1177/.

19. Landau et al., "Deliver Us from Evil," 1139.

20. Landau et al., "Deliver Us from Evil," 1139.

21. Greenberg et al., "Terror Management Theory," 79.

22. Dirk Nabers and Robert G. Patman, "September 11 and the Rise of Political Fundamentalism in the Bush Administration: Domestic Legitimatization Versus International Estrangement?" *Global Change Peace and Security* 20, no. 2 (2008), 174–175, https://doi.org/10.1080/14781150802079714.

Sales of flags and bibles increased,[23] and 97 percent of Americans surveyed agreed with the statement that "they would rather be American than citizens of any other country (an increase of 7 percentage points)," with "85 percent reporting that America was a better country than others (5-point increase)."[24] A Gallup Poll found that in September, the United States experienced "highest level of church attendance" since the 1950s, with the "largest increases in attendees" being Atheists, and with Atheist attendance having tripled between August 2001 and November 2001.[25]

Given that the pattern had been well established through studies that mortality salience led to "increased liking for a person who praises the United States and decreased liking for a person who criticizes the United States,"[26] it comes with little surprise that before a single month had passed, there had been a "spike in hate crimes . . . directed at people who were thought to resemble the hijackers," including South Asian Hindu Sikhs who simply represented what some thought to be Islamic extremists.[27]

The approval rating of George W. Bush received "the greatest boost for any president in history in September 2001,"[28] "culminating in an unprecedent 94" percent.[29] U.S. government issued color-coded alerts to "warn the public of imminent terrorist dangers," which some argued created a "heightened sense of anxiety and confusion in the United States for more than four years."[30] Gallup poll data throughout a three-year period suggests that there was a "direct positive association between terror warnings and presidential approval."[31] Not only did

23. Daniel J. Christie, "9/11 Aftershocks: An Analysis of Conditions Ripe for Hate Crimes," in *Collateral Damage: The Psychological Consequences of America's War on Terrorism*, ed. Paul R. Kimmel and Chris E. Stout (Westport: Praeger, 2006), 24.

24. Christie, "9/11 Aftershocks," 22.

25. Pyszczynski et al., *In the Wake of 9/11*, 100.

26. Greenberg et al., "Terror Management Theory," 80.

27. Christie, "9/11 Aftershocks," 22.

28. John Mueller, "Six Rather Unusual Propositions about Terrorism," *Terrorism and Political Violence* 17, no. 4 (2005): 493, https://10.1080/095465591009359.

29. Christie, "9/11 Aftershocks," 28.

30. Philip Zimbardo, "The Political Psychology of Terrorist Alarms," in *Collateral Damage: The Psychological Consequences of America's War on Terrorism*, ed. Paul R. Kimmel and Chris E. Stout (Westport: Praeger, 2006), viii.

31. Gordon Hodson, Victoria M. Esses, and John F. Dovidio, "Perceptions of Threat, National Representation, and Support for Procedures to Protect the National Group," in *Collateral Damage: The Psychological Consequences of America's War on*

support increase for Bush's handling of national security but also "whenever the color-coded terror alert level was raised, support for Bush increased significantly, not only on domestic security but also in unrelated domains, such as the economy."[32] This led many critics to suggest that the use of these terror alerts was "driven more by political motivations than by public safety concerns."[33]

It is no wonder that Karl Rove, Bush's chief political adviser, asserted in 2003 that the War on Terrorism would be central to Bush's re-election campaign in 2004.[34] Indeed, research using mortality salience to test subjects on their preferences for the 2004 election between the incumbent George W. Bush and John Kerry "increased approval of Bush similarly for liberals and conservatives," but also that the "terrorism prime had a stronger effect on liberals, such that in that condition political orientation was a negligible predictor."[35] What makes this even more weighty however, was the fact that "John Kerry was significantly more highly regarded than George Bush in the intense pain control condition."[36] In September 2004, when registered voters were asked which candidate they planned to vote for in the imminent elections, the control condition more preferred Kerry, but "when people were reminded of death," more favored voting for Bush.[37]

Some scholars understand that people prefer conservative leaders when the populace is primed with thoughts of death because it tends to be "more certain about the answers it provides—right vs. wrong, good vs. evil, us vs. them—and because conservative leaders are more likely to advocate a return to traditional values," which allows people to "stick with what's familiar and known."[38] Having mortality salient limits the appetite for risks that we would possibly be impervious under normal circumstances. Mary Douglas views that risk, on a fundamental level, gives "a community a shared problem or enemy and can therefore be used to mobilize the community."[39] Moral values are used to

Terrorism, ed. Paul R. Kimmel and Chris E. Stout (Westport: Praeger, 2006), 113.

32. Jay Dixit, "The Ideological Animal," Psychology Today, January 1, 2007, https://www.psychologytoday.com/us/articles/200701/the-ideological-animal.

33. Hodson et al., "Perceptions of Threat," 124.

34. Mueller, "Six Rather Unusual Propositions," 493.

35. Landau et al., "Deliver Us from Evil," 1144.

36. Landau et al., "Deliver Us from Evil," 1145.

37. Christie, "9/11 Aftershocks," 30.

38. Dixit, "The Ideological Animal."

39. Jakob Arnoldi, *Risk* (Cambridge: Polity, 2009), 38.

"uphold social and political orders," and anything that deviates from this is seen as anathema.

This hearkens back to speeches given by Bush to the world, that a decision was to be made: "Either you are with us, or you are with the terrorist. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime."[40] Bush also stated that the terrorist attacks were motivated out of "hate [of] our freedoms," "our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other."[41] Bush's style of juxtaposing 'good' and 'evil' "emphasized binary conceptions of reality, in starkly black-and-white terms, which drew boundaries between insiders and outsiders."[42] The criticism of those skeptical of the response carried over into the United States invasion of Iraq, with critics of the war being "accused of identifying with the enemy, and their patriotism [being] questioned."[43]

Policy Response

Even nearly one year after the attacks, 50% respondents to a CBS News survey said that they "felt uneasy or threatened from terrorist attacks," while 62% "thought about the attacks every week" and 90% agreed that "Americans will always have to live with the risk of terrorism."[44] With the memory of 9/11 still strong on the American conscience even after a year had passed, it is of not much surprise that the USA PATRIOT Act was quickly signed into law only six weeks after the actual event took place.[45] The act, which would later be understood as "one of the most sweeping and controversial acts in United States history," drastically amplified the capacity of government surveillance

40. Washington Post, "Text: President Bush Addresses the Nation," September 20, 2001, https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html.

41. Washington Post, "Text: President Bush Addresses the Nation."

42. Nabers and Patman, "September 11," 170.

43. Bernice Lott, "The Social Psychology of Punishing Dissent: Negative Reactions to Antiwar Views in the United States." in *Collateral Damage: The Psychological Consequences of America's War on Terrorism*, ed. Paul R. Kimmel and Chris E. Stout (Westport: Praeger, 2006), 69.

44. Nabers and Patman, "September 11," 175.

45. Lisa Finnegan Abdolian and Harold Takooshian, "The USA Patriot Act: Civil Liberties, the Media, and Public Opinion," *Fordham Urban Law Review* 30 no. 4 (January 2003), 1429.

powers.[46] Perhaps unsurprisingly though, in the heat of the moment, this Act was passed in the United States Senate with a 98-1 majority, "without public hearings or debate, even though the [Antiterrorism] Act" of 1996 (of which it bore some resemblance, though it went much further than) had previously "been ruled unconstitutional by federal courts."[47] By 2003, just 21% of Americans felt that the Bush administration had gone too far, with 55% stating that it had been done about right and with even 19% stating that it had not gone far enough.[48]

Only two years later, the United States engaged in a pre-emptive war, invading Iraq. The justification that was made was that Saddam Hussein would "supply weapons of mass destruction to al Qaeda and other terrorist groups to use against the United States,"[49] even though it was done without much international support, including the United Nations charter deeming it illegal.[50] Although this connection between Saddam Hussein and Al Qaeda would *later* become extremely weak (if at all existent), the majority of Americans initially accepted the relation that Hussein was "partly responsible" for the 9/11 terrorists attacks, and agreeing that "deposing Hussein was reasonable."[51] A Gallup poll in March 2003 revealed that 72% of Americans favored the United States' war with Iraq.[52]

Legitimate Necessity?

Though panic and anxiety were high regarding terrorism at the time, John Mueller suggested that the likelihood that "any individual [would] become a victim in most places is microscopic."[53] Risks with "extremely dire consequences . . . tend to score high in laypeople's risk assessments, even though the 'objective' risk is low," especially when compared with those that are more "mundane, . . . for instance the risk

46. Abdolian and Takooshian, "The USA Patriot Act," 1429.

47. Abdolian and Takooshian, "The USA Patriot Act," 1429–1430.

48. David W. Moore, "Public Little Concerned About Patriot Act." Gallup, September 9, 2003, https://news.gallup.com/poll/9205/public-little-concerned-about-patriot-act.aspx.

49. Zimbardo, "The Political Psychology," ix.

50. "Middle East | Iraq War Illegal, Says Annan." BBC News. BBC, September 16, 2004. http://news.bbc.co.uk/2/hi/middle_east/3661134.stm.

51. Zimbardo, "The Political Psychology," ix.

52. Moore, "Public Little Concerned."

53. Mueller, "Six Rather Unusual Propositions," 487.

of a car accident."[54] Osama bin Laden said in a videotaped message from 2004 that it is "easy for us to provoke and bait. . . . All that we have to do is to send two mujahidin . . . to raise a piece of cloth on which is written al-Qaeda in order to make the generals race there to cause America to suffer human, economic, and political losses."[55] The action and decision making having been swift and potentially reckless, the Stimpson Study Group stated:

> Sixteen years after the terrorist attacks of September 11, 2001, the United States does not have a fully accurate measure of how much it is spending on the fight against terrorism. Without a better measure, policymakers and the American public will have difficulty evaluating whether the nation spends too much, too little, or the right amount on the counterterrorism (CT) mission.[56]

Spending, however, has increased, with the Congressional Budget Office in 2005 estimating that "appropriations for Combating Terrorism and Protecting Critical Infrastructure since 1998 had increased from US $7.2 billion dollars to $88.1 billion dollars" and that these "estimates represent[ed] only a subset of U.S. defense spending," not even including the "billions of dollars expended since September 11th on counter-terrorism measures in other sectors."[57]

It must be wondered how necessary some of this spending and action is when "in general, terrorism is not only a low probability event, but also a low-consequence one, and the vast majority of terrorist attacks do not kill anyone."[58] For Americans, the "chances of dying in a terrorist attack remain close to zero," though the "possibility of a catastrophic terrorist event remains a constant issue of importance for US

54. Arnoldi, *Risk*, 14–15.

55. Mueller, "Six Rather Unusual Propositions," 497.

56. Stimson Organization, "Counterterrorism Spending: Protecting America While Promoting Efficiencies and Accountability," Stimson Study Group, May 2018, 5, https://www.stimson.org/wp-content/files/file-attachments/CT_Spending_Report_0.pdf.

57. Cynthia, Lum, Leslie W. Kennedy, and Alison Sherley, "Are Counter-Terrorism Strategies Effective? The Results of the Campbell Systematic Review on Counter-Terrorism Evaluation Research," *Journal of Experimental Criminology* 2, no. 4 (2006): 489, https://doi.org/10.1007/s11292-006-9020-y.

58. John Mueller and Mark G. Stewart, "Evaluating Counterterrorism Spending," *Journal of Economic Perspectives* 28, no. 3 (2014): 239–240, http://doi.org/10.1257/jep.28.3.237.

policy-makers."[59] Nassim Nicholas Taleb refers to 9/11 as a "Black Swan" event, stating it is something extremely unlikely that does happen every great once in a while, but that "events that are nonrepeatable are ignored before their occurrence, and overestimated after (for a while)."[60] With the benefit of hindsight, we can see this in the data.

