

MRP Final Submission

The corruption of Legitimacy: How American and British Counterinsurgency Strategies Ignore
Jus ad Bellum as the Foundation of Legitimate War

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ABSTRACT

The *United States Army Field Manual FM 3-24 Insurgencies and Countering Insurgencies* (FM 3-24) and the *British Army Field Manual Volume 1 Part 10 Countering Insurgency* (AFM 1-10) are the most comprehensive representations of modern counterinsurgency thinking. Yet they both contain several fundamental flaws that diminish their usefulness as effective strategic frameworks. American and British counterinsurgency strategies lack any significant discussion of the principles of just war theory, as a result they fundamentally misunderstand legitimacy in the context of war. FM 3-24 and AFM 1-10 forget that legitimacy is not a by-product of *jus in bello* alone, instead it is a result of satisfying all of criteria of *jus ad bellum* and of behaving justly in war (i.e. adhering to *jus in bello*). This paper argues that modern counterinsurgency frameworks would be better served if they incorporated the principles of *jus ad bellum* more rigorously. Incorporating all aspects of just war theory into counterinsurgency thinking would lead to better strategies that discourage overly aggressive interventions that cause unnecessary harm to soldiers and civilians alike.

INTRODUCTION

Contemporary counterinsurgency (COIN) theory is predominantly understood through the lens of the current counterinsurgency field manuals of western nations. The *United States Army Field Manual FM 3-24 Insurgencies and Countering Insurgencies* (FM 3-24) and the *British Army Field Manual Volume 1 Part 10 Countering Insurgency* (AFM 1-10) are the most comprehensive representations of modern counterinsurgency thinking. FM 3-24 and AFM 1-10 combine the experiences of US and British forces during the wars in Iraq and Afghanistan with elements of classic counterinsurgency theory. The manuals provide basic guidelines to help soldiers understand how insurgencies operate and how counterinsurgencies should work as a whole. Yet the effectiveness of FM 3-24 and AFM 1-10 is severely reduced by the way in which they conceptualize legitimacy.

In both the FM 3-24 and AFM 1-10 legitimacy is understood as a crucial component of victory and is often interpreted as a result of action or as a matter of public opinion and perception. FM 3-24 and AFM 1-10 operate under the premise that insurgencies are inherently illegitimate and any action taken by them is an act of aggression against the state. Both the British and American counterinsurgency (COIN) doctrines argue that in order to maintain control over the population a counterinsurgency force must build legitimacy through action. Viewing action as the determining factor of legitimacy is inappropriate because it ignores the foundational principles of *jus ad bellum* and can lead to policies or strategies that are overly permissive of war. This paper will argue that the way in which the American and British counterinsurgency strategies view legitimacy is insufficient and impossible to maintain, as such, modern counterinsurgency frameworks would be better served if they incorporated the principles of *jus ad bellum* more rigorously; this is because legitimacy comes from meeting the conditions of *jus*

ad bellum before a war begins and from adhering to the principles *jus in bello* once war has begun. FM 3-24 and AFM 1-10 misunderstand legitimacy as a condition that is gained through war rather than as an obligatory precondition of just war.

Counterinsurgents must be mindful of how their presence in any country is perceived; if they lack legitimacy they will likely be portrayed as an occupying force that is trying to destroy the traditions and values of the local population. Counterinsurgency forces must hold themselves to a higher standard because once they are seen as occupiers it is extremely difficult to undo that narrative, “no matter how hard they [the counterinsurgency force] try, reframing occupation as ‘liberation’ will not make it so.”¹ Once COIN forces are seen as occupiers their presence alone will be sufficient proof to perpetuate this narrative. Using the occupation narrative insurgent forces will always look for examples that can support this narrative; any misstep will be used to try and turn the public against the counterinsurgents. Having legitimacy through *jus ad bellum* will allow for foreign forces to protect their relationship with local populations and will increase the likelihood of defeating the insurgency.

In order to fully understand why the current conceptualization of legitimacy within a counterinsurgency context is troubling requires an examination of the current COIN doctrine alongside a discussion of just war principles. This paper will examine how FM 3-24 and AFM 1-10 misunderstand legitimacy by comparing contemporary counterinsurgency (COIN) thinking with classical and contemporary literature on *jus ad bellum* and *jus in bello*; and by examining various real-world examples that demonstrate how fighting for legitimacy makes achieving it

¹Kahl, Colin H. "COIN of the Realm: Is There a Future for Counterinsurgency?" *Foreign Affairs* 86, no. 6 (2007): 176

next to impossible, especially in the cases where foreign forces are fighting against a domestic insurgency in another state.

This paper is divided into various sections designed to help understand legitimacy within the context of AFM 1-10 and FM 3-24 and within *jus ad bellum* and *jus in bello*. Section 1 focuses on context and provides a brief historical overview of counterinsurgency operations over the last forty years. It will also discuss counterinsurgency as outlined in FM3-24 and AFM 1-10. Section 2 examines *jus ad bellum* and *jus in bello* and how FM 3-24's and AFM 1-10's view of legitimacy ignores just war theory. Section 2 also features an in-depth discussion of sexual abuse in Afghanistan by Afghan police and military commanders and how US forces failed to respond. The case study will explain the affect the abuse had on the legitimacy of the mission in Afghanistan. Section 3 three examines two alternative counterinsurgency strategies, the first alternative relies on extreme violence while the other is based on principles of non-violence. Lastly, section 4 highlights two additional problem areas of FM 3-24 and AFM 1-10 that must be addressed in any future counterinsurgency framework. It should be noted that during the course of this paper any reference to counterinsurgency refers to counterinsurgencies fought in foreign countries by states other than the one directly affected by the insurgency.

