LEGITIMACY and MILITARY OPERATIONS

Lieutenant Colonel James W. Hammond, Canadian Forces

America is at war…We have kept on the offensive against terrorist networks, leaving our enemy weakened, but not yet defeated…The struggle against this enemy…has been difficult. And our work is far from over.

—President George W. Bush, 16 March 2006[1]

ALTHOUGH OVER TWO YEARS have passed since the president wrote these remarks, his words still ring true. While the United States has remained on the offensive, the enemy is not yet defeated. In Iraq alone, the United States has lost over 4,000 servicemen and women, while another division's worth of personnel have been medically evacuated from that theater of operations.[2] The vast majority were killed, wounded, injured or became sick in the years after major combat operations ended in May 2003. In Afghanistan, coalition casualties are increasing, and Taliban fighters are as numerous as at any time in the past six years.[3] Globally, Al-Qaeda seems as effective as ever in spawning its terrorist ideology. The pace of operations against this threat is straining western nations, none more so than the United States, which continues to do almost all of the "heavy lifting." Despite a defense budget that amounts to over 48 percent of total world defense spending, the U.S. military could be ready to break at the seams under the strain. Even with supplemental congressional appropriations, the U.S. Department of Defense (DOD) will be hard-pressed to sustain current operations, let alone be ready for another regional challenge.[4] If, as so many have claimed, we are only in the early stages of a "long war," then we had all better learn some serious lessons, and fast, or in the president's words, our work will be far from over for years to come.

The pressures of the current security environment have resulted in a drive to define, dissect, understand, and meet these challenges. Although reviews of the war have been productive, they have not yet produced an epiphany. On the plus side, experienced officers like U.S. Army General David H. Petraeus and Marine Lieutenant General James Mattis have sparked a renewed interest in counterinsurgency (COIN) experts like David Galula, T.E. Lawrence, Robert Thompson, and Frank Kitson.[5] The search for solutions has also resulted in an in-depth review of key U.S. doctrinal tenets and a complete rewrite of U.S. Army and U.S. Marine Corps counterinsurgency doctrine.

The views expressed in this article are those of the author and do not reflect the official policy or position of the U.S. Government, the Department of Defense, or any of its agencies.

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PHOTO: SSG Akira Taylor, with Mortar Platoon, 5th Battalion, 20th Infantry Regiment, leads fellow Soldiers through the streets of Abu Sayf, Iraq, during a foot patrol, 6 August 2006. (U.S. Army, CPL Sam Kilpatrick)

Among the significant changes to U.S. doctrine has been the increased attention paid to "legitimacy," particularly during COIN operations. Legitimacy has become a defining principle for most COIN theorists, and the conflict itself, in Galula's words, a "battle for the population," where "the exercise of political power depends on the tacit or explicit agreement of the population."[6] U.S. counterinsurgency doctrine now states clearly, "Victory is achieved when the populace consents to the government's legitimacy and stops actively and passively supporting the insurgency."[7] In fact, the term "legitimacy" is so pervasive that it appears 131 times in the new COIN field manual, FM 3-24. Even more significantly, the keystone operations doctrine of the U.S. services, Joint Publication 3-0, *Joint Operations*, has been rewritten to include legitimacy (and the concepts of restraint and perseverance) as "Other Principles" to join the nine traditional "Principles of War" in a new list of 12 "Principles of Joint Operations."[8]

We should consider the potential impact of this change carefully because the principles of war have been the bedrock of military operations in one form or another since the era of Baron Antoine de Jomini.

Five Aspects of Legitimacy

No state can survive for very long exclusively through its power to coerce. . . . [A]cross time, the maintenance of social order is negotiated.

—Christopher Pierson[9]

While Joint Publication (JP) 3-0 introduces the concept of legitimacy, it does not define the term. The word "legitimacy" comes from the Latin *legitimare*, to declare lawful; it therefore connotes rightfulness and legality. In political science, legitimacy refers to the population's acceptance of a set of rules or an authority. In addition, through their consent, they acknowledge a duty of obedience to that authority. Legitimacy differs from legality because it implies that the citizenry respects or consents to the authority irrespective of the existence of a legal justification of it.[10] This is a notably important distinction, particularly in international relations, where overarching legal authority is nonexistent.[11] While legitimacy is a complex and contested concept in political theory, it has five important aspects that have a direct impact on military operations.

Sources of legitimacy. German sociologist Max Weber posited three sources for legitimacy: the legal-rational source, which most Western governments enjoy, based on a framework of legal rules (e.g. the government elected in accordance with a legal framework and constitution); traditional authority, based on custom, upbringing, and birth (e.g. the governing family or clan); and charismatic authority, based on the power of personality of an individual or group.[12]

The importance of Weber's observation on charismatic leadership is clear to anyone who considers Osama bin-Laden's status in certain parts of Pakistan's Federally Administered Tribal Areas, and in fact, all three sources of legitimacy are at play today in both Iraq and in Afghanistan.

Legitimacy and obligation. Legitimacy and obligation are two sides of the same coin.[13] At the very least, accepting some authority as legitimate implies some level of consent on the part of the population to the actions of that authority. This further implies the obligation to accept that authority's decisions, even if some decisions are undesirable. The implication for emerging governments or military forces operating in an area is that local populations will accept even significant infringements on their rights and freedoms if the demands come from an authority they view as legitimate. The inverse, of course, also applies: the people will resist even the slightest imposition from an authority they view as illegitimate.

Legitimacy and force. The ability to apply force does not confer legitimacy. Weber identified one of the most salient features of the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."[14] While Marxist theory suggested that the surreptitious threat to exercise this monopoly on violence was what kept capitalist governments in power, even neo-Marxists today accept that "without some level of legitimacy, it is hard to see that any state could be sustained."[15] Political philosopher Hannah Arendt observed, "Since authority

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always demands obedience, it is commonly mistaken for some form of power or violence. Yet authority precludes the use of external means of coercion; where force is used, authority itself has failed…If authority is to be defined at all, then, it must be in contradistinction to…force."[16] Military officers implicitly understand this when tasked to support civil authorities at home. Any actual use of force implies that authority has already failed to some extent, at least with some sector of the population. Interestingly, studies of police forces in the United States suggest that increased police violence erodes police legitimacy. In fact, studies show that reducing police use of force has a positive effect in reducing violent crime.[17] The findings of further research into police legitimacy show that it "changes the basis on which people decide whether to cooperate with legal authorities" and has a "significant influence on the degree to which people [obey] the law"; it also shows that police "fairness and effectiveness are not mutually exclusive, but mutually reinforcing."[18] In short, using force unnecessarily, inappropriately, or out of proportion to the requirement to do so undermines police legitimacy and effectiveness. If that is the case with peaceful populations at home in North America, surely the relationship between force and legitimacy is something military forces should carefully consider when operating in foreign theaters where legitimacy is more tenuous.