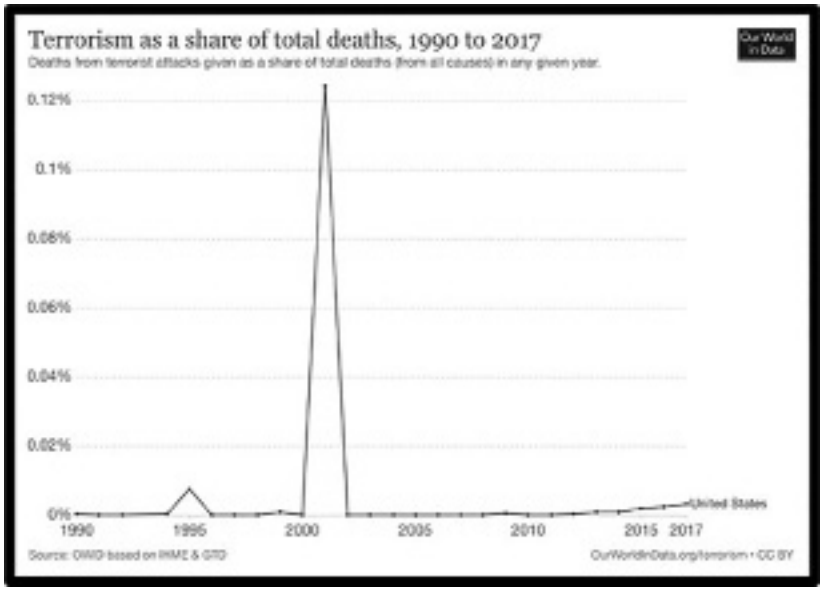

Figure 1. Percentage of deaths caused by terrorism.[61]

The domestic threat of terrorism is largely overexaggerated, and though it could be stated that enhanced counterterrorism methods are to be given credit for that, this should have to be proven first. Though some administrations have tried to tout some parts of the PATRIOT Act, like Section 215, as helping undermine terrorism,[62] a 2014 Privacy and Civil Liberties Oversight Board reviewed the program and stated:

59. Orlandrew E. Danzell and Steve Zidek, "Does Counterterrorism Spending Reduce the Incidence and Lethality of Terrorism? A Quantitative Analysis of 34 Countries," *Defense & Security Analysis* 29, no. 3 (2013): 221, https://doi.org/10.1080/14751798.2013.820970.

60. Nassim Nicholas Taleb, *The Black Swan: Second Edition: The Impact of the Highly Improbable* (New York: Random House, 2007), 78.

61. Hannah Ritchie et al., "Terrorism as a share of total deaths, 1990 to 2017," OurWorldInData, November 2019, https://ourworldindata.org/terrorism.

62. Dara Lind, "Everyone's Heard of the Patriot Act. Here's What It Actually Does," Vox, June 2, 2015, https://www.vox.com/2015/6/2/8701499/patriot-act-explain.

> We have not identified a single instance involving a threat to the United States in which the telephone records program made a concrete difference in the outcome of a counterterrorism investigation. Moreover, we are aware of no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack. And we believe that in only one instance over the past seven years has the program arguably contributed to the identification of an unknown terrorism suspect. In that case, moreover, the suspect was not involved in planning a terrorist attack and there is reason to believe that the FBI may have discovered him without the contribution of the NSA's program.[63]

As the war continues, the United States moves far "beyond counterterrorism to counterinsurgency, and from the temporary deployment of small anti-terrorism forces to a near 'permanent' military presence."[64] The issue with this type of a response is that it usually leads to "excessive targeting of civilians and indifference to collateral damage and civilian casualties," which "breeds response in kind."[65] Martha Crenshaw outlines what seems to "be a common pattern of government actions that act as catalysts for terrorism." These mostly occur when a state uses an "unexpected and unusual force in response to protest or reform attempts." She also lists historical examples of campaigns "of terrorism precipitated by a government's reliance on excessive force," of them being the French government's persecution of anarchists, the death of Beno Ohnesorg in West Germany leading to the emergence of the RAF, and others, including the British government's handling of the IRA.[66]

Similarly, the US' involvement in Iraq has, in many ways, seemed to be counterproductive to its actual goals. Returning to the theme of packaging it as part of the 'war on terrorism,' a problem, "aggregation,"

63. "PCLOB's Report on the NSA's Collection of Americans' Phone Records," Washington Post, January 23, 2014, https://apps.washingtonpost.com/g/page/world/pclobs-report-on-the-nsas-collection-of-americans-phone-records/757/.

64. Anthony H. Cordesman, *Terrorism: US Strategy and the Trends in Its "Wars" on Terrorism*, Center for Strategic and International Studies (CSIS), August 14, 2018, 2, https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180814_Terrorism_Survey_START.Report.compressed.pdf.

65. Cordesman, *Terrorism*, 4.

66. Martha Crenshaw, "The Causes of Terrorism," *Comparative Politics* 13, no. 4 (1981), 384–385, https://doi.org/10.2307/421717.

tends to occur, wherein "all terrorism, all rogue or failed states and all strategic competitors" will become included in the fight.[67] The US' strategy of "shock-and-awe" early on led to the deaths of "half of al Qaeda's 30 senior leaders" and the capture or deaths of "2,000 rank-and-file members," although recruitment still increased.[68] Because of this, Iraq came to replace Afghanistan as the breeding and training ground for "the next generation of 'professionalized' terrorists,'" according to the CIA director's think tank.[69] In terms of actual attacks, suicide bombings had the tendency to spike in response to COIN operations, as well as political events that supported the proxy government.[70]

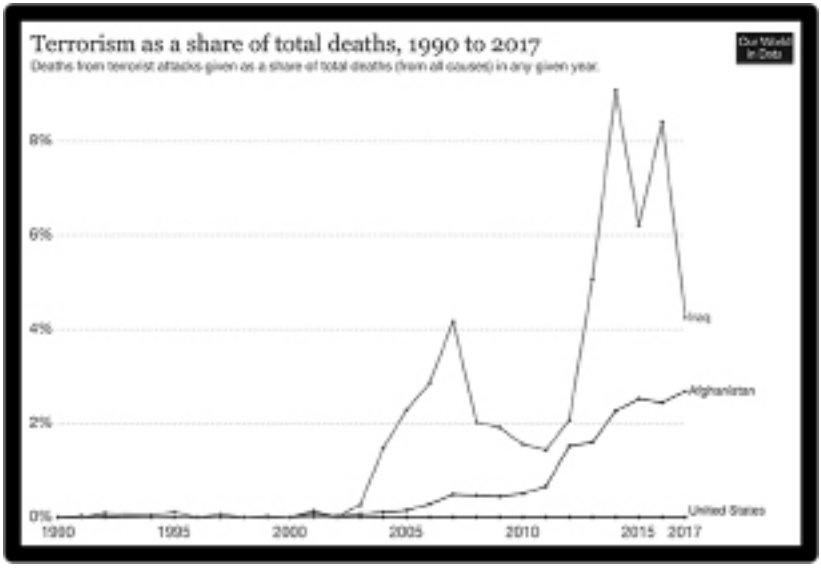

Figure 2. Percentage of deaths caused by terrorism.[71]

67. David J. Kilcullen, "Countering Global Insurgency," *Journal of Strategic Studies* 28, no. 4 (August 2005): 608, https://doi.org/10.1080/10402390500300956.

68. Kim Sengupta, "Occupation Made World Less Safe, Pro-War Institute Says," *The Independent* (October 10, 2011, https://www.independent.co.uk/news/world/middle-east/occupation-made-world-less-safe-pro-war-institute-says-564764.html.

69. Dana Priest, "Iraq New Terror Breeding Ground: War Created Haven, CIA Advisers Report," *Washington Post*, January 14, 2005, https://www.washingtonpost.com/wp-dyn/articles/A7460-2005Jan13.html.

70. Mohammed M. Hafez, *Suicide Bombers in Iraq: The Strategy and Ideology of Martyrdom* (Washington DC: US Institute of Peace Press, 2007), 99.

71. Hannah Ritchie et al., "Terrorism as a share of total deaths, 1990 to 2017," OurWorldInData, November 2019, https://ourworldindata.org/terrorism.

Concluding Thoughts

In hindsight, it seems that in many ways, the United States policy actions in response to 9/11 were overreactions that had overwhelming public support. If Terror Management Theory has given us any insight, it would be that the influence of death can push favorability onto things that might not normally receive such public support. It seems that the efforts to fight off terrorism, whether sincere or misguided, potentially cause more terrorism in other countries, as the United States had less to worry about than expected. The spike in the data that was 9/11 caused a reaction that still has some confused as to how we measure the efficacy of the policies and spending that is being made. Beyond that, it is concerning that mortality salience can be used to "promote campaign strategies and electoral choices based on the political issues and qualifications of the candidates rather than based on rhetoric primarily serving defensive needs to preserve psychological equanimity in the face of death."[72] Though it would be hard to truly judge the authenticity of policy, decisions like pre-emptive wars, even in the case that they have full public support, may be unwise, or at least prudent to exercise some caution or restraint via other international organizations.

Of course, not everyone can know whether they are being a victim of the moment, and to underreact and allow the same tragedy to occur again is so potentially catastrophic that it may seem that providing security by any means necessary could be the best way forward. The worry is that even now, some United States leaders are still reluctant to support the idea of withdrawing troops from Afghanistan. Senator Mitch McConnell has stated that even in 2020, it was still not an appropriate time to withdraw, arguing that a rapid withdrawal would "be abandoning our partners in Afghanistan"[73] and that terrorists "would love" for the United States, "the most powerful force for good in the world," to leave.[74] Former National Security Adviser and retired general H.R. McMaster has warned of terrorists' desire to commit attacks

72. Landau et al., "Deliver Us from Evil," 1148.

73. Jordain Carney, "McConnell Warns Trump Against Troop Drawdown in Afghanistan," The Hill, November 16, 2020, https://thehill.com/policy/defense/526194-mcconnell-warns-trump-against-troop-drawdown-in-afghanistan.

74. Alex Rogers, "McConnell Opposes Removing US Troops from Middle East, Saying Terrorists 'Would Love' It," CNN, November 16, 2020, https://www.cnn.com/2020/11/16/politics/mitch-mcconnell-opposes-troop-withdrawal-middle-east/index.html.

the proportion of 9/11 on multiple occasions and that a reduction in the number of United States Troops in the area would contribute toward that becoming a reality.[75]

The concern here is that we should arguably be out of the weeds here in being able to analyze the data as to what threats are real against the United States and what type of attention they deserve. A stronger explanation or demonstration of the true threat is perhaps owed, or else it seems like the fear of terrorism is being used to prolong international United States' presence.

75. "McMaster: U.S. Has 'Partnered with the Taliban Against the Afghan Government,'" PBS, November 17, 2020, https://www.pbs.org/newshour/show/mcmaster-u-s-has-partnered-with-the-taliban-against-the-afghan-government; Richard Sisk, "US Pullout in Afghanistan Will Empower the Taliban, HR McMaster Says," Military News, November 23, 2020, https://www.military.com/daily-news/2020/11/23/us-pullout-afghanistan-will-empower-taliban-hr-mcmaster-says.html.

100 Years of Turkish Civil-Military Relations

Savannah Mork

Turkey has a strong national memory of being a global empire,[1] and the Turkish people take great pride in their storied past. It is a country that is deeply rooted in nationalism, with a sense of the importance of the community over the individual. This nationalistic pride can be a lens through which one understands Turkey's history with its many coups, and their sometimes-reverent view of those who organize them, when they are perceived to have been planned with the best interests of the country in mind.

Historically, the Turkish military is seen as part of the ruling class of society. The military is viewed as the guardian of Kemalism, secularism, and the state, and they try to be the force that protects modernism and democracy. They are viewed reverently and have maintained their prominent societal status and state-granted prestige throughout the years,[2] partly because of how well the military has defended Turkey's secularism and economic growth. Ataturk believed that the military should be separate from politics,[3] but the military has experienced, "mission creep," as guardians of the state since then. The pendulum

Savannah Mork is a graduate of Georgetown's Security Studies Program and completed her undergraduate education at Utah Valley University. She considers herself a generalist by nature and education, allowing her to research and work in areas that are contemporarily relevant. She hopes to continue her career exploring the human and societal aspects of security and improve the quality of life for others.