Identifying the shortcomings of how current COIN strategies is important because of the harmful effects these strategies can have when they are applied to the wrong situation. Any state that bases its counterinsurgency strategy solely on FM 3-24 and/or AFM 1-10 risks becoming involved in an unjust war that will have no clear, timely, or straightforward solution. Current COIN strategies give the impression that states can gain legitimacy through war. The notion that legitimacy can be gained through war is false and misguided and forgets the fundamental principles of just war theory. FM 3-24 and AFM 1-10 put the proverbial cart before the horse in

the sense that they view legitimacy as a result of war and not as a precondition of it. Allowing the current strategies to go unchanged, “risks producing an overly interventionist foreign policy which distracts and exhausts the US, UK, and other states by treating every localized insurgency as the incubators of future terrorist threats.”² Overly aggressive foreign policy risks undermining the state engaging in war and leads to the unnecessary suffering of innocent people simply caught in the middle. By applying just war theory to all types of conflict, states can avoid costly and unnecessary wars.

1. CONTEXT

1.1: A brief history of modern insurgency

Since the end of the Second World War insurgency has ebbed and flowed, causing insurgencies and guerilla movements to cycle in and out of the consciousness of military strategists, academics, and the public; as a result the study of insurgency and counterinsurgency was often neglected.³ According to Rich and Duyvesteyn, “roughly since Clausewitzian times until the 1960s, guerrilla warfare and insurgencies were viewed as peripheral to mainstream military conflict, which was centered on conventional inter-state war.”⁴ During the 1960s and 1970s debates around insurgency and guerrilla warfare were reawakened as a result of the success of various revolutions around the globe, including the communist revolutions in China,

² Boyle, Michael J. "Do counterterrorism and counterinsurgency go together?" *International Affairs* 86, no. 2 (2010):336

³ Metz, Steven. "Rethinking Insurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 32-44. Abingdon: Routledge, 2012: 42; Beckett, Ian. "The Historiography of Insurgency." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 23-31. Abingdon: Routledge, 2012: 25

⁴ Rich, Paul B, and Isabelle Duyvesteyn. "The Study of Insurgency and Counterinsurgency." In *The Routledge Handbook to Insurgency and Counterinsurgency*, by Paul B Rich and Isabelle Duyvesteyn, edited by Paul B Rich and Isabelle Duyvesteyn, 1-19. Abingdon: Routledge, 2012: 1

Cuba, and Vietnam.⁵ These successive revolutions brought to the forefront the need for strategic thinking about insurgency and counterinsurgency. Maoist revolutionary thinking became so influential that it was seen by strategists as its own distinct model, which could be replicated globally, even without communist ideologies attached to it.⁶ The revolutions in China and Vietnam represented the idea of a “‘people’s war’ directed by a revolutionary party that maintains close links with the different peasant groups in the countryside.”⁷ It can be argued that modern groups such as the Taliban have adopted a Maoist revolutionary strategy and have simply replaced communist ideology with religious extremism.

After the war in Vietnam the American military wanted nothing to do with counterinsurgency. This unwillingness to fight insurgencies led to a doctrinal change during the 1980s and early 1990s.⁸ Mockaitis writes that between the 1970s and 2001, the US was involved in only one counterinsurgency operation, which was the civil war in El Salvador.⁹ US involvement in El Salvador was not considered a COIN operation in the modern sense. The United States government, “provided the government in El Salvador with cash and arms as well as a small group of special forces advisors to assist the Salvadoran military in combating the Farabundo Marti National Liberation Front (FMLN), a growing Marxist insurgency committed to political reform and social change.”¹⁰ Meanwhile the British were faced with increasingly violent resistance from the Irish Republican Army (IRA) in Northern Ireland. After the collapse of the Soviet Union the Russian government conducted counterinsurgency and counterterrorist

⁵ Beckett, Ian. "The Historiography of Insurgency." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 23-31. Abingdon: Routledge, 2012: 25

⁶ (Rich and Duyvesteyn 2012, 5)

⁷ (Rich and Duyvesteyn 2012, 5)

⁸ Mockaitis, Thomas R. "Trends in American counterinsurgency." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 251-262. Abingdon: Routledge, 2012: 257

⁹ *ibid*, 258

¹⁰ *ibid*

operations in Dagestan and Chechnya, which resulted in two wars between Russia and Chechen separatists from 1994-1996 and 2000 to 2009.¹¹

After 9/11 the United States entered Afghanistan along with the International Security Assistance Force (ISAF) – a group of 47 nations with differing mandates and rules of engagement.¹² Despite quickly defeating the Taliban, the US and ISAF were unable to eliminate the Taliban threat. The Taliban remained more resilient than anticipated, in large part due to its networked structure and the availability of sanctuary in Pakistan.¹³ After the invasion of Afghanistan, the invasion of Iraq soon followed and with the ousting of Saddam Hussein, Iraq descended into chaos with various Sunni and Shiite insurgent groups fighting for power.¹⁴ Instability in Iraq combined with unrest in Syria also resulted in the rise of the Islamic State (aka ISIS/ISIL), which seized control of several major cities in Iraq and Syria and claimed responsibility for various terrorist attacks across Europe and the Middle East.¹⁵ As a result of the wars in Afghanistan and Iraq the US and British armies developed new counterinsurgency strategies aimed at addressing the challenges of conducting counterinsurgency operations in the modern era.