U.S. Air Force, SSGT Stacy L. Pearsall

A U.S. Army Soldier kicks in the door of a building during a cordon and search in Buhriz, Iraq, 14 March 2007.

Perceptions and legitimacy. The fourth aspect of legitimacy that military commanders must understand is that the legitimacy is relative to the audience. For example, a military force operating in Iraq must primarily be concerned about the local Iraqi population's perception of Iraqi government legitimacy. The less legitimate an operation seems, the less support it can expect. If the people regard it as legitimate, a U.S.-led operation to track an IED cell that killed hundreds of civilians can elicit local assistance. On the other hand, the people may regard a cordon-and-search operation in an area where insurgents have harmed few locals as unnecessary and less legitimate. In the same vein, the international community will be less supportive of actions deemed arbitrary, if the force has intervened illegitimately in a territory or conducted overly aggressive operations. In addition, the domestic audience is also critical to success, as the United States learned during the Vietnam era. Once the people viewed that war as illegitimate back at home, the likelihood of a successful conclusion to it became more remote. Finally, the men and women of the deployed military force make up an important audience that questions the force's legitimacy as rigorously as any other audience does. Once the mission loses legitimacy in their eyes, whether due to immoral or excessive action, regaining effectiveness will take a complete overhaul of trust, which may well be impossible. Forced obedience in such circumstances will never compensate for willing obedience lost with squandered legitimacy.

Contested legitimacy. A final characteristic of legitimacy is that it applies to both sides in a conflict. Often, coalition officers will point out that the enemy targets innocent civilians, tortures and beheads hostages, and refuses to observe any rules of combat. We know from experience that all of this is true, but we must also consider whether such conduct is an effective strategy for the enemy in the long run. General David H. Petraeus notes, "Al-Qaeda's indiscriminate attacks . . . have finally started to turn a substantial proportion of the Iraqi

population against it."[19] James Fallows adds: "What they have done is to follow the terrorist's logic of steadily escalating the degree of carnage and violence—which has meant violating the guerrilla warrior's logic of bringing the civilian population to your side . . . [I]nsurgents have slaughtered civilians daily . . . But since American troops are also assumed to be killing civilians, the anti-insurgent backlash is muddied."[20]

Al-Qaeda leaders at the highest levels recognize the negative impact of violence on their strategy. According to Peter Bergen, "It was Al-Zawahiri who wrote a letter to Al-Qaeda's leader in Iraq, Abu Mousab Al-Zarqawi, gently suggesting that he stop his habit of beheading hostages because it was turning off many Muslims."[21] Similar negative responses occurred in the fall of 2005 after bombs exploded in Amman, Jordan, and in Bali, Indonesia. In the day-to-day struggle for legitimacy, both insurgents and counterinsurgents wrestle on the fulcrum of the relationship between force and legitimacy.

Strategic and Operational Legitimacy

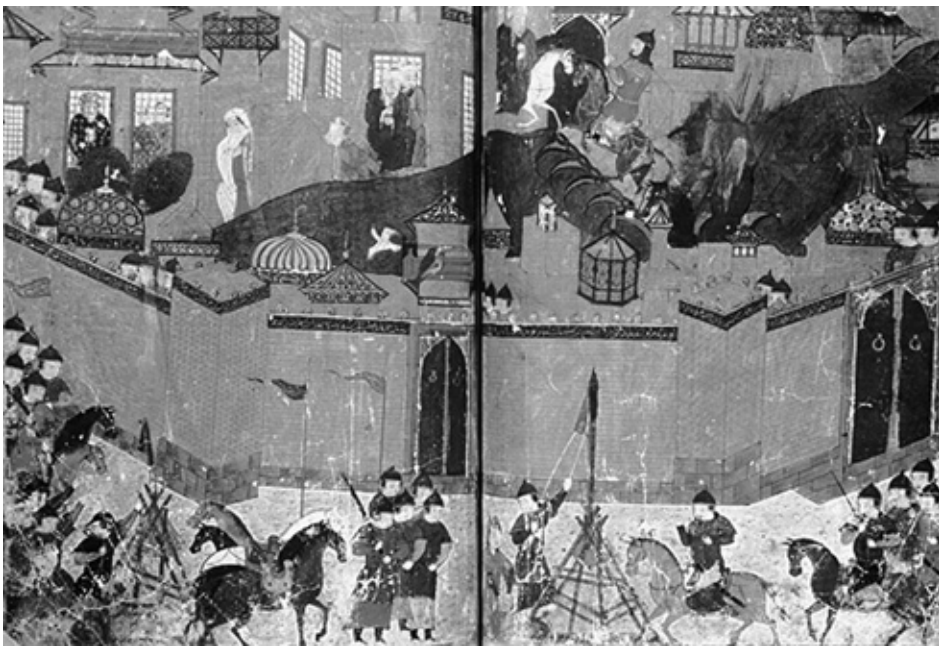
If you just look at how we are perceived in the world and the kind of criticism we have taken over Guantanamo, Abu Ghraib and renditions, whether we believe it or not, people are now starting to question whether we're following our own high standards.