1. Nilüfer Narli, "Civil-Military Relations in Turkey," *Turkish Studies* 1 no. 1 (Spring 2000), 107, https://doi.org/10.1080/14683840008721223.

2. Narli, "Civil-Military Relations in Turkey," 108.

3. James Brown, "The Military and Society: The Turkish Case," *Middle Eastern Studies* 25, no. 3 (1989): 387, https://doi.org/10.1080/00263208908700788.

has swung from no involvement in politics, to open involvement in international treaties and negotiations. However, since 2016, they have become subject to much more intense civilian control than they have possibly been since the founding of modern Turkey.

Turkey has a conscript force as part of their military. Conscription began in 1927[4] shortly after the founding of the new country. At that time, the officer corps was largely made up of men from rural areas, because joining the military was the only way a professional education became accessible.[5] Conscription allowed young Turkish men to develop a shared experience, and a sense of national pride and unity, which is also an effective way of promoting good civil-military relations since everyone will have some sort of personal connection to the military.

The modern iteration of conscription is that every 20-year-old, able-bodied man is required to serve for a period of six months, down from the previous 12 month requirement, but includes the option to extend the conscription period to 12 months and be paid for their time in the service for the extension.[6] Conscription in modern times has the same impact on shared experiences and national pride as it did in the 1920s, and includes a relatively similar demographic makeup, thanks to the option for wealthier Turkish men to avoid conscription after the one-month training period. In order to avoid conscription, one must pay 30,000 TRY ($4,992 USD).[7] For context, a median monthly income in Turkey is TRY 19,700, roughly the equivalent of $3,228 USD.[8] One could speculate that this option has a minimal effect on the divide between average citizens and the elites, but it could also be argued that conscription and the military serve as a social stepping stone to a higher status, or leaves the lower class in harm's way because they cannot afford to escape conscription.

Turkey has its own model of civil-military relations, that treats the

4. Narli, "Civil-Military Relations in Turkey," 118.

5. Brown, "The Military and Society," 388.

6. "Parliament Adopts Bill Reducing Conscription, Making Paid Military Service Exemption Permanent," *The Daily Sabah*, June 25, 2019, https://www.dailysabah.com/turkey/2019/06/25/parliament-adopts-bill-reducing-conscription-making-paid-military-service-exemption-permanent. Note: *The Daily Sabah* is a pro-government newspaper that was taken over by Erdogan in 2007.

7. "Parliament Adopts Bill," *The Daily Sabah*.

8. "Average Salary in Turkey 2020," *Salary Explorer*, 2020, http://www.salaryexplorer.com/salary-survey.php?loc=221&loctype=1.

military like a kind of fourth branch of government, with an important role to play in major decision-making. The so-called Turkish model refers to almost a century of civil-military relations with varying degrees of power for those involved. This paper will discuss the various balances of power and what they mean for Turkey.

The Turkish Armed Forces (TSK) includes the land, naval, and air forces, which follow a typical command structure and report to a general staff who operate under a defense minister. The TSK also includes the Gendarmerie and Coast Guard, which are under the Ministry of Interior[9] and operate domestically as a police force during times of peace.

In previous years, the Chief of Staff acted as commander in chief during war. He fell outside of the chain of command of the Minister of Defense, sometimes participating in meetings about international treaties and the role of the military within those treaties. The military in the 20th century functioned as a largely independent power with an important role to play in the government that was outside of what is normal for a democratic country's military.[10]

After the 2016 coup attempt, a two-year state of emergency was declared. Under this state of emergency was a massive restructuring of the chain of command. The Supreme Military Council (YAS) shifted from being mostly military officials to half civilian cabinet ministers, the chief of staff became a presidential appointment instead of a prime minister appointment and attached, along with the general staff, to the president. Before 2016, the prime minister and defense minister were the only civilians among fifteen generals and admirals in the YAS. The council now includes the deputy prime minister, the foreign, justice, and interior ministers.[11]

This shift effectively consolidated a lot of military functions and decision-making under the president and his political appointees instead of in career military officials, making the military more political and less democratically controlled. Along with the democratic problems this shift poses, the civilians quickly took charge of an organization with which they have very little expertise and no transition period in

9. "World Factbook—Turkey," CIA, February 7, 2020, https://www.cia.gov/the-world-factbook/countries/turkey/.

10. Narli, "Civil-Military Relations in Turkey," 118–119.

11. Stephen J. Flanagan et al., eds., *Turkey's Nationalist Course: Implications for the U.S.–Turkish Strategic Partnership and the U.S. Army* (Santa Monica: Rand, 2020).

which to learn the nuances of military leadership.[12] While the civilians still have a few generals to help guide them, the gap in understanding is potentially problematic for the military to run as smoothly as it might but offers an opportunity for stronger political leanings and control within the ranks.

20th Century

There were four important coups in Turkey during the 20th century that describe the different interactions of civil-military relations and the history that provides context for the most recent 2016 coup. The 20th-century coups are divided into direct and indirect actions, with direct being the physical ousting of the government, and indirect being behind-the-scenes pressure to resign from government. The former category includes the May 1960 and September 1980 incidences; the latter includes the 1971 and 1997 instances.

Direct Coups

One of the first coups of modern Turkey took place in May of 1960. Several factors contributed to the military's decision to take over the state. The factor that is most important for this coup is the idea of the military being seen as an honorable occupation. Some believed that this coup was overdue because of the trajectory of politics in the 1950s. The military believed that if they were not the drivers of politics in the country, Turkey would be in danger.[13] Prior to the coup, the military was being used on behalf of Prime Minister Menderes to suppress opposition and aid student protests against anti-secularist reforms. The economy was suffering, and promotion within the military was based on pledged fidelity to the Menderes' political party. One officer described why the coup was important:

> The prestige of the army was declining. . . . An officer no longer had status in society. . . . It was not that we needed money, for officers had always been ill-paid, but we had honor and respect in the past. Now it was gone.[14]

12. Lars Haugom, "The Turkish Armed Forces Restructured," *The Turkey Analyst*, September 30, 2016, https://www.turkeyanalyst.org/publications/turkey-analyst-articles/item/566-the-turkish-armed-forces-restructured.html.

13. Gerassımos Karabelıas, "The Military Institution, Atatürk's Principles, and Turkey's Sisyphean Quest for Democracy," *Middle Eastern Studies* 45, no. 1 (2009), https://doi.org/10.1080/00263200802548196.

14. Brown, "The Military and Society," 388.

The coup organizers consisted of mostly middle-ranking officers, and the coup was popularly seen as a just action because it was a successful ouster of a repressive government[15] and, as was mentioned above, the military believed it was saving the country from disaster and the people agreed.

The September 1980 coup was one that formalized the role of the military in Turkish politics. Its aim was to "reestablish democracy." During this time, the military distanced itself from either side of the political spectrum and focused on Ataturkist principles[16] in order to be the most trusted figures in the conversation. The 1970s are known as a horrible decade in Turkey. The economy was all but collapsed, and radical political divisions caused both violent and peaceful protests throughout the country.[17] All of the problems led to the coup itself, which was a brutal crackdown that ended with hundreds of thousands in prison and many dead from torture and other means.[18] General Evren and a national security council took charge of the country and implemented a provisional constitution that favored the military as a decision-making entity,[19] including a provision that protected coup leaders and organizers from prosecution. In the interim, Evren made sweeping governmental changes that led to stability but ultimately were repressive to minority political parties. Evren later became president by popular election.

Indirect Coups

The 1971 coup is known as a coup by memorandum. There was unrest throughout the country because of a recession and competing ideas from both ends of the political spectrum. Groups of leftist students began with small-scale violence, which escalated to bombings and terror tactics in protest of horrible economic conditions.[20] Memduh Tagmac, the chief of the general staff, decided the government was not

15. Jonathan Head, "Turkey's First Coup Still a Raw Nerve," BBC, May 28, 2010, https://www.bbc.com/news/10176915.

16. Narli, "Civil-Military Relations in Turkey," 114.

17. Soner Cagaptay, *The New Sultan and the Crisis of Modern Turkey* (London: I. B. Tauris, 2017).

18. Cagaptay, *The New Sultan.*

19. Reuters, "Coups and Plots in Turkey Over Past 50 Years," *NBC News*, July 15, 2016, https://www.nbcnews.com/storyline/turkey-military-coup/coups-plots-turkey-over-past-50-years-n610646.

20. Cagaptay, *The New Sultan.*

fit to rule Turkey safely; he sent a memo to Prime Minister Demirel stating as such.[21] The government resigned and was ruled by technocrats who were approved by the military.[22] This coup was fairly straightforward, and the fear of what a forceful, direct coup would be like was enough to force the government out and allow the military to take over.

Again, in 1997, there was another indirect coup to unseat the Welfare Party Islamist President. This event, similar to the 1971 coup, was not a bloody takeover. Military leaders threatened to take action if the president did not resign, and he did a few months later.[23] Again, this was very straightforward, and the fear of what might happen was enough to convince the civilian government to relinquish their power to the military. The main concern of the military leaders at this time was that secularism was losing its status and Islamists were becoming too influential in the country. The military was still very highly regarded at this time, and most citizens in the late 1990s approved of the officer corps, which was largely made up of modern, secular men, but it also included pious and rural men. Even with the coup, there was not widespread support for purging or ostracizing Islamists or anti-Kemalists within the officer corps.[24]

21st Century before the Coup

Turkey has been on a path that suggests a shift in the politics of the country away from truly secular Kemalism to a more Islamist, conservative system. The AK Party (AKP) of President Erdogan was born of the youthful members of the former conservative Welfare party, but early in their political careers they saw the Welfare Party fail. Their Islamist origins make the military wary of how beneficial the AKP might be for Turkey.[25] Erdogan was inspired by leaders that were ousted, such as Prime Minister Menderes in the 1960 coup,[26] and he views the history of coups in Turkey as "a continuous cycle of democratic empower-

21. "Timeline: A History of Turkish Coups," *Al Jazeera*, July 15, 2016. https://www.aljazeera.com/news/europe/2012/04/20124472814687973.html.

22. Cagaptay, *The New Sultan*.

23. Susan Fraser, "21 Sentenced to Life over Turkey's 1997 'Post-Modern Coup,'" AP, April 13, 2018, https://apnews.com/619fbeadd1fc4cbe8e2d-d9ee2e5c4251/21-sentenced-to-life-over-Turkey's-1997-'post-modern-coup'.

24. Narli, "Civil-Military Relations in Turkey," 117–118.

25. Müge Aknur, "Civil-Military Relations During the AK Party Era: Major Developments and Challenges," *Insight Turkey* 15, no. 4 (fall 2013).

26. Head, "Turkey's First Coup."

ment thwarted by military intervention."[27] This view contrasts with what many see as the military serving as a force to enable democratic empowerment from political leaders who derailed the progress. Erdogan remembers the 1970s well, and because of his conservative, pious roots, he recalls the violence of the left, and, like other conservatives, uses that decade as an example of why secularism is bad for Turkey.[28]

Throughout the early 2000s, the relationship between the military and the AKP was fraught. The military lost many of its former institutional powers to influence treaties and their immunity in the case of a coup, and they believed the country was moving farther away from secularism. The Balyoz and Egenekon trials also eroded some of the trust the public placed in the military because the cases exposed human rights issues and several plans to sow chaos in order to justify a coup.[29] The Balyoz case from 2003, in particular, planned to use terror-style attacks against the people by bombing mosques and starting a conflict with Greece in order to justify ousting Erdogan and the AKP.[30] These plots did not enjoy the support of the public, likely because they endangered the people and supported a specific political agenda instead of the honorable protection of the country.