¹¹ Younkyoo, Kim, and Stephen Blank. "Insurgency and Counterinsurgency In Russia: Contending Paradigms and Current Perspectives." *Studies in Conflict & Terrorism* 36 (2013): 918

¹² Mockaitis 2012, 260

¹³ Giustozzi, Antoni. "Insurgency in Afghanistan." In *The Routledge Handbook on Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 218-226. Abingdon: Routledge, 2012: 224

¹⁴ BBC. *Iraq Profile - timeline*. October 3rd, 2018. <https://www.bbc.com/news/world-middle-east-14546763>.

¹⁵ Encyclopedia Britannica. *Islamic State in Iraq and the Levant*. July 23, 2018. <https://www.britannica.com/topic/Islamic-State-in-Iraq-and-the-Levant>.

1.2: The US Army Field Manual on Counter Insurgency FM 3-24 and the British Army Field Manual Volume 1 Part 10 Countering Insurgency

Originally written in 2006 and subsequently updated in 2014, the *US Army Field Manual 3-24 Insurgencies and Countering Insurgencies* (FM 3-24) was designed to fill a doctrinal gap in US military strategy. FM 3-24 provides a framework for ways in which the military can counter an insurgency.¹⁶ It seeks to provide soldiers with, “an understanding of insurgencies and the operational environments within which they exist.”¹⁷ Although FM 3-24 provides a strategic and operational context for countering insurgencies, it clearly articulates that counterinsurgency is not in itself a strategy nor is it a substitute for one.¹⁸ Yet, despite not being intended as a strategy it has become one. Furthermore, “[FM 3-24] cannot and should not be the only reference on how to conduct counterinsurgency operations.”¹⁹ According to the field manual, counterinsurgency requires a multifaceted whole-of-government approach in order to be successful.

FM 3-24 has been highly praised as being, “surprisingly honest and self-critical, and it continues to play an important role in reconnecting military operations with political objectives”²⁰ FM 3-24 provides an excellent overview of how insurgencies function and operate and of some of the crucial strategic and operational elements required for counterinsurgency operations. FM 3-24 is most useful as a tool for understanding how insurgencies function but its ignorance of the benefits of *jus ad bellum* make it less useful as a strategic framework.

¹⁶ United States Army. "U.S. Army/Marine Corps Field Manual (FM) 3-24/ Marine Corps Warfighting Publication (MCWP) 3-33.5 Insurgencies and Countering Insurgencies." Washington, DC: Marine Corps War Publishing 3-33., May 2014: vii

¹⁷ *ibid*

¹⁸ *ibid*, 1-2

¹⁹ *ibid*, 1-4

²⁰ Griffin, Stuart. "Iraq, Afghanistan and the future of British military doctrine: from counterinsurgency to stabilization." *International Affairs* 87, no. 2 (March 2011): 328

Regardless of its shortcomings, FM 3-24 has been influential on the counterinsurgency policies of other countries most notably on the British counterinsurgency doctrine.

The *British Army Field Manual Volume 1 Part 10 Countering Insurgency* (AFM 1-10) was released in 2009 and shares many similarities to FM 3-24. Much like FM 3-24, AFM 1-10 was written in response to the wars in Afghanistan and Iraq, but it also sought to move the British counterinsurgency thinking away from its earlier iterations which relied heavily on the British Army's colonial experience and its experience in Northern Ireland.²¹ AFM 1-10 combines classic counterinsurgency thinking with the experiences of British forces in Iraq and Afghanistan. The links to classic British COIN are made clear by the manual's emphasis on law enforcement as a critical part of counterinsurgency operations, an idea which is mostly absent from FM 3-24. The British counterinsurgency doctrine was far less influential than that of the US; Warren Chin argues that this is likely due to the fact that, "recent British participation in counterinsurgency operations has been largely through coalitions frequently led by the United States. As a result, the British have had to fuse their plans with those of their allies as well as the host government."²² Despite being less influential AFM 1-10 contains some important considerations which are not brought up in FM 3-24, particularly surrounding the importance of law-enforcement and the psychological impacts of conflict.

²¹Chin, Warren. "From Belfast to Lashkar Gar via Basra. British counterinsurgency today." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 276-285. Abingdon: Routledge, 2012 : 278

²² *ibid*, 278-279

1.3: Defining Insurgency

The dominant understanding of insurgency which has developed since the end of the Second World War center on notions of political resistance.²³ Given their relative weakness, insurgents employ tactics that are advantageous to their smaller numbers and weaker capabilities. Insurgency is often synonymous with guerrilla warfare; Michel Gross uses the terms guerilla and insurgent interchangeably. However, Gross does differentiate between militants and guerrillas/insurgents. He argues that, "...armed militants mount sporadic challenges to the state, [while] insurgents and guerrillas sustain hostilities for relatively long periods of time and take control of significant territory."²⁴ For Gross guerrilla/insurgent warfare often includes military operations, economic warfare, and public diplomacy. Additionally, guerrilla movements operate on the local level (by gaining the support of the people), the national level (in their struggle for independence or against an entrenched regime), and at the international level (where they work to gain support from the international community).²⁵ Gross insists that insurgents should not be conflated with terrorists because in doing so, "we overlook important questions of justice that surround many struggles for national determination."²⁶ Gross argues that guerrilla or asymmetric wars are by definition justice neutral.²⁷ Terrorist groups may share many of the same elements that make up guerrilla movements but they often lack just cause as it is understood in *jus ad bellum*. At times, similar patterns of behavior, as well as overly broad definitions, make it challenging to distinguish between such groups.