—Colin Powell, 2007[22]

Before examining legitimacy's role during military operations overseas, we must ask how the legitimacy of the strategic decision to deploy a military force affects the legitimacy of the force itself. Traditional just war theory examines the justness of a war on two scales: *jus ad bellum,* the justness of the decision to go to war; and *jus in bello,* the justness of how military forces prosecute it. *Jus ad bellum* considerations ask if the cause for war is just, if the good toward which the war aims is greater than the evil the fighting causes, if a legitimate authority made the decision to go to war, if war was the last resort, and if there is a reasonable chance of success.[23] All of these questions arose during the debates over the U.S. administration's decision to go to war against Iraq in 2003.[24]

A war's legitimacy, or *strategic legitimacy*, is not something a Soldier can influence; we should not hold him responsible for the justness of the decision to go to war. He or she must simply follow orders and make the best moral choices during the ensuing operations. Under international law, the military commander is protected by what Francisco de Vitoria described five centuries ago as "invincible ignorance" to distinguish between the justness of the war itself and the justness of specific military actions during the war.[25] Nevertheless, military commanders would be foolish not to understand the context in which they operate, including the perceived legitimacy of their cause.

Commanders on the ground sometimes see legitimacy as water in a bucket. Both strategic and operational decisions affect the volume of the water. If the decision to deploy is suspect, the commander starts his operation with a reduced volume of water (or none). How the force conducts the operation will define how quickly he uses it up (or whether the force can regain greater legitimacy through operationally effective and morally virtuous actions on the ground).



As they did to many Islamic cities, the Mongols utterly destroyed Baghdad. Just war theory was mature at the time. Mongols employed terror on a massive scale to control the Arab population.

Military leaders can do little about the legitimacy of the decision to go to war, but they can assert and protect the legitimacy of operations, or *operational legitimacy*. Overzealous use of force can undermine even the most legitimate intervention. Actions on the ground should demonstrate *jus in bello* considerations of proportionality. Quite simply, all military operations should discriminate clearly between combatants and non-combatants and any use of force should be proportional only to the military end and avoid unnecessary collateral damage. Both concepts are difficult to apply in what General Rupert Smith called "war amongst the people," in which combatants wear no uniforms and operate from population centers.[26] Even so, restraint and focused application of force are critical to sustaining the support of both local and U.S. populations. I will now turn to the conduct of recent military operations to examine their impact on operational legitimacy.

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Operational Legitimacy in Iraq and Afghanistan

This I realized, now watching Dienekes rally and tend to his men, was the role of the officer. . . . To fire their valour when it flagged and rein in their fury when it threatened to take them out of hand.

—Steven Pressfield, *Gates of Fire*[27]

Security actions must be balanced with legitimacy concerns. . . . Restricting the use of force, restructuring the type of forces employed, and ensuring the disciplined conduct of the forces involved may reinforce legitimacy.

—Joint Publication 3-0, *Operations*[28]

The story of current coalition operations is generally a story of heroism, courage, and self-sacrifice. During the initial stages of Operation Iraqi Freedom in particular, there were many daring acts that should take their place in the annals of military history. One of those actions occurred on the night of 31 March 2003 near the town of Haditha in west-central Iraq. After an overland infiltration across unproven territory, B Company of 3rd Ranger Battalion of the 75th Ranger Regiment secured objective Lynx, which was critical to ensuring that Saddam Hussein's regime could not sabotage the Haditha Dam and unleash a humanitarian disaster on the Iraqi citizens of the Tigris and Euphrates valleys.[29] Operating with adequate but incomplete intelligence, the Rangers secured the dam after a four-hour firefight. Over the next six days, this lightly armed Ranger company, with air force combat controllers and later reinforced by two M1 tanks, fought off a series of uncertain counterattacks to secure the dam and destroy 29 enemy tanks and over 65 artillery, air defense, and mortar pieces. This small operation is a fine example of light forces demonstrating agility, courage, and determination in an honorable cause against a numerically superior enemy while respecting the rules of engagement and laws of armed conflict. As such, it deserves to be remembered.

Only four years later, however, the historical record of Haditha reads very differently. In the public imagination, the events at the dam have long been overshadowed by the actions of a small number of other U.S. servicemen, who, it is alleged, murdered 24 Iraqi civilians, including women and children, during a vengeful rampage after an improvised explosive device (IED) killed a 20-year-old lance corporal on the morning of 19 November 2005.[30] The initial press release about the incident gave a plausible explanation, which suited the expectations of military personnel: "A U.S. Marine and 15 civilians were killed yesterday from the blast of a roadside bomb in Haditha. Immediately following the bombing, gunmen attacked the convoy with small arms fire. Iraqi army soldiers and [U.S.] Marines returned fire, killing eight insurgents and wounding another."[31] An Iraqi human rights organization began to investigate almost immediately, but it was not until *Time* obtained a video in January 2006 and subsequently gave it to U.S. authorities for comment that the U.S. launched significant military investigations.[32]

The evidence is damning. The video shows blood spattered on walls inside family bedrooms; there was testimony from a survivor whose family members (but for one sibling) were killed in their night clothes in their rooms; while some adult males

were killed, many of the deceased were women and children ranging from 2 to 14 years of age. There was no evidence of bomb fragments on any of the civilian bodies and no evidence of crossfire outside the houses. The director of the local hospital stated that "no organs were slashed by shrapnel. . . . Most of the victims were shot in the chest and head—from close range."[33] Undeniably, something went terribly wrong in Haditha.

While the legal process brought against accused murderers will demonstrate U.S. determination to apply U.S. values and the rule of law to its own citizens, it will not in itself address the event's broader implications. Criminals may exist in any military force, but the killings at Haditha require more basic self-examination by a military force that dedicates itself to promoting security and the rule of law and protecting innocents. When innocent civilians die during stabilization, humanitarian, or combat operations, we must ask hard questions. How could highly trained, disciplined, and selected personnel commit such an act? How could authorities not discover and deal with the criminal nature of the incident for four months? How could a chain of command fail to ask more questions in the days immediately after the events?

To answer these questions, Major General Eldon A. Bargewell examined the broader issues related to the killings. His report, completed in June 2006, focused on the reporting of the incident as well as the command climate within the Marine Corps' leadership in western Iraq.[34] While the Bargewell Report did not find direct evidence of an orchestrated effort above squad level to cover up the incident, he found complicity from platoon to division level to ignore indications of serious misconduct and "an unwillingness, bordering on denial, on the part of the battalion commander to examine an incident that might prove harmful to him and his Marines."[35] The Marine Corps relieved the battalion commander and three other officers of their duties and charged them with violation of a lawful order, dereliction of duty, and making a false statement.