The government understood that if it wanted to maintain its path towards more Islamist policies and governance, they would need to rid the military of at least some of its powers, since the constitution and society generally forgave the military for all past transgressions. In 2010 there was a constitutional amendment with the goal of stopping internal military interventions by lifting coup-leaders' immunity from prosecution.[31] Before it was repealed, that amendment protected the leaders of previous overthrows and allowed them to govern. Since the repeal, many of the former coup leaders were stripped of their ranks and put on trial for plotting against the government.

2016 Coup

27. Cagaptay, *The New Sultan.*

28. Cagaptay, *The New Sultan.*

29. Aknur, "Civil-Military Relations."

30. "Turkish 'Sledgehammer' Coup Plot Trial Collapses," BBC, March 31, 2015, https://www.bbc.com/news/world-europe-32136809.

31. Reuters in Ankara, "Kenan Evren, Leader of Turkey's 1980 Military Coup and Former President, Dies," *The Guardian*, May 10, 2015, https://www.theguardian.com/world/2015/may/10/kenan-evren-leader-of-turkeys-1980-military-coup-and-former-president-dies.

The 2016 coup attempt was a failed and disorganized plot. It lacked leadership from the top of the government and consisted of mostly mid-level officers, and it attacked institutions of the state instead of protecting them. The military claimed it had taken control of the government and that Erdogan had been ousted. It was a short-lived fight as Erdogan went on social media to ask Turks to take to the streets and fight against the plotters, which worked out in his favor. The plot was over quickly after it began and resulted in vast changes for Turkish civil society as well as the military and government structures in an effort to insulate the AKP and the civilian government from further plots against them. This also led to a shift in public perception of the military and caused some to question how large of a role the military should play in deciding what is best for the country.

The Aftermath of 2016

Turkey remained under a state of emergency for two years following the July 2016 attempted coup. The state of emergency was lifted in July 2018, but many do not believe that much will change, other than many of the state of emergency rules being institutionalized.[32] These "new" laws consolidate a lot of power into the hands of the president and his political appointees, including much of the restructuring of the military. Especially notable is the omission of domestic enemies from the mission statement of the TSK, which lists only foreign-born enemies as part of their jurisdiction.[33] Foreign-born being the key word because even domestic enemies can be viewed as influenced by foreigners, creating a layer of protection around the president and the government should they feel threatened by a domestic group.

Turkey's use of conscription is a fascinating political strategy. Through being conscripted, Turkish men all have a shared experience that can create a stronger sense of citizenship and duty among the population, and it can provide a sense of diversity within the military and a deeper connection between the broader population and the military. Shortening the length of service from 12 to 6 months results in

32. Gulcen Solaker and Ece Toksabay, "Turkey's Emergency Rule Expires as Erdogan's Powers Expand," Reuters, July 18, 2018, https://www.reuters.com/article/us-turkey-security/turkeys-emergency-rule-expires-as-erdogans-powers-expand-idUSKBN1K824E.

33. "Mission," Turkish Armed Forces, 9 a, https://www.tsk.tr/Sayfalar?viewName=Mission.

benefits that are still probable without the risk of too many diverse ideologies interrupting the culture that has been curated for the military, or the coup risk that comes with a military that is more connected to their communities than to the organization and chain of command. The problem with the short conscription period is that it makes professionalization and specialization difficult, as six months in any job is a relatively short amount of time. An additional political consideration is that if conscripts are only serving for six months, it is less likely that those of less-preferable political ideologies become attached to their service and desire a career in the military if they do not feel their ideas and beliefs are welcome in the institution.

Part of the restructuring of the military was the establishment of a new National Defense University and the closing of all former military academies.[34] The new NDU is to be an umbrella education center for all military education, and it includes military, navy, and air force academies under the umbrella of the NDU. The university is run by Erhan Afyoncu, a historian with limited relevant experience and education. By restructuring the military education system, the government can exercise more control over the curriculum and disrupt structures and systems toward which some military members might feel loyalty.

As a result of the purges, many more contract officers are now graduating from civilian universities instead of military academies. These changes to military education can have an enormous impact on the culture of the armed forces as a whole. The air force and military academies mention Ataturk in their mission statements, but it seems increasingly unlikely that the true principles of Ataturk's secularism and protection of the country over the government will be applied by the military because of the culture of fear that the purges created.[35]

The new culture of fear is especially likely, given that the president can now "receive information from and issue orders directly to service commanders."[36] Given that the history of the Turkish military is one of secularism and duty to protect the country from any dangers domestic or foreign, the core values of the military will have to change since they

34. Flanagan et al., *Turkey's Nationalist Course.*

35. "Mission Statement," National Defense University Air Force Academy, http://www.hho.edu.tr/EN/AboutUs/HHOVizyonu.aspx; "Purpose of the Turkish Military Academy," National Defense University Turkish Military Academy, http://www.kho.edu.tr/eng_about_tma/mission.html.

36. Flanagan et al., *Turkey's Nationalist Course.*

are now under the direct command of the president. This is not to say that the Turkish military was ever apolitical, as they have been known as staunch defenders of Kemalism, but this is a shift for the aforementioned reasons with the understanding that Turkish modern culture is deeply rooted in secular Kemalism and the idea that the military exists outside of the political system as its own force. As this situation unfolds, it seems to be up in the air whether or not Turks will abandon that tradition and embrace Erdogan's vision or if they will stick to the secular Kemalist tradition and defend against increasing political control.

It is important to note that it is not unusual for a president to be able to give directions to military officers. In the United States, this is well understood and widely accepted by much of the population. However, the founding structure of the United States supports this chain of command, whereas the structure in Turkey does not. Additionally, it does not appear that the Turkish president has the same time restrictions as the US president regarding the length of military activity.[37]

Following the coup, there was a massive purge of the military and other institutions in Turkish society, almost like a reverse coup. This has resulted in a reduction in readiness and has left the military with a shortage of trained personnel that will take years to recover. The purges have had an enormously detrimental effect on the readiness of the TSK. The air force in particular was badly hit by the purges, especially since there was a shortage of trained pilots before the attempted coup, and many had left the military for the private sector. Not only were there more than 4,000 members of the air force purged, but many of the cadets at the air force academy were charged in connection to the attempted coup with little to no evidence they were involved.[38] Some experts believe that it could take a decade to replace these lost pilots.[39] Most flag officers in the military were removed, making room for more Islamist officers to be promoted.[40] In addition to the obvious political

37. "Mission," Turkish Armed Forces, 3 a.

38. Abdullah Bozkurt, "Turkish Air Force Crippled after Mass Purge of Pilots by Erdogan Government," *Nordic Monitor*, January 13, 2020, https://www.nordicmonitor.com/2020/01/the-turkish-air-force-crippled-after-mass-purge-of-pilots-by-erdogan-government/.

39. "Chains of Command," *The Economist*, September 29, 2016, https://www.economist.com/europe/2016/09/29/chains-of-command.

40. Levent Kenez, "Erdogan Forced out Nearly All Generals and Admirals

slant being institutionally encouraged in the TSK, the loss of so many expensively and extensively trained military professionals is difficult to recover in terms of readiness for the air force should they be needed in their international or domestic service obligations.

Conclusion and Recommendations

Turkish civil-military relations seem to be on a pendulum that favors military intervention to protect secular ideologies at one end and subordination to the civilian government at the other. It is hard to imagine that popular support will favor the latter if the economy does not remain steady and will probably swing back in favor of the military and Kemalist values. Turks have shown that they are content with military coups as long as they are for the good of the country. When people stop feeling stable and trusting the government, it is more likely that they will be opposed to another attempted coup.

Hardships within the military and increased operational tempo due to the purges could potentially result in another coup. A lack of personnel in the military is a very precarious situation, and if military leaders do not trust the foreign policy decisions being made, they could be convinced another coup attempt is in their best interest in order to protect their subordinates.

Turks seem to be supportive of the military as a foundational part of their patriotism. It is difficult to imagine that the public would lose trust of the institution because of the political framing of their actions that has been in place for the past decade. The military culture that supports coups is also so deeply rooted in that history, and it will likely take a lot more than reforms made after 2016 to shake the entire institution of their belief that they are the protectors of the Turkish way of life.

Erdogan, the entire civilian political system, the military, and the Turkish people should all be considered in what needs to change to create a sustainable Turkish model. Based on Turkey's history with the ever-fluctuating relationship between secularism and Islamism, its shifting relationship with the military, and the impact of economics on stability, there are a few ways Turkey could go about establishing more

from Turkish Military," *Nordic Monitor*, November 23, 2019, https://www.nordicmonitor.com/2019/11/erdogan-wiped-out-nearly-all-generals-and-admirals-from-turkish-army/.

stable civil-military relations in the long run.

First, a reinstatement for those who were purged who did not have solid evidence supporting their involvement in the 2016 coup. By putting such a massive strain on the military for readiness and the fear that anyone could be accused next, Erdogan has set up everyone for failure. There is no way to have a good relationship without trust between the government and the military, and both need to find a stable balance that allows the civilian government to control the military without the military feeling defensive of its members. Additionally, this will help restore some of the honor associated with being a member of the military—a lack of which contributed to the 1960 coup. Another benefit to this will be reestablishing trust between the family members of those who were purged with both the government and the military.

Second, Erdogan should form a stronger coalition with secular advocates and show that there is no reason for the Kemalists to fear his presidency, since he is a president for all of Turkey. In what is supposed to be a liberal democracy, the rights of all should be considered in order to establish trust between the government and the people. Additionally, those on the liberal end of the political spectrum should make an effort to coordinate on policies, specifically ones that affect the military. This will establish a better trust between the military and the government.

Lastly, conscription should remain the same length of time, but the option to avoid service for a fee will only serve to deepen the divide between Turkish elites and everyone else, and the fee should be eliminated. Making everyone serve is a good way to establish camaraderie and create trust between everyone in society, as well as allowing Turkey to maintain a stable, common-values system that everyone understands. Additionally, women should have service requirements in order to make sure that everyone is participating in service to their country.

Commentary on the 2001 Authorization for the Use of Military Force

Erik Knighton

. In the almost 20 years since the adoption of the 2001 Authorization for the Use of Military Force (AUMF), many have openly criticized it as a "blank check" for presidential power. Indeed, some political figures have argued that it should be repealed completely. While it could be logically argued that the 2001 AUMF itself has perhaps been too broadly interpreted and applied—a problem exacerbated by the lack of a sunset clause—outright repealing the AUMF would be a step too far. Instead, legislators should work with the president to draft new authorizations suited to contemporary counterterrorism needs. The president should act within the bounds of constitutional law and use the 2001 AUMF only where it is actually applicable.

The Origins and Context of the 2001 AUMF

Traditionally, US constitutional law has specifically outlined the roles of both Congress and the president in matters of war. However, in the age of the War on Terror lines have begun to be blurred. It was on September 11, 2001, when the most significant terror attack on US soil occurred, that so much in the national security enterprise of the United States began to change in earnest. On that day 19 extremists caused the deaths of "more than 2,600 people . . . at the World Trade Center; 125 . . . at the Pentagon; 256 died on the four planes."[1] So much

Erik Knighton graduated from Utah Valley University in National Security Studies in 2020, focusing on Eastern European issues and his mastery of the Russian language. Living in Ukraine for two years sparked his interest in the legal aspects of international affairs and conflicts. He maintains a strong interest in the issues of the post-Soviet sphere, with an affinity for Ukraine. He considers the AUMF to be one of the most influential pieces of legislation in US history.

1. National Commission on Terrorist Attacks Upon the United States, *The 9/11*

unprecedented death and destruction warranted institutional change, and the country wanted justice. According to a Gallup opinion poll from December of 2001, just months after the attacks, the "vast majority of Americans—92%—[expressed] satisfaction with the amount of progress made by the US military in the war in Afghanistan," and that 93% of Americans saw "capturing or killing bin Laden [as] . . . just one step in a long campaign against terrorism."[2] It was this political environment, at a time when action needed to be taken, that paved the way for the 2001 Authorization for the Use of Military Force.