²³ Bunker, Robert J. "Changing Forms of Insurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 45-53. Abingdon: Routledge, 2012: 48

²⁴ Gross, Michael L. *The Ethics of Insurgency A Critical Guide to Just Guerrilla Warfare*. Cambridge: Cambridge University Press, 2015: 3

²⁵ *ibid*, 4

²⁶ *ibid*, 4

²⁷ *ibid*, 5

FM 3-24 takes a generalist view of insurgency and explains that, “insurgency in its most basic form is a struggle for control and influence, generally from a point of weakness, outside existing state institutions.”²⁸ It further defines insurgency as, “an organized use of subversion and violence to seize, nullify, or challenge political control of a region. Insurgency can also refer to the group itself.”²⁹ In other words, it is, “an organized politico- military struggle designed to weaken the control and legitimacy of an established government, occupying power, or other political authority.”³⁰ The motives of insurgents vary from group to group; most often a history of grievances is cited as the primary motivation for violent action. Grievances are integral to insurgencies and a perceived injustice is often used by insurgents to justify their actions against the state. According to FM 3-24, “grievances are necessary but not sufficient conditions for an insurgency; in addition, insurgencies require opportunity and means to be successful.”³¹ Past grievances can be exploited by insurgent groups, allowing them to create a narrative to justify their actions against the state. Narratives designed to support the insurgency, “will explain who is to blame for grievances, how grievances will be addressed, and how the population and insurgency should work together to accomplish the goal.”³² Whether these grievances are real or perceived is of little consequence. As long as a group is able to construct an accepted narrative, the effect tends to be the same.

The basic definitions of insurgency in AFM 1-10 and FM 3-24 are virtually identical. The British Army defines insurgency as “an organized, violent subversion used to effect or prevent

²⁸ United States Army 2014, 1-1

²⁹ *ibid*, 1-2

³⁰ Rich and Duyvesteyn 2012, 11

³¹ United States Army 2014, 4-3

³² *ibid*, 4-3

political control, as a challenge to established authority.”³³ According to AFM 1-10, “an insurgency’s origins may be ideological, religious, ethnic, sectarian, class-based, or, most probably, a combination of these factors...” In addition, insurgents may seek, “to gain control of territory, seek resolution of a grievance or seek the overthrow of the existing authority.”³⁴ The two field manuals differ most in how they perceive insurgencies at a normative level. In FM 3-24 insurgency is presented as a strategy used by weaker actors to try and gain advantage against a stronger opponent, whereas AFM 1-10 seems to make a value judgement about insurgency, frequently linking it to criminality and criminal activity. Similar judgements are found within FM 3-24, but are far less pronounced.

1.4: Defining Counterinsurgency

1.4.1: Classic Counterinsurgency Theory

Classic counterinsurgency theory refers to the strategic thinking of the 1950s and 1960s. Heavily influenced by writers such as David Galula and Robert Thompson, classic counterinsurgency theory was shaped by the Cold War and the rise of nationalist and anti-colonial movements.³⁵ Classic counterinsurgency is often separated into the British and French schools of thought. The British approach views counterinsurgency as a matter of policing while the French perspective viewed insurgency as a matter of war.³⁶ These two different approaches resulted in different tactics and methods for countering insurgencies.

³³ British Army. "British Army Field Manual Volume 1 Part 10 Countering Insurgency." Warminster, October 2009:1-5

³⁴ *ibid*, 1-5

³⁵ Kilcullen, David. "Counterinsurgency. The state of a controversial art." In *The Routledge Handbook of Insurgency and Counterinsurgency*, by Paul B Rich and Isabelle Duyvesteyn, 128-153. Abingdon: Routledge, 2012. : 131; Metz, Steven. "Rethinking Insurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 32-44. Abingdon: Routledge, 2012: 34

³⁶ Metz 2012, 34

The classic French approach viewed insurgency as, “a new form of warfare which included an interlocking system of actions – political, economic, psychological, and military – that aims to overthrow the established authority in a country and its replacement by another regime.”³⁷ French thinking on counterinsurgency favored pacification; this relied on the notion that certain populations could be pacified through political support gained by administrative work at the local level, which would in turn secure success at the tactical military level.³⁸ Under the French school of thought, victory was not seen as being dependent on the result of one battle over a specific terrain.³⁹ The French emphasized the need for holistic approach which incorporated a combination of social, political, and military strategies to combat an insurgency.