These failings, like the killings themselves, are individual acts of commission or omission, and Bargewell could therefore deal with them on an individual basis, but he discovered a systemic problem with the collective attitudes of the chain of command:

> All levels of command tended to view civilian casualties, even in significant numbers, as routine and as the natural result of insurgent tactics . . . Statements made by the chain of command during interviews for this investigation . . . suggest that Iraqi civilian lives are not as important as U.S. lives, their deaths are just the cost of doing business, and that the Marines need to 'get the job done' no matter what it takes. These comments had the potential to desensitize the Marines to concern for the Iraqi populace and portray them all as the enemy even if they are noncombatants.[36]

Bargewell further noted that the regimental combat team commander "expressed only mild concern over the potential negative ramifications of indiscriminate killing based on his stated view that the Iraqis and insurgents respect strength and power over righteousness."[37] While Bargewell does not suggest that the chain of command directly condoned any of the actions at Haditha, he reported some fault with the command climate within the 2d Marine Division at the time.

As an isolated event, Haditha is a tragedy and potentially a crime that tarnishes the reputation of all who serve. It was the culmination of a number of factors, triggered by the death of a U.S. Marine by an IED and stoked by the tensions of operations and a command climate that seems to have implicitly condoned the attitude that Iraqi civilians are different from U.S. civilians and suspect. The real problem, however, is that Haditha was not an isolated incident.

On 26 April 2006, a group of U.S. Marines reportedly took Hashim Ibrahim Awad, a disabled father of 11 children, out of his home, beat him, and then shot him to death. Authorities charged seven Marines and a navy hospital corpsman with crimes ranging from murder and kidnapping to conspiracy, making false official statements, and larceny.[38] Again, this incident is clearly a criminal act, perhaps as some suggest, the act of a few "bad apples" that does not reflect the conduct of the vast majority of coalition Soldiers in Iraq.

Nevertheless, like most such events, it resulted from multiple factors, including a command climate that either condoned mistreatment of Iraqi civilians or at the very least, was unable to enforce the Marine

Corps' commitment to its core values.[39] As they collected evidence, they discovered other unrelated assaults, some weeks before the Awad murder.[40] In one case, Second Lieutenant Nathan P. Phan allegedly beat, choked, and threatened detainees in Hamdani earlier in 2006. Phan acknowledged ordering his men to choke a detainee because he believed it was necessary to gather information from suspected insurgents. He also pressed an unloaded pistol against the mouth of another detainee to frighten him. In an unsubstantiated but telling admission intended to justify the assault, Phan's attorney stated that "the information [Phan] gained from these terrorists was highly important and valuable in saving Marine's lives."[41] Not only can this justification not be proven, but also such acts are contrary to the Uniform Code of Military Justice, *The Law of Land Warfare* (FM 27-10), the Geneva and Hague Conventions, the U.S. Constitution that officers swear to defend, and, significantly, the core values of the U.S. Marine Corps. Such actions supplied subordinates with a leadership example that would have tragic consequences for all concerned.

Some suggest that the attitudes displayed toward Iraqi civilians in the above incidents are simply the tip of an iceberg. In his book *Assassin's Gate*, George Packer describes the detention of two suspected insurgents at a U.S. airfield in Iraq. After witnessing the verbal abuse heaped on two detainees, Packer wrote, "It wasn't Abu Ghraib, just the ugliness of a bored and probably sadistic young man in a position of temporary power. But I left the airfield . . . with an uneasy feeling. I'd had a glimpse under the rock of the occupation; there was bound to be much more there."[42] While it may be that the two detainees were insurgents, the unprofessional handling techniques Packer observed did nothing to gain the detainees cooperation or conversion. The acts simply added to their disdain for America and the U.S. military.

Thomas Ricks provides further evidence of the attitudes of U.S. Soldiers and their leaders toward the Iraqi population. One brigade commander in early 2004 reportedly told a civil affairs officer that his forces were there to "kill the enemy, not win their hearts and minds," while his division commander later wrote, "Most nights we fired H&I fires [harassment and interdiction], what I call 'proactive' counter-fire . . . artillery plays a significant role in counterinsurgency."[43] A psychological affairs officer reported, "4th ID fueled the insurgency . . . guys would come up from Fallujah, set up next to a farmhouse, set off a mortar, and leave. In addition, the 4th ID would respond with counterbattery fire. The 4th ID's CG [commanding general] would foster that attitude. They were cowboys." Another U.S. officer reported, "I saw so many instances of abuses of civilians, intimidating civilians. Our jaws dropped."[44]

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While most of the incidents that undercut U.S. military legitimacy have occurred in Iraq, operations in Afghanistan have not been without problems. On 4 March 2007, an element from a newly formed Marine special operations company was patrolling in Nangahar Province in eastern Afghanistan when a suicide bomber in a van ambushed it. A preliminary investigation revealed that the Marines started firing and continued shooting at no fewer than six locations, miles beyond the site of the ambush. According to a draft report the *Washington Post* obtained, they fired at stationary vehicles, passersby, and others who were "exclusively civilian in nature" and had made "no kind of provocative or threatening behavior."[45] Central Command quickly ordered the company out of Afghanistan, and the Marine Special Operations Command relieved the company commander and senior non-commissioned officer.[46]

While one can argue that strategic legitimacy in Afghanistan was more persuasive than in Iraq, both theaters have experienced varying levels of success in maintaining operational legitimacy. The response to the Marine's actions in Nangahar Province was predictably hostile locally where anti-coalition sentiment runs high, but the national response was rather muted. In Iraq, where U.S. strategic legitimacy was weak from the start, overcoming such incidents has been challenging. Efforts to buttress U.S. legitimacy through humanitarian and reconstruction operations have not been successful, and

the shocking revelations at Abu Ghraib exacerbated the situation.