Days after the horrific attacks on 9/11, Congress passed the 2001 AUMF by a landslide. It states in no uncertain terms that the President of the United States is given authority to employ any means deemed necessary to bring those responsible for 9/11 to justice:

> The President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.[3]

At the time this authorization made a lot of sense. Swift action was needed to prevent something like this from happening ever again. The AUMF was the authorization that the Chief Executive needed in order to pursue and bring to justice al-Qaeda, the group deemed responsible for the attacks. The AUMF was likewise the authorization to enter Afghanistan and begin the War on Terror and launch the manhunt for bin Laden.[4] As stated above, there was broad public support for this in the United States—at the time. However, there are many who would argue that the 2001 AUMF has been overused—especially since the AUMF has no sunset clause and thus does not expire.

The 2001 AUMF in Practice

Commission Report, July 2004, 1–2.

2. "Latest Summary: American Public Opinion and the War on Terrorism" Gallup News Service, December 21, 2001, https://news.gallup.com/poll/5113/latest-summary-american-public-opinion-war-terrorism.aspx.

3. Joint Resolution, AUMF, Public Law 107-40, (September 18, 2001).

4. Council on Foreign Relations, "How a Single Phrase Defined the War on Terror," 2020, https://world101.cfr.org/global-era-issues/terrorism/how-single-phrase-defined-war-terror.

Observers who would claim that the AUMF clauses in question has been overused have legitimate cause to think so. Bush, Obama, and the Trump administrations have each applied the Joint Resolution regularly in the War on Terror. According to the Congressional Research Service, as of 2016 the AUMF has been cited 37 times, in 14 different countries and on the high seas in the 19 years since its adoption. It has been used to justify action in Afghanistan, Cuba (Guantanamo Bay), Djibouti, Eritrea, Ethiopia, Georgia, Iraq, Kenya, Libya, Philippines, Somalia, Syria, and more.[5] Much of this has occurred even after Osama bin Laden was killed in 2011.[6] In response to this liberal application of the Authorization, some detractors have called for the outright repeal of the resolution, with no replacement whatsoever.

Criticisms of the AUMF

The reasoning of those who would argue that the AUMF should be repealed often hinges on the idea that the AUMF has gone far beyond the intended scope of bringing those responsible for 9/11 to justice. Healy and Glaser write, "Wipe the slate clean: repeal, don't replace, the 2001 AUMF. Recognize that the original authorization has run its course, and sunset it, leaving adequate time—six to nine months—to wrap up ongoing combat operations."[7] Other detractors cite constitutional law: "Repealing the 2001 AUMF would bring an end to nearly two decades of creeping warfare and reflect the proper constitutional balance of war powers between the executive and legislative branches."[8] Ultimately these voices all have a point. The 2001 AUMF has, in some ways, served as what they call a "blank check" allowing the president to make many decisions unilaterally about counterterror efforts. However, some of these observers advocate for repealing the AUMF

5. Matthew Weed, "Presidential References to the 2001 AUMF in Publicly Available Executive Actions and Reports to Congress," Congressional Research Service, February 16, 2018, https://fas.org/sgp/crs/natsec/pres-aumf.pdf.

6. "Obama Announces Death of Osama Bin Laden," History.com, 2012, https://www.history.com/topics/21st-century/obama-announces-death-of-osama-bin-laden-video.

7. Gene Healy and John Glaser, "Repeal, Don't Replace, the AUMF," Cato Institute, August 6, 2018, https://www.cato.org/sites/cato.org/files/serials/files/policy-report/2018/8/cpr-v40n4-6.pdf.

8. "The Problems with the 2001 AUMF and How to Fix Them," Human Rights First, July 03, 2019, https://www.humanrightsfirst.org/resource/problems-2001-aumf-and-how-fix-them.

entirely without any solid replacement.

Some critics of the AUMF claim that repealing and not replacing the AUMF in any manner would have no ill consequences. Human Rights First, a prominent advocacy group, stated in a 2019 publication that

> repealing the 2001 AUMF now would not leave the United States vulnerable. In the past, Congress has demonstrated its ability to act swiftly when it believes that authorizing military force is necessary. Congress passed the 2001 AUMF within three days of the 9/11 attacks and historically has acted quickly in a number of similar contexts.[9]

An obvious hole in this logic is that Congress, while indeed acting swiftly to pass the AUMF, did not act until after the 9/11 attacks had already killed thousands of Americans—it was a reaction, not a preemption. But now the United States is in the middle of the War on Terror and preemption matters. The Authorization does afford a greater ability to react quickly to terrorist threats and to eliminate them before bad actors are able to carry out attacks against the United States. Outright repealing the AUMF could potentially leave the president in a position of feeling the need to act unilaterally—presidents have acted unilaterally in matters of armed conflict often in the past.

The president's acting unilaterally in matters of security is not at all unprecedented. In fact, there is a long history of presidents acting unilaterally in such cases. As Patrick Hulme recently wrote for Lawfare, "Presidents have consistently been unwilling to enter into "big wars" without knowing Congress is in on it as well, while being inclined to use force in "small wars" alone given that the cost in lives and money will be minimal."[10] This has been seen repeatedly; in fact, there are more examples of armed conflicts of one form or another that have no formal congressional approval than there are formal declarations of war by Congress.[11] Examples of this range from rescue operations, such as in the mid-19th century, when a federal appellate court "held that the

9. "The Problems with the 2001 AUMF, Human Rights First.

10. Patrick Hulme, "The Future of War Is Unilateral but Small, Lawfare, October 31, 2019, https://www.lawfareblog.com/future-war-unilateral-small.

11. Jennifer K. Elsea and Matthew C. Weed, "Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications," Congressional Research Service, April 18, 2014, https://crsreports.congress.gov/product/pdf/RL/RL31133/17.

President could act on his own to retaliate against an attack on an American diplomat stationed in Nicaragua," all the way to the Korean War—a war that had no formal declaration by Congress.[12]

Those arguing for the outright repeal of the AUMF may refer to this precedent of unilateral action as evidence that the AUMF does not matter in the first place; the president will take the action he or she deems necessary. There is certainly a legitimate reason to come to that conclusion, as it is easy to get the impression that with each successive presidential administration, more actions are made unilaterally by the executive. The Bush, Obama, and Trump administrations have cited the AUMF to justify actions. Officials within each of the administrations have even openly advocated for keeping the AUMF, claiming that it is sufficient to justify military action taken in the War on Terror—even when such action is not closely linked to al-Qaeda. Both the Obama and Trump administrations have argued that the 2001 and 2002 AUMFs are enough to expand the War on Terror to targets outside Afghanistan and Iraq. In 2017, then Secretary of Defense James Mattis as well as then Secretary of State Rex Tillerson testified before the Senate Foreign Relations Committee that "a new [war authorization] is not legally required to address the continuing threat posed by al-Qaeda, the Taliban, and ISIS," citing the relevancy 2001 AUMF.[13] Tillerson and Mattis offer an insightful perspective, but mostly insofar as the AUMF applies to al-Qaeda and its affiliates. This, in reality, refers only to the instances in which the AUMF has been appropriately applied, but the AUMF has been used as justification for activities that could no doubt be seen as extending beyond the original purpose of the Joint Resolution.

The Original Intent

The application of the AUMF may go too far when the Authorization has been interpreted to apply not only to al-Qaeda, but to affiliated groups, or "associated forces." According to the Congressional Research Service,

> The United States has identified other groups in the Middle

12. Geoffrey Corn et al., *National Security Law: Principles and Policy* (New York: Wolters Kluwer, 2015).

13. *The Authorizations for the Use of Military Force: Administration Perspective*, Before the United States Senate Committee on Foreign Relations, 115th Cong. S.HRG 115-639, (2017) (statement of Rex Tillerson, Secretary of State, and James Mattis, Secretary of Defense).

> East and Africa that it considers "associated forces" of Al Qaeda, that is, organized forces that have entered alongside Al Qaeda in its armed conflict with the United States and its coalition partners. The United States has used force against these Al Qaeda associates in a number of other countries, including Yemen, Somalia, Libya, and most recently, Syria. In addition, the President has relied in part on the 2001 AUMF as authority for his campaign against the Islamic State (also known as ISIS or ISIL) in Iraq and Syria, and against the Khorosan Group of Al Qaeda in Syria. Since 2001, counterterrorism activities involving deployment of U.S. Armed Forces, if not always the use of military force, have steadily increased, taking place in countries around the world, although it is not clear whether the 2001 AUMF has provided authority for these activities.[14]

The AUMF is a point of consistent contention between Congress, the president, and the people. When President Barack Obama pursued ISIS militarily, a US Army captain filed a lawsuit against Obama, claiming that "President Obama's war against ISIS is illegal because Congress has not authorized it."[15] The administration's defense was that their legal justification was the 2001 AUMF, a resolution that in no way directly refers to ISIS, as the group did not even exist when the authorization was written.[16]

The Authorization was likewise applied to actions in Yemen, but Congress passed a resolution stating, "Congress has not enacted specific legislation authorizing the use of military force against parties participating in the Yemeni civil war that are not otherwise subject to the Authorization for the of Use of Military Force."[17] Thus, there are, at least from one perspective, many instances in which the AUMF does

14. Matthew C. Weed, "2001 AUMF: Issues Concerning Its Continued Application," Congressional Research Service, April 14, 2015, https://fas.org/sgp/crs/natsec/R43983.pdf.

15. Smith v. Obama, US Court for the District of Columbia, https://law.yale.edu/sites/default/files/documents/pdf/Public_Affairs/smithvobama.pdf

16. Mary Louise Kelly, "When the U.S. Military Strikes, White House Points To A 2001 Measure," NPR, September 6, 2016, https://www.npr.org/sections/parallels/2016/09/06/492857888/when-the-u-s-military-strikes-white-house-points-to-a-2001-measure.

17. Expressing the Sense of the House of Representatives with Respect to United States Policy towards Yemen, and for Other Purposes, H. Res. 599, 115th Cong. (November 13, 2017).

not technically apply; Congress did not give another authorization, but the Executive took action notwithstanding. Under the 1973 War Powers Resolution enacted during the NixonAdministration (despite his veto), when the president brings armed forces into armed conflict, or into situations where hostilities are imminent, the president must either get approval from Congress within 60 days in order to remain, in the form of a declaration of war or specific statutory authorization, or the activities must be terminated within 30 days after the 60-day period expires.[18] It seems logical, then, that certain activities carried out by presidents are not only unjustifiable according to the 2001 AUMF, but they are also in violation of the War Powers Resolution.[19]

The 2001 AUMF has been too liberally, too broadly interpreted and applied. Nowhere in the original text of the document are "associated forces" expressly mentioned. In fact, the only text that comes close pertains to "those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons."[20] This document was clearly written to refer to the perpetrators of the inexcusable attacks on 9/11, in order to bring all those involved to justice. Instead, it has been used to justify numerous military actions in dozens of countries—some of which are not directly affiliated with al-Qaeda, much less a part of the plan for the 9/11 attacks.

Looking Forward

The Biden administration and future administrations ought to seek separate congressional authorization for the use of military force against other groups and narrowly apply the 2001 AUMF to al-Qaeda and others responsible for 9/11. Doing so would be in better standing with the War Powers Resolution, and with the Constitution's originally intended role for both Congress and the Executive branch in matters of war. When drafting the Constitution, the delegates changed the Constitution's grant of power to Congress

> to "make war" to the power to "declare war," . . . not to take Congress out of the decision-making process, but be-

18. War Powers Resolution, H. Res. 542, 93rd Cong. (1973).

19. Alan Greenblatt, "Why the War Powers Act Doesn't Work," NPR, June 16, 2011, https://www.npr.org/2011/06/16/137222043/why-the-war-powers-act-doesnt-work.