The British approach to counterinsurgency “was akin to colonial policing and thus stressed the synthesis of police and military efforts.”⁴⁰ British methods relied on employing “the idea of minimum force and relying, where possible, on conventional civil and policing structures.”⁴¹ The British approach “typically avoided over-reliance on military means and the use of force, and tended to see addressing the legitimate grievances on which an insurgency fed as their center of gravity.”⁴² Classic British COIN is best encapsulated by Robert Thompson’s five principles of counterinsurgency, which were: “that the government must have a clear political aim... the government must function in accordance with law... the government must have an overall plan and this plan must cover not just the security measures and military operations... the government must give priority to defeating the political subversion not the

³⁷ *ibid*, 34

³⁸ Rich and Duyvesteyn 2012, 9

³⁹ Metz 2012, 34

⁴⁰ *ibid*

⁴¹ Rich and Duyvesteyn 2012, 10

⁴² Zaalberg, Thijs Brocades. "Counterinsurgencies and Peace Operations." In *The Routledge Handbook of Insurgency and Counter Insurgency*, by Paul B Rich and Isabelle Duyvesteyn, 80-97. Abingdon: Routledge, 2012: 84

guerrillas... [and finally], in the guerrilla phase of an insurgency, a government must secure its base areas first.”⁴³ These five principles highlight the importance of state control and political legitimacy; they work together to take power away from insurgents by eliminating grievances and improving the legitimacy of the state while delegitimizing the insurgents.

Critics of the classic British approach emphasize that despite its guiding principles it often failed to achieve its desired objective. Bruno Reis argues that classic British COIN failed to adhere to the principle of minimum force.⁴⁴ The term “minimum force” was often relative, as the strategy was often abandoned by British forces in favour of more brutal methods.⁴⁵ Today many scholars view the traditional British approach as a relic of empire that served its purpose during colonialism but is no longer relevant.⁴⁶ Nonetheless, the classic British model remains useful as it provides an alternative perspective on a complex issue.

Steven Metz argues that one of the reasons why the French approach to counterinsurgency was more influential than the British approach is because it sees the state as a victim and, “being a victim or target of war does not imply that a state is flawed.”⁴⁷ Unlike rebellion, insurgency frames the state as a victim of aggression, removing questions of motivation or cause from the equation. If a state is facing a rebellion, the inherent assumption is that there must be a reason for it and that the state must be flawed. By articulating insurgency as an act of aggression against the state, that state retains its own legitimacy while diminishing the legitimacy of the insurgent group. Operating under such assumptions may make it easier for

⁴³ Van Heerden, K WJ. "Defeating Communist Insurgency Robert Thompson." *Scientia Militaria, South African Journal of Military Studies* 12, no. 4 (1982): 68

⁴⁴ Reis, Bruno c. "The Myth of British Minimum Force in Counterinsurgency Campaigns during Decolonisation (1945–1970)." *The Journal of Strategic Studies* 34, no. 2 (April 2011): 246

⁴⁵ Rich and Duyvesteyn 2012, 10

⁴⁶ *ibid*

⁴⁷ Metz 2012, 34

states to maintain control over the population and weaken the insurgency. The current British and American field manuals have blended elements from each traditional model to create a new framework which views insurgency as a war that requires a combination of both military and political methods in order to be resolved.

1.4.2: Contemporary Counterinsurgency

Modern counterinsurgency theory experienced a resurgence after 9/11 and the subsequent invasions of Afghanistan and Iraq. David Kilcullen views the rapid growth of counterinsurgency policy after 9/11 as a neo-classical revival drawing inspiration from the earlier writings of Galula, Thompson, and others. He argues that instead of discovering new approaches to combat insurgencies, old ideas were simply updated and adapted to a modern context.⁴⁸ Meanwhile, scholars such as Thijs Zaalberg see contemporary counterinsurgency as “synonymous with a more enlightened and subtle population centric approach to defeating insurgencies.”⁴⁹ Zaalberg is correct in his assertion that modern COIN doctrine is more population focused than its predecessors, but FM 3-24 and AFM 1-10 remain very state-centric in their understanding of insurgency and in their strategies to fight against them. Counterinsurgency thinking today is not focused on a singular objective; it is concerned with the political, economic, social, and cultural aspects that influence insurgencies.

FM 3-24 defines counterinsurgency as, “comprehensive civilian and military efforts designed to simultaneously defeat and contain an insurgency and to address its root cause.”⁵⁰ There are two key elements of this definition that should be examined in more detail. The first is concerned with the reference to civilian and military efforts. Civilian and military effort refers to

⁴⁸ Kilcullen 2012, 137

⁴⁹ Zaalberg 2012, 84

⁵⁰ United States Army 2014, 1-2

a whole-of-government approach which, "...integrates the collaborative efforts of the departments and agencies of the government to achieve unity of effort toward a shared goal."⁵¹ Functioning as a big picture strategy, FM 3-24 views a whole-of-government effort as, "vital to achieving the balance of resources, capabilities, and activities that reinforce progress made by one of the instruments of national power while enabling success among the others."⁵² FM 3-24 makes it clear that counterinsurgency strategy cannot be focused on achieving a purely military victory, because, "victory for an insurgent may depend less on defeating an armed opponent and more on a group's ability to garner support for its political interests (often ideologically based) and to generate enough violence to achieve political consequences."⁵³ It is for this reason that coordination amongst various agencies is seen as fundamental to the success of COIN operations.

AFM 1-10 defines counterinsurgency as, "those military, law enforcement, political, economic, psychological, and civic actions taken to defeat an insurgency, while addressing its root causes."⁵⁴ For a counterinsurgency to be successful, a multifaceted approach that addresses the political, economic, social, cultural, and security dimensions of the unrest is required.⁵⁵ AFM 1-10 recognizes a more diverse set of solutions that are needed to defeat an insurgency. The British counterinsurgency manual views military actions as necessary but potentially detrimental, because "military operations may meet their military objectives but if they are conducted without ensuring that their likely outcomes are clearly in pursuit of political objectives, the results they achieve may be entirely counterproductive."⁵⁶ The American and British frameworks are

⁵¹ United States Army 2014, 1-12

⁵² *ibid*

⁵³ *ibid*, 1-2

⁵⁴ British Army 2009, 1-6

⁵⁵ *ibid*

⁵⁶ *ibid*, 3-2

conscious of the dangers of not meeting political objectives, yet they neglect the need to also meet social objectives that can influence public perception. Both strategies are self-aware enough to warn against the over reliance on military tactics and the use of excessive force; yet, the way in which FM 3-24 and AFM 1-10 view restraint is based on the idea that the only type of legitimacy that matters is political/public legitimacy.