The handling of detainees has done more damage to U.S. strategic and operational legitimacy in the past few years than any other single issue. American and world public opinion has been harshly critical of the handling of detainees since Seymour Hersh first broke the story of the Abu Ghraib photos in April 2004.[47] The furor and rioting sparked in May 2005 after *Newsweek* reported that the Qur'an had been mishandled at Guantanamo demonstrates that the implications of abuse go far beyond issues of internal military discipline.[48] The August 2004 Schlesinger Report was damning in its criticisms of the policy, command, and disciplinary failures that contributed to the shocking level of abuse of detainees that occurred.[49] On 6 May 2005, through a report to the UN Committee Against Torture, the United States formally explained the results of its nine detainee investigations to the world and said it is dealing with over 300 recommendations to improve detainee handling, accountability, investigation, supervision, and coordination.[50] The detainee issues are by now well-known, and the effect on U.S. legitimacy has been devastating. Sheik Mohammed Bashir summed up Iraqi frustrations at Friday prayers in Um al-Oura, Baghdad, on 11 June 2004: "Freedom in this land is not ours. It is the freedom of the occupying Soldiers in doing what they like . . . abusing women, children, and the old men and women whom they arrested randomly and without any guilt. No one can ask them what they are doing because they are protected by their freedom. . .No one can punish them."[51]

The real impact of Abu Ghraib, Haditha, Hamdani, and other de-legitimizing incidents is not just a reduction in local cooperation for U.S. efforts, censure by the international community, and fading U.S. domestic support for the operations. The real impact is to strengthen the enemy. RAND researcher David Gompert has suggested that "careless COIN violence, indiscriminate arrests, nonjudicial detention, and cruel interrogation can delegitimize the governing power, validate the jihadist story, legitimize terrorism, and spawn new martyrs."[52] From January to September 2006, Iraqi approval rates for attacks on U.S. forces grew from 47 percent to 61 percent. Among Sunnis, support for targeting U.S. troops has dropped significantly from its high of 92 percent only because U.S. force commanders under General Petraeus finally started getting the message.[53] Based on polling results, Gompert notes, "When more than a third of American Muslims—known for their moderation—believe that their own government is 'fighting a war on Islam,' one can begin to fathom the difficulty of persuading non-American Muslims that this is not the case."[54]

Rebuilding Legitimacy

Military action can address the symptoms of a loss of legitimacy. In some cases, it can eliminate substantial numbers of insurgents. However, success in the form of a durable peace requires restoring legitimacy, which . . . requires the use of

AP Photo/Pablo Martinez Monsivais

A protester dressed as an Abu Ghraib prison detainee stands across from the White House during anti-war protests, 26 September 2005.

all instruments of national power. A COIN effort cannot achieve lasting success without the HN [host nation] *government achieving legitimacy.*

—FM 3-24, *Counterinsurgency*[55]

Rebuilding U.S. legitimacy for current operations will require a long-term, multi-agency effort at the strategic and operational levels, but there are already signs that the effort may be worthwhile.

First, although U.S. legitimacy in Iraq remains weak, Muslim support for the Taliban or Al-Qaeda's vision of the world is at less than 10 percent. As one observer put it, "Many people would like to see Bin-Laden and Zarqawi hurt America. But they do not want Bin-Laden to rule their children."[56] While we have not won the war, we are far from losing it. Improving the perceived legitimacy for the Iraqi government and the U.S.-led effort in Iraq will save Iraqi and coalition lives, as well as serve to undermine insurgent and Al-Qaeda recruiting efforts.

The second note of optimism is the genuine effort we are making to correct the situation. Whether in determined pursuit of justice against wrongdoings, thorough doctrinal review, or selection of commanders with proven counterinsurgency experience, the U.S. military has taken the first steps in recognizing and correcting the problem. To complete the process, six important strategies are prerequisites for success.

Create a truly integrated list of principles of joint operations. The recent changes to U.S. doctrine have renamed the military operations other than war principles—legitimacy, restraint, and perseverance—as "other principles" and made them subordinate to the traditional principles of war as if to suggest that one should not consider legitimacy until some magic moment when it is time to replace one set of principles with another. Suggesting that a shift in mentality will occur on demand brings to mind the comments an officer made as the 3d Armored Cavalry Regiment arrived in Iraq in 2003: "Their attitude in terms of rules of engagement suggested to me that they had not made the change from combat operations to stability operations."[57] Officers cannot begin thinking about legitimacy, restraint, and perseverance in Phase IV. During modern combat operations, we must consider these principles long before Phase IV begins. A mind-set that still views high-intensity combat as the only real work for Soldiers will result in confusion. Serving the Nation can take on many forms, all of which require professionalism and reflection on bedrock principles, among which legitimacy must urgently take its place. Soldiers need to learn that reinforcing legitimacy is a core business of all combat forces.

Recognize that professional officers are protectors of legitimacy. The administration's decision to support harsher interrogation methods may have produced some information of intelligence value, but its negative impact has far outweighed any value gained. Many, particularly in the judge advocate branch, saw the crisis looming, but were marginalized by non-military advisors suggesting that "the new paradigm rendered the Geneva Convention obsolete" and "rendered quaint some of its provisions."[58] The reality was, however, that senior officers requested, accepted, and implemented these provisions, often with insufficient oversight given the risks involved. Senior officers must consider their organization's long-term legitimacy when requesting or implementing such extraordinary measures.

State the unstated clearly. Leaders at every level must recognize that they could have prevented many actions that eroded legitimacy were it not for the tacit approval that the troops assumed their senior leaders had given for such actions. Second Lieutenant Phan's example of poor leadership in Hamdani reflects an attitude of implicit justification. The Schlesinger Report's observation that "leaders conveyed a sense of tacit approval of abusive behaviors towards prisoners" verbalizes what many in the military could feel—a command climate where restraint was not a clear concern. Comments about complacency in the Bargewell Report on Haditha also reinforce conclusions that leaders at all levels clearly failed to state how legitimacy fit into the concept of the operation.[59]

Consider a tactical operation's impact on legitimacy. Soldiers like kicking in doors. It gives them an adrenaline rush and a sense of accomplishment

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Soldiers like kicking in doors. It gives them an adrenaline rush and a sense of accomplishment and cuts the boredom. Unfortunately, it also creates new enemies.

and cuts the boredom. Unfortunately, it also creates new enemies. Hard intelligence must guide cordon-and-search operations and 0200 hours takedowns. If the local police could ring the doorbell the next morning with the same effect, should a platoon have to break its way in? Can we leave the small fish behind until after we catch the big fish in order to ensure the locals understand our intent? Can special operations forces (SOF) deal with this target? Are SOF too focused on direct-action missions instead of the more subtle paths to victory? As the staff war games all options, it must consider the longer-term results of the tactical actions.