20. Joint Resolution, AUMF.

> cause . . . the power to "make" war might be confused with the ability to "conduct" a war once it had started—a . . . narrower tactical task and hence an Executive Function."[21]

The Framers clearly intended for power in a time of war, as in a time of peace, to be split between the Legislature and the Executive. The historic blanket application of the 2001 AUMF represents perhaps too much latitude in the hands of the president. It would be far preferable if the president would seek specific congressional approval in order to meet new and evolving challenges that the United States is facing, while remaining true to the original intent of the law.

21. Corn et al., *National Security Law*.

A Nuclear Crisis in East Asia: China, Taiwan, and the United States

Sasha Woffinden

Abstract

The status of Taiwan has been a point of contention in US–China relations for many years. Taiwan asserts that it is an independent and sovereign state, while China strongly maintains that Taiwan is part of the Chinese mainland. Conversely, the United States views Taiwan as a valuable ally in curtailing China's influence in East Asia, thus preferring that Taiwan remain sovereign. China has before alluded to its resolve to use nuclear arms in a fight for Taiwan, signifying that any US intervention in the region could risk spurring a conflict that escalates beyond conventional warfare.[1] Thus, this generates the question of how the United States may achieve its aim of keeping Taiwan independent while simultaneously mitigating the risk of provoking a nuclear conflict with China. There are four possible courses of action that the United States could pursue if China's aggression continues to rise. The United States could (1) formally commit to defending Taiwan, (2) abandon Taiwan, (3) arm Taiwan, or (4) pursue an international resolution. Some potentially useful recommendations include the United States passing a domestic law that clearly emphasizes its commitment to Taiwan's defense

Sasha Woffinden holds a Bachelor of Arts in political science with an emphasis in legal studies from Brigham Young University. Her areas of focus are US foreign policy, international development, East and Southeast Asian politics, and global governance. Sasha has worked at the United Nations Information Centre in Tokyo as an intern and as a research and teaching assistant at BYU. She currently works as a researcher in a team investigating the effects of electrification and democratic governance in rural Burmese villages.

1. United States Policy Regarding the Export of Satellites to China: Joint Hearings before the Comm. on National Security Meeting Jointly with Comm. on International Relations, 105 Cong. (1998), 56.

and defining US level(s) of engagement towards this end; continuing to supply conventional arms to Taiwan; and, as a last resort, pursuing international action on Taiwan.

Background

Taiwan, formerly known as the Republic Formosa, has been controlled by different governments throughout its existence. First governed by the Chinese Qing Dynasty in the 1800s, China's defeat in a war against Japan transferred control from the Qing Dynasty to Japan, who ruled Taiwan for about fifty years.[2] Currently, Taiwan occupies a unique status—it asserts that it is an independent and sovereign state, while China maintains that Taiwan is part of the Chinese mainland. As US General Douglas MacArthur once observed, China views Taiwan as "the unsinkable aircraft carrier" and as a geographically important territory in maritime East Asia, which China could use to exert its influence in the Pacific.[3]

An equally key reason behind China's continued rejection of Taiwanese independence is China's desire to satisfy its communist ambition of reuniting the country—of which Beijing considers Taiwan a part—"under the Mandate of Heaven," which refers to the long-held Chinese belief that China is entitled to rule territories that the Qing Dynasty had ruled, including Taiwan.[4] Taiwan's continued assertion of independence is an affront to this doctrine. Due in part to China's influence, most nations and international organizations—such as the United Nations—do not recognize Taiwan's independence.[5]

The United States had recognized Taiwan's independence until 1979, when the Carter Administration ended formal diplomatic and treaty relationships with Taiwan and began formalizing diplomatic relations with China.[6] During this period, the United States claimed that the Government of the People's Republic of China was the "sole legal

2. "Taiwan," The World Factbook, Central Intelligence Agency, Office of Public Affairs.

3. Gary J. Schmitt, ed., *Rise of the Revisionists: Russia, China, and Iran* (Washington: The AEI Press, 2018), 58–59.

4. Schmitt, *Rise of the Revisionists*, 58–59.

5. Chris Horton, "Taiwan's Status Is a Geopolitical Absurdity," *The Atlantic*, July 8, 2019, https://www.theatlantic.com/international/archive/2019/07/taiwans-status-geopolitical-absurdity/593371/.

6. U.S. Department of State, "U.S. Relations with Taiwan," 2018, https://www.state.gov/u-s-relations-with-taiwan/.

government of China," thereby denouncing the legitimacy of the Taiwanese government and begetting the "One China" policy that the United States accepts to this day.[7] However, while the United States no longer expressly recognizes Taiwan's status as an independent state, the US Congress passed the Taiwan Relations Act in 1979, which created an informal security relationship between the United States and Taiwan. The Act is written in nebulous terms—notably, it suggests that any threat to Taiwan is considered of "grave concern" to the United States, but it does not necessarily entail that the United States will come to Taiwan's defense in every—or any—case.[8] This is known as the United States' policy of strategic ambiguity.

Though the nature of the US–Taiwan relationship has changed throughout the years, the United States maintains good unofficial relations with Taiwan and views Taiwan as a valuable part of preserving an order favorable to the United States in East Asia. Taiwan is a major interchange for the Trans-Pacific undersea cables, which is important to the United States for both economic and security purposes. Taiwan, as a fellow democracy and ally, is also politically symbolic to the United States; deterioration in the relationship between the two countries could call into question the credibility of US security assurances to its other allies, particularly those in East Asia. Additionally, if Taiwan were to fall under Chinese control, China would likely use Taiwan to reduce the US presence in East Asia, thereby inhibiting the United States from exerting its influence in the region.[9] With this rationale in mind, the Trump Administration bolstered the United States' strategic relationship with Taiwan.[10] However, the United States, in past administrations, also acted accordingly with its doctrine of strategic ambiguity, being careful not to aggravate China by siding with Taiwan on too many matters. When Taiwan once pursued a nuclear weapons program, China successfully exerted significant pressure on the United States to convince Taiwan to shut its program down, which Taiwan eventually did.

7. U.S. Department of State, "U.S. Relations with Taiwan."

8. Cal Clark, "The Taiwan Relations Act and the U.S. Balancing Role in Cross-Strait Relations," *American Journal of Chinese Studies* 17, no. 1 (2010): 4, http://www.jstor.org/stable/44288005.

9. Horton, "Taiwan's Status Is a Geopolitical Absurdity."

10. Zoe Leung, "The Precarious Triangle: China, Taiwan, and United States," *The Diplomat*, May 15, 2020, https://thediplomat.com/2020/05/the-precarious-triangle-china-taiwan-and-united-states/.

While the US doctrine of strategic ambiguity has helped maintain the status quo thus far, China's increasing assertiveness in the Taiwan Strait may eventually render strategic ambiguity ineffectual.[11] If China continues to encroach on Taiwanese bounds and threatens military action, the United States will need to consider its options. The United States must also recognize that intervening in the region could result in a conflict that escalates beyond conventional warfare, as China has alluded to its own resolve to use nuclear arms in a fight for Taiwan. Consequently, it is important to factor into US nuclear strategy these considerations and the present and pressing danger of a potential Chinese nuclear escalation. Further examination of the policy options for these various scenarios is necessary.

Overview of Options

As established, it is in the United States' best interest to ensure a free and sovereign Taiwan; however, past experiences demonstrate that there is also a non-negligible risk of a conflict emerging between China and the United States over Taiwan. There is an even slimmer, but also non-zero, chance of such a conflict escalating into a limited nuclear war. Therefore, there are four courses of action that the United States may consider. The optimal option is the one that best serves the US interest of defending Taiwan's independence while mitigating the risk of inciting a conventional or nuclear conflict.

Option One Overview

The first option is that the United States makes a tangible commitment to defending Taiwan. The United States may consider strengthening its security relationship with Taiwan through changing its posture towards Taiwan from strategic ambiguity to stalwart military commitment. This option is divided into two sub-options: Sub-option (1a) proposes that the United States and Taiwan form a security treaty similar to the US–Japan Treaty of Mutual Cooperation, which guarantees US military protection to Japan. Alternatively, sub-option (1b) proposes that the United States pass a new domestic law to express its robust commitment to Taiwan's defense.

11. Brad Lendon, "Almost 40 Chinese Warplanes Breach Taiwan Strait Median Line; Taiwan President Calls it a 'Threat of Force,'" CNN, September 21, 2020. https://edition.cnn.com/2020/09/21/asia/taiwan-china-warplanes-median-line-intl-hnk-scli/index.html.

Implementation of option one will likely be difficult, though the precise level of difficulty is contingent upon which level of commitment the United States pursues. With regard to sub-option (1a), ratifying a security treaty with Taiwan would require domestic approval, and in a political climate where the past few administrations—and even many US citizens themselves—have complained about the "one-sided" nature of security treaties with East Asian allies, the chances of passing another security treaty with the potential to become "one-sided" may be slim. While there are proponents in the US government for establishing a robust security commitment to Taiwan, they are currently outnumbered by those who are unwilling to forge such a hefty commitment.[12] Additionally, a new treaty between the United States and Taiwan would unquestionably inflame tensions with China. Given that China considers Taiwan a part of its mainland and sees Taiwan's bid for independence as an internal problem, Beijing would not respond well to Taiwan forming a security treaty with an external actor—especially the United States.

For these reasons, successful pursuit of option one need not necessarily require the formation of a US–Taiwan treaty. Sub-option (1b) suggests that the United States pass a domestic law that clearly stipulates the bounds of US commitment to Taiwan and expresses a coherent stance on how and when the United States will defend Taiwan. Such a law may outline precise situations in which the United States would be compelled to act in Taiwan's defense and define different levels of US engagement for threats and attacks against Taiwan. Passing a domestic law may be more viable in light of the lack of Congressional support for a treaty with Taiwan mentioned in discussion of sub-option (1a), as it would allow the United States to unilaterally define the terms of its engagement and its own limits without input from Taiwan, which would appeal to US lawmakers. Another clear benefit of this course of action is that it is less likely to aggravate China than would forming a treaty, as passing a US domestic law would not require Taiwan's cooperation. Additionally, passing another domestic law would be a logical and familiar step for the United States, considering the string of similar, extant US policies towards Taiwan; both the Taiwan Relations Act of 1979 and the TAIPEI Act of 2019 were established to

12. Shirley A. Kan. *Taiwan: Major U.S. Arms Sales Since 1990*, Congressional Research Service, August 29, 2014, https://fas.org/sgp/crs/weapons/RL30957.pdf.

define the terms of the US–Taiwan relationship and the United States' stance towards Taiwan, albeit ambiguously.

The TAIPEI Act builds upon the Taiwan Relations Act, reinforces the importance of the US–Taiwan relationship, and proposes a stronger US commitment to Taiwan in select areas. Various clauses in the Act pledge that the United States will advocate for Taiwan's engagement in international organizations where "appropriate," to be determined by the executive, and will help Taiwan strengthen its diplomatic ties with other countries.[13] The Act was devised and passed in response to China's offensive campaign towards Taiwan, which obstructed Taiwan's diplomatic relationships and impeded Taiwan's participation in international organizations.[14] While China predictably decried the TAIPEI Act as "an act of hegemony,"[15] no conflict outside of tensions in the grey zone—defined as non-war conflict or tensions—has arisen as a result, even though the Act proposes a heightened level of US engagement with Taiwan.[16] Consequently, the passage of another domestic law—even one that boldly defines a substantive US commitment to Taiwan's defense, unlike its predecessors—will most certainly infuriate China, but there is no precedent of US domestic laws sparking actual conflicts, making sub-option (1b) particularly viable.

Option Two Overview

The second option is the inverse of the first, suggesting that the United States abandons Taiwan. In this option, the United States refrains from becoming involved in Taiwan's affairs or in any potential conflicts with China over Taiwan. Implementation of this option would require the United States to cease any ongoing and future arms and military technology sales to Taiwan, to refrain from passing comment or taking action on Chinese aggression towards Taiwan, and to ignore any conflict that arises between China and Taiwan. This option is the

13. Taiwan Allies International Protection and Enhancement Initiative (TAIPEI) Act of 2019, S.1678, 116th Cong. (2019).

14. Mercy A. Kuo, "Trump and the TAIPEI Act," *The Diplomat*, April 21, 2020, https://thediplomat.com/2020/04/trump-and-the-taipei-act/.