2. JUST WAR THEORY AND INSURGENCY/ COUNTERINSURGENCY

2.1: *Jus ad bellum*

Jus ad bellum (justice of war) consists of several different criteria that are designed to determine when a war can be considered just. Generally, it is agreed that there are six principles of *jus ad bellum*: just cause, right intention, last resort, public declaration of war by an appropriate (legitimate) authority, reasonable probability of success, and proportionality.⁵⁷ Of the six criteria, just cause, last resort, and legitimate authority are raised most often when questioning the justness of an insurgency/ counterinsurgency. Just cause questions the reasons given for going to war, “it insists that a state may only engage in warfare for an appropriate reason.”⁵⁸ Most often the only just reason for going to war is the resistance of aggression, or in other words, self-defence.⁵⁹ Hugo Grotius wrote, “no other just cause for undertaking war can there be except injury received.”⁶⁰ When self-defence is the only just cause for war, then any act of aggression is automatically seen as unjust. When discussing counterinsurgency operations in foreign countries just cause comes under question, raising concerns around preventative versus pre-emptive wars.

⁵⁷ Coleman, Stephen. *Military Ethics And Introduction with Case Studies*. New York: Oxford University Press, 2013:67

⁵⁸ *ibid*, 72

⁵⁹ *ibid*

⁶⁰ From *De iure belli ac pacis*, bk II found in: Reichberg, Syse and Begby 2006, 401

Neither FM 3-24 nor AFM 1-10 include any reference to questions of just cause or last resort; this may be due, in part, to the *jus ad bellum/jus in bello* divide. The separation between the two paths morally protects soldiers who may be fighting in an unjust war, absolving them of any responsibility for the decision to go to war. That decision rests in the hands of the state and the government which chooses to use military force; responsibility lies with those making the decision to go to war to ensure that the reasoning is just, not with the soldiers who fight in it. From a practical perspective it seems unlikely that any military would produce a field manual that instructs its own soldiers to question the validity of a given mission or strategy. Nonetheless, just cause and last resort should not be ignored by military decision makers and discussions of *jus ad bellum* should be included in the field manuals. Just war theory seeks to protect the innocent, but it also seeks to protect those engaging in war from unnecessary harm. A counterinsurgency is more likely to be successful when all the criteria of *jus ad bellum* are met.

Legitimacy under *jus ad bellum* is not the same as the legitimacy discussed in American and British COIN manuals. Legitimate authority as part of *jus ad bellum* concerns itself with who has the right to declare war. Kings and emperors were once seen as the only legitimate authority for declaring war, in the modern world determining legitimate authority has become more complex. It is generally agreed that the United Nations Security Council (UNSC) is the only authority which can legally declare any type of war other than one of self-defence which remains a right of any state. Article 51 of the UN Charter acknowledges the “inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”⁶¹ Article 51 clearly indicates that states have a right to their own self-defence but

⁶¹ United Nations. "Charter of the United Nations." October 24, 1945.

it is ultimately the role of the Security Council to take necessary steps to ensure peace. In spite of the clear articulation of Article 51, the Security Council's ability to protect global peace and stability has come under question on numerous occasions. The NATO intervention in the former Yugoslavia as well as the US led invasion of Iraq in 2003 show that there is a lack of consensus on who or what is the global legitimate authority.

2.2: Legitimacy & legitimate authority in FM 3-24 AN AFM 1-10

A legitimate war is a just war, it is a war that has met all of the criteria of *jus ad bellum*; and yet, FM 3-24 and AFM 1-10 ignore questions concerning the legitimacy of war and the meaning of legitimate authority, instead they choose to focus on the various functions of legitimacy. FM 3-24 is clear that the role of US forces engaged in COIN operations is to assist the state; FM 3-24 and AFM 1-10 assume that counterinsurgencies derive their own legitimacy from the legitimacy of the state which accepts their presence. In some ways COIN forces claim legitimacy by proxy since they take actions in support, or, on behalf of the state. The host nation is the default legitimate authority and the role of foreign counterinsurgents is to support, “the host state in reducing the credibility of the insurgency while strengthening its own.”⁶² The British Army's field manual defines legitimate authority as, “a population's acceptance of its government's right to govern or of a group or agency to enforce decisions.”⁶³ FM 3-24 defines legitimate authority as being, “whoever a group accepts as having legitimate authority to govern their actions is that group's legitimate authority.”⁶⁴ Viewing legitimate authority through the lens of domestic governance is appropriate for understanding the domestic political situation in any given country but it is not sufficient for determining the legitimacy of war.