Take a lesson from American history. As police forces in the United States increased in professionalism, they learned hard lessons about legitimacy. In 1965, two years before some of the worst riots in Detroit history, Detroit Police Commissioner George Edwards wrote the following: "Although local [white] police forces generally regard themselves as public servants with the responsibility of maintaining law and order, they tend to minimize this attitude when they are patrolling areas that are heavily populated with Negro citizens. There, they tend to view each person on the streets as a potential criminal or enemy, and all too often that attitude is reciprocated . . . It has been a major cause of all recent race riots."[60]

The tendency to view most citizens as potential enemies is often the default setting for coalition forces. While no Soldier should be naïve, the assumption that most people in the streets just want to get on with their lives peacefully is probably correct. The respect Soldiers show to those citizens should be similar to the respect they show to U.S. citizens during responses to domestic crisis.

Recognize that legitimacy in a single operation is influential and enduring. U.S. legitimacy in Iraq affects how people in Afghanistan, Yemen, and the Philippines view U.S. operations. The Abu Ghraib revelations had a direct impact on attitudes around the world. The success of the U.S. in regaining legitimacy in Iraq will have an impact on some future operation in another region of the world. A single operation will have an affect on all future operations in the region because local memories

U.S. Air Force, SSGT Jason T. Bailey

An M1A1 Abrams tank enforces a "no walking, no stopping, no vending, no loitering, deadly force authorized" zone near Baghdad, 7 December 2007.

tend to last longer than the institutional memories of deployed forces. In 1979, the anger of Iranian students who took 54 citizens of "the Great Satan" hostage shocked the U.S. In fact, a long-term view of U.S. legitimacy in the region influenced Iranian students who used the phrase. From the local perspective, the hostage taking was a form of insurance against a repeat of the clandestine U.S. intervention of 1953 that overthrew a popular prime minister in favor of the pro-U.S. and authoritarian shah.[61] Whatever reputation one sets today in a region will have second- and third-order effects years from now.

Conclusion

For wee must consider that wee shall be as a citty upon a hill. The eies of all people are uppon us.

—John Winthrop, 1630[62]

To achieve long-term successes, the U.S. must conduct *all* military operations with the concept of legitimacy in mind. While military officers must play the hand that fate deals them in geopolitics, they can influence how people view their actions on the ground. Good influence requires an integrated force that comprehends the importance of legitimacy. The objective may be the first principle of all operations, but legitimacy ranks second. ***MR***

NOTES

1. President George W. Bush, *The National Security Strategy of the United States of America*, Washington, DC: The White House, 16 March 2006, Introduction, 1, < www.whitehouse.gov/nsc/nss/2006/nss2006.pdf>.

2. Official DOD casualty totals are available at <www.defenselink.mil/news/casualty.pdf>. The most useful reference for running totals including coalition and (tentative) Iraqi totals is at <icasualties.org/oif/>.

3. Not including Pakistani or Afghan forces, fatalities among coalition troops in 2006 totaled 191, far in excess of the 12 killed in 2001 and the 68 killed in 2002. The sites noted above give up-to-date figures. For official DOD reports, see <www.defenselink.mil/news/casualty.pdf>. More complete reporting of coalition casualties is available at <www.icasualties.org/oef/>.

4. While there is much debate over what constitutes a defense expenditure, the 48 percent figure comes from *Stockholm International Peace Research Institute's Yearbook 2006: Armaments, Disarmament and International Security*, (Oxford: Oxford University Press, 2006), chapter 8. Extracts are available at <http://yearbook2006.sipri.org/chap8/chap8>. The United States has taken on an immense burden. Were it a national defense budget, the budget supplemental request alone (in addition to the departmental request) would rank as the second largest national defense budget in the world (approximately $30 billion more than China's). For current budget requests, see <www.whitehouse.gov/infocus/budget/BudgetFY2008.pdf>.

5. Too many useful references on counterinsurgency exist to provide a full list here. Full bibliographical references as well as reviews can be found at the U.S. Army Command and General Staff College in Fort Leavenworth website at <www-cgsc.army.mil/carl/resources/biblio/CAC_counterinsurgency.asp> or at the very useful *Small Wars Journal* website at <http://smallwarsjournal.com/reading-list/>.

6. Quotes are from David Galula, *Counterinsurgency Warfare: Theory and Practice* (New York: Praeger, 1964), 8.

7. U.S. Army, Field Manual (FM) 3-24 *Counterinsurgency* (Washington, DC: U.S. Government Printing Office [GPO], 15 December 2006), 1-3. The U.S. Marine Corps also issued this publication as Marine Corps Warfighting Publication 3-33.5, <http://usacac.army.mil/cac/repository/materials/coin-fm3-24.pdf>.

8. The principles of war are objective, offensive, mass, economy of force, maneuver, unity of command, security, surprise, and simplicity. See U.S. Joint Chiefs of Staff, Joint Publication 3-0, *Joint Operations*, 17 September 2006, <www.dtic.mil/doctrine/jel/new_pubs/jp3_0.pdf>. Joint Publication (JP) 3-0 took the new list of "other principles" directly from earlier U.S. doctrine for "Operations Other than War." See U.S. JCS, Joint Publication (JP) 3-07, *Joint Doctrine for Military Operations Other than War,* 16 June 1995, available at <www.dtic.mil/doctrine/jel/new_pubs/jp3_07.pdf>. The fact that JP 3-07 refers to these other principles as "MOOTW-specific" suggests that in U.S. military thinking until recently, issues such as restraint, legitimacy, and perseverance were not part of mainstream doctrinal thinking. Note that JP 3-07 is no longer extant. Similar terminology appeared in earlier U.S. Army doctrine, notably FM 100-5 and FM 100-20.

9. Christopher Pierson, *The Modern State* (London: Routledge, 1996), 22.

10. For discussions on legitimacy as a political concept, see Andrew Heywood, *Key Concepts in Politics* (New York: St Martin's Press, 2000), 29-30; David Held, *Political Theory and the Modern State: Essays on State, Power and Democracy* (Cambridge: Polity Press, 1989), 99—157; and, John Hoffman, *Beyond the State* (Cambridge: Polity Press, 1995).