15. Brad Roberts, *The Case for U. S. Nuclear Weapons in the 21st Century* (Palo Alto: Stanford University Press, 2015), 75.

16. Minnie Chang and Kristin Huang, "China Describes Signing of Taipei Act by Donald Trump as an Act of Hegemony," *South China Morning Post*, March 27, 2020, https://www.scmp.com/news/china/diplomacy/article/3077336/china-describes-signing-taipei-act-donald-trump-act-hegemony.

least logistically infeasible to implement, as its only requirement is non-action on the part of the United States.

Option Three Overview

The third option is that the United States provides conventional arms to Taiwan or tacitly consents to Taiwan's arming itself with nuclear weapons. Unlike option one, however, option three entails that the United States retains only its current level of involvement in Taiwan, keeping its policy of strategic ambiguity.

Option three consists of two sub-options: In sub-option (3a), the United States will, as it has done since 1979 and continues to do, sell arms to Taiwan. The Taiwan Relations Act requires the United States to supply Taiwan with defensive arms.[17] Sub-option (3a) entails that the United States continues with this same trajectory. Precedent shows that China has been—and thus, will continue to be—affronted by such sales to Taiwan, with Chinese government officials and spokespeople warning that US weapons and military technology sales to Taiwan constitute aggressive actions on the part of the United States. However, no actual conflict outside of the grey zone has arisen as a result to date, and it is doubtful if China would start a conventional—let alone a nuclear—war for this reason alone.

In sub-option (3b), the United States takes an arguably morally dubious stance—namely, it turns a blind eye to Taiwan rebuilding its nuclear weapons program, thereby tacitly consenting to Taiwan possessing nuclear arms. Quietly consenting to a country's nuclear weapons build-up is not unprecedented, as Washington does exactly this with Israel; thus, this scenario may not damage the United States' moral standing. However, given the strength of the current global nonproliferation regime and the enduring nuclear taboo worldwide—which is particularly persistent in neighboring East Asian countries, such as Japan—Taiwan itself may not be willing to risk being on the receiving end of regional and international hostility by rebuilding its nuclear weapons program.

Option Four Overview

The fourth option is that the United States seeks an international

17. Edward Wong, "U.S. Pushes Large Arms Sale to Taiwan, Including Jet Missiles That Can Hit China," *New York Times*, September 17, 2020, https://www.nytimes.com/2020/09/17/us/politics/us-arms-sale-taiwan-china.html.

resolution for Taiwan. This option may come in two sub-options: In sub-option (4a), an international resolution would come in the form of pressuring international organizations, such as the United Nations (UN), to recognize Taiwan's status as an independent nation. More realistically, sub-option (4b) entails forming a treaty with other allies to defend Taiwan from hostile invasion. Implementing either sub-option of option four would be logistically difficult, considering that they both rely heavily on the participation of other states to be successful.

Formally recognizing Taiwan's independence at the UN level would be near impossible to achieve; China is a permanent member of the UN Security Council, which gives it leverage over the voting process by way of veto power, and Russia, another permanent member, would be equally unlikely to vote against China and in the United States' favor. UN recognition of Taiwan would damage China's account that Taiwan is part of the Chinese mainland, and China has thus far unfailingly fought against any means by which Taiwan could gain recognition from the United Nations. In one instance, China successfully prevented the UN from accepting humanitarian aid from Taiwan for fear that the UN accepting aid would implicitly signify its recognition of Taiwan's status as an independent nation.[18]

The situation demonstrates the importance of the "One China" doctrine to the Chinese government's legitimacy, as well as the lengths to which China will go to defend—and to ensure the world recognizes—its carefully crafted yet extraordinarily fragile narrative. It can be assumed that international recognition of Taiwan would deal a heavy blow to China's self-image, undermine Beijing's position that China encompasses Taiwan and is united "under heaven," and irreparably dent its overarching communist doctrine.[19] Thus, even if UN recognition is not currently possible due to China and Russia's veto powers, it is still possible for countries to begin destabilizing China's narrative by independently recognizing Taiwan's independence.

Sub-option 4 could be an effort that the United States initiates—by recognizing Taiwan's sovereignty domestically—and then spearheads—through pressuring its allies to do the same. This may be a more feasi-

18. Eric Ting-Lun Huang, "Taiwan's Status in a Changing World: United Nations Representation and Membership for Taiwan," *Annual Survey of International & Comparative Law* 9, no. 1 (2003): 59.

19. Schmitt, *Rise of the Revisionists*, 58–59.

ble substitute to sub-option (4a), helping achieve the same effect of chipping away at the symbolic narrative that China holds in high importance. Sub-option (4b) is more realistically achieved. While the United States ostensibly benefits from keeping Taiwan independent, allies—especially Asian allies—have much to lose from China absorbing Taiwan. Consequently, a treaty between the United States and its close allies could help distribute the commitment of keeping Taiwan free between different nations.

Assessment of Options

An evaluation of the advantages and disadvantages to the United States in pursuing each of the four options is requisite to understand which option(s) is most viable. Additionally, it is necessary to analyze the anticipated logistics accompanying the implementation of each given option and weigh each option's benefits against its associated costs to ultimately decide which option yields the highest advantages while mitigating costs.

Option One: The United States Makes a Commitment

Option one calls for the United States to articulate a tangible commitment to defending Taiwan. As a brief recap, this option may entail either of two sub-options: In sub-option (1a), the United States and Taiwan create a formal security treaty committing the United States to Taiwan's defense. In sub-option (1b), the United States does not engage in treaty-making, instead passing a new domestic law to express its staunch commitment to Taiwan's defense.

Option One Advantages

There are numerous general benefits to option one and both sub-options. Pursuing this option allows the United States to reassure its allies that US security assurances are credible, while simultaneously demonstrating to China the United States' resolve. As of late, there have been concerns among East Asian allies of wavering US commitment in the region. Thus, if the United States bolstered its relationship with Taiwan and committed publicly to upholding its defense, this would signal to East Asian allies that the United States is invested in keeping its allies safe and China at bay, thereby enhancing US relationships with countries such as Japan and South Korea. Strengthening ties with such countries would indubitably yield diplomatic, economic, and

strategic benefits for the United States. Additionally, a statement of US commitment may serve as a deterrent to other hostile nations, such as North Korea.

Moreover, a free and independent Taiwan is economically and strategically important to the United States, helps maintain an order favorable to the United States in East Asia, and serves as a defense against the aggressions of an increasingly belligerent China. Taiwan's geographic position makes it a launching point into the Pacific. If China absorbed Taiwan, Beijing would certainly exploit Taiwan's geographic advantages as another step in pushing the United States out of East Asia, thereby obstructing the United States from exerting its influence in the region.[20]

The final benefit to the United States comes by way of raising the country's profile in international diplomacy. Through making a stronger commitment to Taiwan, Washington represents the values it purports to protect—democracy, freedom, and human rights—on the world stage.

Option One Disadvantages

While option one is promising, it is not without its costs. Committing to defending Taiwan is financially—and politically—expensive. In an era where recent US presidential administrations have criticized East Asian allies for freeriding and failing to uphold their ends of their security relationships with Washington, adding yet another East Asian ally to the existing list of countries that require defense may be difficult to achieve from a domestic political standpoint. US critics of higher engagement in Taiwan have also noted that establishing a robust security relationship with Taiwan may disincentivize Taiwan from bolstering its own defenses, resulting in Taiwan becoming too heavily reliant on the United States for defense.[21]

China has grown increasingly assertive in the Taiwan Strait, and there is a fair chance that the United States, if committed to defending Taiwan, becomes involved in a costly conflict with China. Less significant US actions—such as the passage of a US domestic law, which sub-option (1b) describes—may keep tensions in the grey zone. However, if the United States and Taiwan formed a formal security treaty,

20. Horton, "Taiwan's Status."
21. Kan, *Taiwan.*

tensions could intensify to conflicts in the red zone, which is defined as conflict likely to escalate to war.[22] There is even the possibility of an actual escalation of conflict to conventional—or nuclear—war. One scholar notes that there is "a real potential for miscalculation and inadvertent escalation, especially in a confrontation over Taiwan."[23]

The US–China dispute over Taiwan is often characterized as one of the very few scenarios that could catalyze China to deviate from its No First Use nuclear policy—particularly if "China is on the verge of suffering a politically catastrophic defeat in a conventional military conflict over Taiwan."[24] During the Third Taiwan Strait Crisis, Chinese intelligence officer Xiong Gunag-kai told US Assistant Secretary of Defense Chas Freeman that "Americans care more about Los Angeles than they do about Taiwan," which Freeman interpreted as a veiled threat that demonstrated China's resolution to use nuclear weapons against the United States if it intervened in a China-Taiwan conflict.[25]

Even the United States once considered using nuclear arms against China to defend Taiwan during the First Taiwan Strait Crisis.[26] While circumstances absolved the United States from having to make such a decision, it was a course of action that the Eisenhower Administration had been prepared to take.[27] If a conventional or nuclear war begins between the United States and China, there will be US casualties, especially if a Chinese missile launch reaches one or more US states. This signifies a potential escalation of a conflict in the grey or red zones to a nuclear strike on US land, which enters the black/white zone—meaning that the United States or a US ally has become the target of a nuclear attack.[28] Some years ago, a Chinese general warned that US interference in any Chinese effort to take control of Taiwan would result in Beijing launching a nuclear attack on Seattle; this was a public media

22. Roberts, *The Case for U.S. Nuclear Weapons*, 75.

23. Roberts, *The Case for U.S. Nuclear Weapons*, 171.

24. Christopher T. Yeaw, Andrew Erickson, and Michael Chase, "The Future of Chinese Nuclear Policy and Strategy," in *Strategy in the Second Nuclear Age: Power, Ambition, and the Ultimate Weapon*, ed. Toshi Yoshihara and James R. Holmes (Baltimore: Georgetown University Press, 2012), 61.

25. United States Policy Regarding the Export of Satellites to China (1998).

26. Gordon H. Chang, "To the Nuclear Brink: Eisenhower, Dulles, and the Quemoy-Matsu Crisis," *International Security* 12, no. 4 (1988): 98, https://doi.org/10.2307/2538996

27. Chang, "To the Nuclear Brink, 98."

28. Roberts, *The Case for U. S. Nuclear Weapons*, 75.

threat, although the Chinese government later scrambled to shut him down.[29] This, as well as the Chinese stance during the Third Taiwan Strait Crisis, aligns with political analysts' characterization of this issue: China is so unwilling to relinquish Taiwan that it could resort to using nuclear weapons against its adversaries.

However, an important consideration for the United States is its ability to limit costs to its mainland through developing more advanced missile defense technology, such as the Multiple Kill Vehicle (MKV). The US MKV program has historically disturbed China, who believes the US MKV is aimed in its direction. China's fears may not be entirely unfounded—the MKV is capable of intercepting the few dozen Chinese missiles that have the capacity to strike the United States, thereby radically changing the missile defense equation in the United States' favor.[30] While past administrations have distanced themselves from the program over the fears it caused the Chinese, the MKV program was actively researched under the Trump administration.[31] Whether the current Biden administration will continue the program or dissolve it—as did the Obama administration, under which Biden served as vice president—still remains undetermined.