⁶² United States Army 2014, 1-9

⁶³ British Army 2009, 1-6

⁶⁴ United States Army 2014, 1-9

FM 3-24 and AFM 1-10 see legitimate war as war that satisfies *jus in bello* and they disregard *jus ad bellum* entirely. By seeing legitimacy as dependent only on *jus in bello* modern counterinsurgency thinking sees the legitimacy of war and legitimate authority as equivalent to political legitimacy and public acceptance. FM 3-24 states that legitimacy is, “dependent on the norms and values of a particular population. Legitimacy can change as a society evolves... Legitimacy is an indication of the extent to which systems of authority, decisions, and conduct are accepted by the local population.”⁶⁵ AFM 1-10 adds a psychological dimension to legitimacy by claiming that it is important to account for the psychological impact of counterinsurgency not only in the country facing the insurgency but also at home.⁶⁶ The element of psychology does not fundamentally change the way legitimacy is understood, it only expands the scope of things that affect the public’s perception of a counterinsurgency. Once again, the emphasis on norms and values is relevant to determining political legitimacy but not to the legitimacy of war.

If one views insurgent support as a result of a state’s inability to meet the needs of its people, then logically the state’s standing as the legitimate authority is diminished by the presence of insurgent groups; therefore, if a foreign force intervenes on behalf of a state that is perceived as being illegitimate than the counterinsurgents may also be perceived as illegitimate. AFM 1-10 and FM 3-24 are correct in the assertion that counterinsurgents must have legitimacy, but, by assuming that a counterinsurgency is automatically granted legitimacy by the state in which it operates, COIN strategies will never be able to gain and maintain true legitimacy. By framing legitimacy as the result of successful state-building, every failure deteriorates the legitimacy of the counterinsurgency. The current situation in Afghanistan demonstrates how deriving legitimacy from a government that may be perceived as illegitimate only serves to

⁶⁵ United States Army 2014, 1-8,1-9

⁶⁶ British Army 2009, 1-7

strengthen an insurgency. Despite seventeen years of war, the Taliban has once again begun to grow in strength and now threatens to destabilize the fragile situation in the country even further. Attacks such as the one in Ghazni on August 11th, 2018 demonstrate the continued loss of credibility for the Afghan government.⁶⁷ The current government in Afghanistan has repeatedly failed to establish itself as the legitimate authority; its continued inability to address underlying issues has only lead to more violence and instability.

If a counterinsurgency is to be successful it must be seen as legitimate by the local population and by the international community. The best way to achieve public legitimacy is to have legitimacy from meeting the criteria of *jus ad bellum* before war begins, once it has been gained through *jus ad bellum* it can be maintained through the strict adherence to *jus in bello*. The assumption that a counterinsurgency operation is legitimate because it has permission from the host nation neglects the fact that legitimacy is not a by-product of *jus in bello* alone, instead it is a result of satisfying all of criteria of *jus ad bellum* and of behaving justly in war. Relying on public acceptance as one's only source of legitimacy creates instability and makes progress more difficult. Insurgencies will always prey on the weaknesses of intervening forces. If a counterinsurgency force lacks public legitimacy prior to intervening (by not satisfying *jus ad bellum*), it is unlikely that it will ever be able to obtain public legitimacy through war with the insurgency.

FM 3-24 frequently refers to the importance of supporting and maintaining legitimacy in the eyes of the people and government; it warns that, "low legitimacy may breed contempt on the part of the population and may require extensive prodding and incentives by the government to

⁶⁷ Lyall, Jason. "5 key lessons from the Taliban's deadly resurgence in Afghanistan." *The Washington Post*. August 19, 2018. <https://www.washingtonpost.com/news/monkey-cage/wp/2018/08/19/5-key-lessons-from-the-talibans-deadly-resurgence-in-afghanistan/?noredirect=on>.

secure compliance of the population; while high legitimacy generally invites compliance by the population...⁶⁸ FM 3 -24 repeatedly makes clear that counterinsurgency operations must be culturally sensitive, it even devotes an entire early chapter to discussing how and why COIN operations should be culturally sensitive. Cultural sensitivity is critical any time one country is interacting with another; there should always be a degree of cultural understanding and sensitivity. The field manual warns of the dangers of cultural mirror imaging; “mirror imaging refers to the pattern of assuming that other cultures see events in the same way one’s own does.”⁶⁹ Yet, this knowledge has done little to assist American forces in dealing with circumstances that may reduce their own legitimacy in places such as Afghanistan and Iraq.

Using political or public acceptance as the sole source of one’s legitimacy ignores the fact that public perception is incredibly fragile and that any misstep or action that harms a population (intentionally or not) can be used to diminish the public’s level of acceptance of the counterinsurgents. There have been countless examples of corruption, murder, violence, and criminality that have placed the credibility and effectiveness of modern COIN operations in jeopardy. From Abu Ghraib, to Guantanamo Bay, to the rural villages of Afghanistan, stories of sexual abuse, torture, and murder are ever present. These stories paint a picture of complacency and ineffectiveness that has ultimately led to a delegitimization of counterinsurgency forces in the eyes of many Afghans.

One such example concerns the numerous allegations that during the height of the war in Afghanistan, American and allied forces turned a blind eye to the sexual abuse of young boys by ranking members of both the Afghan National Army and police force. These cases are troubling

⁶⁸ United States Army 2014, 1-9

⁶⁹ United States Army 2014, 3-1

not only because of their despicable nature, but also because of how they have contributed to the deterioration of the political legitimacy of the Afghan government and of the foreign forces working to support the Afghan people and government. By ignoring the abuse and allowing it to continue American forces lost legitimacy in the eyes of local communities because they were seen as complicit in the abuse. The lack of a response further emboldened corrupt officials to use their positions of power for personal gain because of the lack of consequences. The bacha bazi case is complex because it combines a variety of issues such as the need for cultural sensitivity with debates over the cost of intervention versus the cost of alienating one's local allies.