11. A good example of this was the NATO decision to conduct operations in Kosovo in 1999. While the legality of that operation remains debatable (since there was no formal UNSC resolution), based on polling, the majority of NATO populations generally viewed it as a legitimate application of force.

12. Max Weber, *The Theory of Social and Economic Organization*, (New York: The Free Press, 1964), 124-32; see also *Basic Concepts in Sociology,* Part IV Social Order available on-line in English translation at <www.ne.jp/asahi/moriyuki/abukuma/weber/method/basic/basic_concept_frame.html>.

13. Larry Johnston, *Politics: An Introduction to the Modern Democratic State*, (Peterborough, ON: Broadview Press, 1997), 24.

14. Max Weber, quoted in Pierson, 22.

15. Ibid., 22-23.

16. Hannah Arendt, Between Past and Future: Eight Exercises in Political Thought, 4th ed, rev. (New York: Penguin Books, 1983), 92-3, quoted in Jean-Marc Coicaud, Legitimacy and Politics: A contribution to the study of political right and political responsibility, trans., David Ames Curtis (Cambridge: Cambridge University Press, 2002).

17. The experiences of Miami Police Chief John Timoney are of particular interest. As a senior member of New York Police Department, Timoney examined police shooting rates in New York in 1972 and noted that when a policy restriction on firearms use was imposed, shootings dropped immediately by 50 percent. By 1985, the number of people killed by the police in New York had dropped from 90 to 12 and the number of police officers killed dropped from 12 to zero. As Miami Chief of Police, he imposed similar restrictions, resulting in significant reductions in shootings (from an average of 12 police shootings and 2.8 people killed by police annually before his tenure to less than two police shootings per year and only two people killed by police in four years under his tenure). Importantly, these reforms had a positive affect on crime in Miami, including a significant decrease in the murder rate. See, Elsa Walsh, "Miami Blue: The Testing of a Top Cop," *The New Yorker*, 5 March 2007, 47.

18. All quotes are from a useful summary of research in Wesley Skogan and Kathleen Frydl, eds, *Fairness and Effectiveness in Policing: The Evidence*, Report of the National Research Council Committee to Review Research on Police Policy and Practices (Washington, DC: The National Academies Press, 2004), 18-19 and 304-6.

19. GEN David H. Petraeus, "Commanding General's Letter about Values," *Multi-National Force—Iraq Website*, 10 May 2007, <www.mnf-iraq.com/images/stories/CGs_Corner/values_message_%2810_may_07%29.pdf>.

20. James Fallows, "Declaring Victory," The *Atlantic Monthly*, 298, no. 2 September 2006, <www.theatlantic.com/doc/200609/fallows_victory>.

21. Peter Bergen, "Ayman Al-Zawahiri," in *Time Magazine*, Sunday, 30 April 2006, <www.time.com/time/magazine/article/0,9171,1187180,00.html> and at <www.peterbergen.com/bergen/articles/details.aspx?id=259>. In the same vein, Fallows continues to argue: "Telhami's polls, like those from the Pew Global Attitudes Survey, show a steady increase in hostility toward the United States—but no surge of enthusiasm for Taliban-style fundamentalist life . . . 'many people would like bin Laden and Zarqawi to hurt America. But they do not want bin Laden to rule their children.' His polls asked people to identify an aspect of Al-Qaeda with which they most sympathized. Only 6 percent of respondents chose Al-Qaeda's advocacy of a puritanical Islamic state." Fallows, Ibid.

22. Quoted in <http://projects.washingtonpost.com/staff/email/karen+deyoung++and+peter+baker>. "Bush Detainee Plan Adds to World Doubts of U.S., Powell Says," *Washington Post,* 19 September 2006, A04, <www.washingtonpost.com/wp-dyn/content/article/2006/09/18/AR2006091801414.html?referrer=email>.

23. While there are many references for just war theory, a good introductory text is Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues,* 3d Edition. (Upper Saddle River, NJ: Pearson Prentice Hall, 2004).

24. Many argue that the decision to go to war was largely pre-conceived and that briefings to the UN Security Council or the search for further evidence of weapons of mass destruction in Iraq were simply efforts to seek legitimacy for a decision already taken. See Bob Woodward, *Plan of Attack* (New York: Simon and Schuster, 2004).

25. See Paul Christopher, Chapter 4.

26. Rupert Smith, *The Utility of Force: The Art of War in the Modern World*, (London: Penguin Books, 2006), 16-17.

27. Quoted in Anonymous (the IOC Staff, The Basic School), "A Question of Moral Authority: Understanding the Fighter/Leader Concept," *The Marine Corps Gazette*, May 2006, 64-5. From Steven Pressfield, *The Gates of Fire* (New York: Doubleday, 1998), 112.

28. JP 3-0, Annex A, A-4.

29. For the Ranger descriptions of the operations, see James Schroeder, "The Rangers Take Hadithah Dam," *Veritas* (Winter 2005): 55—60, and Mir Bahmanyar, *Shadow Warriors: A History of the U.S. Army Rangers* (New York: Osprey, 2005), 248-53. The latter is complete with PowerPoint slides from the concept of operations

briefing. A more general overview, which gives the operational context for the operations appears in Michael R. Gorden and General Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq*, (New York: Pantheon books, 2006), 331-35.

30. Martin Asser, "What happened at Haditha?" BBC News Report, 21 December 2006, <http://news.bbc.co.uk/1/hi/world/middle_east/5033648.stm>. A useful overview with references is also available at *Wikipedia.org* under the title of *"Haditha Killings,"* <http://en.wikipedia.org/Haditha_massacre.htm>.

31. See Tim McGirk, "Collateral Damage or Civilian Massacre in Haditha?" *Time*, 19 March 2006, <www.time.com/time/magazine/article/0,9171,1174682,00.html>. Also, see Asser.

32. A preliminary investigation began on 14 February 2006 and a criminal investigation three weeks later. Those investigations have resulted in 15 broad charges and 44 specific charges against 8 marines, including murder charges against 4 of them.