If a possible conflict with China over Taiwan escalates to the black/white zone—as it could do if the United States were to pursue a treaty with Taiwan—then the MKV program can help reduce the damage done to the United States. Such considerations may stop China from launching a first-strike attack against the United States, thus mitigating the chances of a nuclear war occurring.[32]

On several occasions, China has provoked tensions in the grey zone to express displeasure over what it believed was excessive US interference in Taiwan. However, as mentioned in the above analysis of sub-option (1a), the degree of possible escalation is at least partially contingent on the corresponding level of US action. Past experiences with the Taiwan Relations Act and the TAIPEI Act show that the passage of US domestic laws regarding Taiwan has not yet caused China to escalate tensions outside of the grey zone. Thus, it can be reasonably inferred that passing another domestic law—even one explicitly stating

29. Kerry Kartchner (former U.S. senior adviser, Strategic Communications), in discussion with the author, October 2020.

30. Kartchner, discussion.

31. Kartchner, discussion.

32. Yeaw et al., "The Future of Chinese Nuclear Policy," 61.

US commitment to Taiwan's defense and defining US terms of engagement—will push the limits of the US–China relationship but is unlikely alone to provoke China into launching a nuclear strike on the United States. Subsequently, pursuing sub-option (1b)—though not without its risks—is more likely to help the United States protect its interests and avoid a nuclear war than would pursuing sub-option (1a).

Option Two: The United States Abandons Taiwan

The second option proposes that the United States should abandon Taiwan. This option entails complete US disengagement from Taiwan.

Option Two Advantages

While the benefits of abandoning Taiwan are few, they may be significant. Abandoning Taiwan means the United States will not have to make a financially costly commitment to defend Taiwan. Additionally, the United States will not need to incur the economic costs of defying China, a major supplier and consumer of US products. The United States will also benefit from being able to focus its attention on its other international efforts without needing to worry about Taiwan. Most importantly, the United States will not have to engage with China in a conflict over Taiwan. If the United States were to turn a blind eye to Chinese aggression, threats, or territorial encroachments, the risk of a nuclear war with China over the issue of Taiwan would be near zero.

Option Two Disadvantages

The advantages of option two are unconvincing when viewed in light of the costs. Significantly, abandoning Taiwan discredits the credibility of US security assurances to its other allies, particularly those in East Asia. In January 2020, US Secretary of State Mike Pompeo, US Secretary of Defense Mark Esper, Foreign Minister Toshimitsu Motegi, and Defense Minister Taro Kono released a joint statement about the Treaty of Mutual Cooperation on behalf of the US and Japanese governments. The statement mentions both nations' "unwavering commitment to values such as democracy, respect for human rights, and a rules-based international order," as well as a "shared vision of a free and open Indo-Pacific . . . through regional security cooperation."[33]

33. "Joint Statement on 60th Anniversary of the Signing of the U.S.–Japan Treaty of Mutual Cooperation and Security," U.S. Embassy and Consulates in Japan, January 18, 2020, https://jp.usembassy.gov/joint-statement-60th-anniversary-us-japan/.

Additionally, the statement notes the increasing strength and importance of the US–Japan security alliance. This statement proclaims a strong US position on upholding values such as a "rules-based international order" and democracy—a position that would be compromised if the United States abandoned Taiwan.[34]

Thus, abandoning Taiwan, a fellow democracy, would pose a moral problem and damage the world's perception of the United States. As mentioned in the prior con of credibility, the United States is famed for its vocal commitment to defending human rights and democracy. Though the earlier statement in question was made with Japan—a country with which Washington has a formal security treaty—one trait of American exceptionalism derives from its pledge to protect these values worldwide. Abandoning Taiwan could mean that the United States loses moral high ground on the world stage on other issues. Additionally, abandoning Taiwan means accepting the chance that Taiwan falls under Chinese control, which would guarantee a significant loss of US strategic influence in East Asia.

Option Three: The United States Arms Taiwan

Option three entails that the United States rearms Taiwan. This option is divided into two sub-options, with sub-option (3a) being that the United States continues to sell conventional arms to Taiwan, as it has done since 1979. Sub-option (3b) is morally questionable—in this scenario, the United States tacitly consents to Taiwan rearming itself with nuclear weapons by turning a blind eye.

Option Three Advantages

One obvious advantage of option three is that it will likely result in Taiwan becoming better equipped to defend itself against China and other potential adversaries. A particularly salient advantage from the US standpoint is that the United States will not need to abandon its current policy of strategic ambiguity while simultaneously taking a quieter, more discreet role in Taiwan's defense. Selling military technology and conventional arms to Taiwan is unlikely to incur the same amount of hostility from China as would a newly formed US–Taiwan security treaty, and the United States could still ensure that Taiwan is not left defenseless. While drastic, sub-option (3b) particularly fulfills this aim—Taiwan possessing nuclear arms capabilities would reinforce its security

34. "Joint Statement on 60th Anniversary."

and potentially curb other states' aggression towards Taiwan. Another added benefit is that the United States will not need to incur financial costs to support Taiwan on a long-term basis; in fact, in sub-option (3a), the United States can reap the additional benefit gaining another loyal consumer of its military technology.

Option Three Disadvantages

There are, of course, several disadvantages that must be considered. For one, China will view direct US arms sales—sub-option (3a)—to Taiwan as a threat. In 2019, the Trump administration expressed informal support to the US Congress of selling sixty-six F-16 fighter jets to Taiwan.[35] The sale was approved by Congress, and in November 2020, the transaction was completed.[36] In 2019, a spokesperson for the Chinese government denounced the proposed sale as a violation of its "One China" doctrine, warning the United States against "arms sales" and "military contact" with Taiwan.[37] "Otherwise," the spokesperson warned, "the Chinese side will surely make strong reactions, and the US will have to bear all the consequences."[38] The reactions and consequences were not specified; however, as Christopher Yeaw, Andrew Erickson, and Michael Chase have theorized, China could shed its No First Use nuclear policy if it feels its "territorial integrity" has been sufficiently threatened.[39] China regards Taiwan as part of China, and as such, China views the Taiwan issue as an internal problem. Consequently, selling arms to Taiwan fits the criteria for threatening China's "territorial integrity," as analysts have warned.[40]

Additionally, if the United States were to tacitly consent to Taiwan rebuilding its nuclear weapons program as in sub-option (3b), this would further exacerbate the problem that could arise from pursuing sub-option (3a). At worst, pursuing sub-option (3b) could trigger a war

35. Anthony Capaccio, "U.S. Formalizes F-16 Jet Sale to Taiwan with China Tensions High," Bloomberg, August 15, 2020, https://www.bloomberg.com/news/articles/2020-08-14/u-s-formalies-f-16-jet-sale-to-taiwan-with-china-tensions-high.

36. Anthony Capaccio and Nick Wadhams, "U.S. Backs F-16 Sale to Taiwan, Drawing Warning from China," Bloomberg, August 16, 2019, https://www.bloomberg.com/news/articles/2019-08-16/u-s-backs-f-16-sale-to-taiwan-in-move-likely-to-anger-china.

37. Capaccio and Wadhams, "U.S. Backs F-16 Sale."

38. Capaccio and Wadhams, "U.S. Backs F-16 Sale."

39. Yeaw et al., "The Future of Chinese Nuclear Policy," 61.

40. Yeaw et al., "The Future of Chinese Nuclear Policy," 61.

with China. In choosing sub-option (3b), the United States would engage in the same risky paradox as it does in its policy towards Israel's nuclear program, which can be detrimental in several ways: First, this risks angering China, who may view the United States' tacit acceptance of a rearmed Taiwan as an act of US aggression. China once exerted significant pressure on the United States to shut down Taiwan's nuclear weapons program, demonstrating that China would be enraged if the United States were to passively enable the rebirth of Taiwan's nuclear weapons program. Second, ignoring the rebirth of the Taiwan nuclear program would impair the United States' position as a leader of the global nuclear nonproliferation regime. Third, other allies in East Asia may feel threatened by the rebirth of another nuclear power in the region and may themselves feel compelled to proliferate, thus leading to a string of proliferations. This could lead to strategic destabilization, as well as to the deterioration of the United States' relationships with its allies in the region.

Option Four: The United States Pursues an International Resolution

Option four proposes that the United States seeks an international resolution for Taiwan. Sub-option (4a) proposes that the United States could pressure international organizations—such as the UN—to formally recognize Taiwan's status as an independent nation. More realistically, sub-option (4b) proposes that the United States forms a treaty with willing allies to defend Taiwan from hostile invasion.

Option Four Advantages

A clear advantage for the United States is that an international resolution—whether it comes in the form of sub-option (4a) or sub-option (4b)—would relieve the United States of the pressure to handle the Taiwan issue unilaterally and to increase the chances of the issue being resolved strictly through diplomacy and without conflict. However, if a conflict were to break out between China and Taiwan, the United States—having sought international action—could rely on key allies to contribute to Taiwan's defense, thus decreasing US financial and national security costs of fighting a war against China. Taiwan is more secure with many allies committed to its defense, rather than just one. Though the United States boasts a superior conventional military and more advanced technology than its allies, a coalition of united allies can lend vital support where necessary. Standing with other allies

also means that Washington would need not independently bear all the economic and diplomatic repercussions that an aggravated China may impose.

Another important benefit of option four is that international support legitimizes the United States' cause while simultaneously delegitimizing China's "One China" narrative. The United States independently involving itself in Taiwan's affairs can be construed as meddlesome or hawkish to the rest of the world, and having the support of other countries will help dispel this perception. This option has the added benefit of reassuring US allies of the United States' commitment to securing democracy worldwide, and the United States gains stronger moral standing in the eyes of the world. Apart from option two, option four is the least overtly aggressive and is least likely to paint the United States in a hawkish, unfavorable light. Seeking an international resolution may look more diplomatic and less aggressive than simply increasing US engagement in Taiwan—as in option one—and selling arms to Taiwan—as in option three—would.

Option Four Disadvantages

The drawbacks to option four are also evident. Most obviously, pursuing this option will anger China. This, however, is a guaranteed outcome for every option aside from option two, rendering it an inevitable consequence of any sort of US engagement in Taiwan. Though an international resolution would stoke China's ire, the United States need not bear the costs alone if promised the support of other states, actors, and international organizations.

The most prominent disadvantage of this option is that pursuing an international resolution is logistically difficult. Given China's immense sphere of influence, the large number of countries that would suffer from antagonizing China, and the fact that the United Nations does not recognize Taiwan as an independent nation, successful implementation of this option is more unrealistic than that of the other three options. The United States is already in a coalition-building sphere against China with America's European and Asian allies; however, building a coalition is not proving to be successful. Many countries' national security and economic fates are tied to China, and these nations may not feel that Taiwan is worth the struggle of compromising their own vital interests.

Recommendations

Given these considerations and the cost-benefit analyses of the previous section, the United States should emphasize a stronger US commitment to Taiwan through the passage of a domestic law that, unlike the Taiwan Relations Act and the TAIPEI Act, expresses overt US commitment to Taiwan's defense and defines the precise terms of this commitment, as sub-option (1a) proposes. Second, the United States should continue to quietly supply conventional arms to Taiwan, as in sub-option (3a). Finally, if the preceding measures fail to secure Taiwan's sovereignty, the United States should pursue sub-option (4b) and seek international action on Taiwan.

There are concerning disadvantages to option one, a large drawback being that this is the option China would most likely consider to be the most overtly aggressive of the three mentioned options, which means it also has the highest possibility of escalating to a nuclear war. However, given Chinese reactions to past laws of a similar nature, such as the Taiwan Relations Act and the TAIPEI Act, escalation to a nuclear war is still unlikely. This option is less likely to spark extreme contention with China than forming a full-fledged treaty with Taiwan would, and it still manages to convey US resolve convincingly. Concurrently, the United States should continue its military arms sales to Taiwan. While the 2020 F-16 sales make it definitively clear that US arms sales to Taiwan will infuriate China and fan the flames of China's animosity towards the United States, it is unlikely that arms sales alone would be the catalyst for nuclear war. Rather, any conflicts over arms sales will likely drag on in the grey zone, as they have in the past. Finally, if pursuing this combination of options fails to curtail Chinese aggression towards Taiwan and seems insufficient in keeping Taiwan independent, the United States should pursue sub-option (4b) and seek an international resolution through the form of a treaty with allied nations—particularly those in the Indo-Pacific region—who, alongside the United States, have vested security and economic interests in keeping Taiwan independent.