33. Asser.

34. Josh White, "Report on Haditha Condemns Marines: Signs of Misconduct were Ignored," *Washington Post*, 21 April 2007, A01, www.washingtonpost.com/wp-dyn/content/article/2007/04/20/AR2007042002308.html.

35. "'Simple Failures' and 'Disastrous Results': Excerpts from MG Eldon A. Bargewell's Report," *Washington Post*, 21 April 2007, page A13. <www.washingtonpost.com/wp-dyn/content/article/2007/04/20/AR2007042002309.htm>.

36. Ibid., A13, and Josh White, A13.

37. Ibid., A13.

38. Reuters, "Marine Given 8 Years in Iraqi's death," *New York Times*, 19 February 2007, <www.newyorktimes.com/2007/02/19/us/19marine.html/ref=worldspecial>. For a list of detailed charges in this case and the Haditha incident, see U.S. Marine Corps website, "Iraq Investigations," <www.usmc.mil/lapa/iraq-investigations.htm>. Note that five of the eight have now accepted plea bargains of various forms to receive lesser sentences in exchange for testimony against three of the accused.

39. In response to these events, the Commandant of the Marine Corps, General M W. Hagee, released a reminder to the Corps entitled, "On Marine Virtue," < www.marines.mil/marinelink/mcn2000.nsf/0/ff362b1c89c3a3538525717900632927?Open Document>.

40. See a quick summary of related news articles and links to those articles in a *Wikipedia.org* article "Hamdania incident," <http://en.wikipedia.org/wiki/Hamdania_incident>.

41. Thomas Watkins, AP, "Lawyer: Charges Dropped Against Marine," WTOP News, 1 May 2007 <www.wtopnews.com/?nid=104&sid=1031693>.

42. George Packer, *The Assassin's Gate: America in Iraq* (New York: Farrar, Straus, and Giroux, 2005), 236-37.

43. Thomas E. Ricks, *Fiasco: the American Military Adventure in Iraq* (New York: Penguin Press, 2006), 234.

44. Ibid., 232-33.

45. Ann Scott Tyson and Josh White, "Excessive Force by Marines Alleged: Afghan Report on Killings of Civilians is Consistent with U.S. Findings," *Washington Post,* 14 April 2007, A01, <www.washingtonpost.com/wp-dyn/content/article/2007/04/13/AR2007041302171.html>.

46. Ibid.

47. Seymour Hersh, "Torture at Abu Ghraib," *The New Yorker*, 10 May 2004, <www.newyorker.com/printables/fact/040510fa_fact>. For responses, see, for example, Human Rights Watch Report, *Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees,* April 2005, Vol. 17, No 1(G), <www.hrw.org/reports/2005/us0405/> or Op Ed columns such as Bob Herbert, "We Can't Remain Silent," *New York Times,* 1 April 2005; Thomas L. Friedman, "Just Shut it Down," *New York Times*, 27 May 2005; or Anthony Lewis, "Guantanomo's Long Shadow," *New York Times,* 21 June 2005.

48. For a short encapsulated version of the *Newsweek* allegations, retractions, and U.S. admissions, see the BBC report at <news.bbc.co.uk/2/hi/americas/4608949.stm>.

49. James R. Schlesinger, Chairman, *Final Report of the Independent Panel to Review DOD Detention Operations*, August 2004, <www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf>.

50. Department of State, Second Periodic Report of the United States of America to the Committee Against Torture, 6 May 2005, <www.state.gov/g/drl/rls/45738.htm>.

51. Edward Cody, "Iraqis Put Contempt for Troops on Display," *Washington Post*, 12 June 2004, quoted in MG George R. Fay, Investigating Officer, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade* 23, August 2004, 26.

52. David Gompert, *Heads We Win: The Cognitive Side of Counterinsurgency* (Santa Monica, CA: RAND, 2007), xi, < www.rand.org/pubs/occasional_papers/2007/RAND_OP168.pdf>.

53. The Brookings Institution*, Iraq Index: Tracking Reconstruction and Security in Post-Saddam Iraq,* 17 May 2007, < www3.brookings.edu/fp/saban/iraq/index.pdf>.

54. Gompert, 28. Gompert cites the polling results from Zogby International, "Muslims in the American Public Square: Shifting Political Winds & Fallout from 9/11, Afghanistan, and Iraq." October 2004, <www.projectmaps.com/AMP2004report.pdf>.

55. FM 3-24/MCWP 3-33.5, 1-22, Para. 1-120.

56. Fallows. Fallows quotes Shibley Telhami before U.S. forces killed al-Zarqawi in 2006.

57. Packer, 223.

58. Quotations are from a 2002 memo written by then White House Counsel Alberto Gonzales. See extracts at Dan Froomkin, More Ambiguity about Torture," *Washington Post*, 12 July 2006.

59. Schlesinger Report, 75. The importance of role modeling in leadership cannot be underestimated. See the results of a Pentagon survey released on 4 May 2007, which reports that approximately 40 percent of U.S. Soldiers questioned believed that torture should be permitted. Less than half believed that non-combatants should be treated with dignity and respect, and 10 percent admitted to damaging property in Iraq. Sara Wood, "Defense Department Releases Findings of Mental Health Assessment," *American Forces Press Service*, 4 May 2007, < www.defenselink.mil/news/newsarticle.aspx?id=33055>.

60. George Edwards, "Order and Civil Liberties: A Complex Role for the Police," *Michigan Law Review*, 64, no. 1 (November 1965): 54-5. Available through JSTOR (Journal Storage) at <http://links.jstor.org/sici?sici=0026-2234(196511)64%3A1%3C47%3AOACLAC%3E2.0.CO%3B2-Y>.

61. For a sobering, but very readable account of U.S. small wars and the enduring effects on legitimacy, see Stephen Kinzer, *Overthrow: America's Century of Regime Change from Hawaii to Iraq* (New York: Times Books, 2006).

62. From a famous John Winthrop sermon reportedly given to the Puritans of Massachusetts on the ship *Arabella* in 1630, <http://en.wikipedia.org/wiki/John_Winthrop>, <http://en.wikipedia.org/wiki/Sermon>. The text of the speech, "A Modell of Christian Charity," is available at <http://history.hanover.edu/texts/winthmod.html>.

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