2.3: Case study: the dancing boys of Afghanistan.

Numerous articles have been written on the troubling practice of bacha bazi or “boy play.”⁷⁰ Bacha bazi “was common, particularly in rural parts of Afghanistan, for hundreds of years, before being outlawed by the Taliban government in the 1990s.”⁷¹ A report by the Afghan Independent Human Rights Commission (AIHRC) describes the practice as follows.

“In some parts of [Afghanistan], a number of local individuals keep with them one or more boys typically aging between 10 to 18 years for the purpose of bacha bazi. Bacha bazi is generally associated with sexual exploitation and other forms of sexual harassments. These children are usually coming from poor families who are kept by some rich individuals as bodyguards, apprentices, or as servants at homes, shops, bakeries, workshops,

⁷⁰ Somade, Jesutofunmi E. *Bacha bazi: Afghanistan's darkest secret*. August 18, 2017. <https://humanrights.brightblue.org.uk/blog-1/2017/8/18/bacha-bazi-afghanistans-darkest-secret>.

⁷¹ Somade 2017

hotels, restaurants and other paid jobs or through coercion, threat, trickery, intimidation and enticement. They often fall victim to sexual abuses. In some parts of the country, these children while wearing female clothes are used as dancers in parties and wedding ceremonies. At the end of ceremonies, they are usually taken to private houses or hotels and raped; sometimes they are even gang raped. As sex slaves, these children continually suffer from sexual exploitation or other forms of sexual harassments.”⁷²

The exact level of popularity of bacha bazi in Afghanistan is not quite known as the practice is considered a social taboo, yet, “in Kabul and other Afghan cities, bacha bazi CDs and DVDs are widely on sale from street stalls and carts, serving an audience who can't afford the real thing.”⁷³ Under the Taliban, bacha bazi, and any/ all homosexual activity was outlawed and severely punished. Anyone found guilty of participating in bacha bazi (or any other form of homosexuality) would be sentenced to be crushed by a collapsing wall.⁷⁴ On some occasions individuals who were sentenced to death did not die right away and were repeatedly dug up and subjected to the same punishment until they died.⁷⁵ After the American invasion of Afghanistan and the subsequent overthrow of the Taliban in 2001 bacha bazi made a resurgence.⁷⁶ The

⁷² Afghan Independent Human Rights Commission. *Causes and Consequences of Bacha Bazi in Afghanistan*. Afghan Independent Human Rights Commission, 2014.

⁷³ Abdul-Ahad, Ghaith. *The dancing boys of Afghanistan*. September 12, 2009. <https://www.theguardian.com/world/2009/sep/12/dancing-boys-afghanistan>.

⁷⁴ Smith, Craig S. *Kandahar Journal; Shh, It's an Open Secret: Warlords and Pedophilia*. February 21st, 2002. <https://www.nytimes.com/2002/02/21/world/kandahar-journal-shh-it-s-an-open-secret-warlords-and-pedophilia.html?module=inline>.

⁷⁵ Smith 2002

⁷⁶ Somade 2017

resurgence was likely due to the fact that those who engaged in the practice no longer had to fear the Taliban's punishment.

The practice became a difficult problem for the International Security Assistance Force (ISAF) to deal with as information started to emerge about sexual abuse being conducted by commanders within the Afghan National Police force (ANP) and Afghan National Security Force (ANSF). New York Times reporter Joseph Goldstein describes how US soldiers had been told to look the other way when confronted with cases of sexual abuse by their ANP and ANSF counterparts. Goldstein writes about Lance Cpl. (LCpl) Gregory Buckley who, "was killed along with two other Marines in 2012 by one of a large entourage of boys living at their base with an Afghan police commander."⁷⁷ In the article Lance Cpl. Buckley's father recalls his son telling him that, "at night we [the US Marines] can hear them screaming, but we're not allowed to do anything about it."⁷⁸ What they heard was Afghan police commanders sexually abusing young boys that had been brought on to the base. When LCpl Buckley informed his superiors that the young boys were being abused, he was told to "look the other way because it is their culture."⁷⁹ LCpl Buckley's experience was unfortunately not unique.

In an interview with the New York Times in 2015, Dan Quinn, a former Special Forces captain who was relieved of his command and pulled from Afghanistan after assaulting an Afghan militia commander for keeping a boy as a sex slave spoke about his experience. In the interview Quinn said, "we were putting people into power who would do things that were worse than what the Taliban did — that was something village elders voiced to me."⁸⁰ The experiences

⁷⁷ Goldstein, Joseph. *U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies*. September 20, 2015. <https://www.nytimes.com/2015/09/21/world/asia/us-soldiers-told-to-ignore-afghan-allies-abuse-of-boys.html>.

⁷⁸ Goldstein 2015

⁷⁹ Goldstein 2015

⁸⁰ Goldstein 2015

of Quinn and LCpl Buckley appear to be only the tip of the proverbial iceberg, “as of Aug. 12, 2016, the Defense Department was investigating 75 instances of gross human rights violations, seven involving child sexual assault, but even Defense Department officials acknowledged that that was a small portion of the total.”⁸¹ The full scale of the problem remains unknown and under reported and continued US/ISAF complacency remains troubling.

Questions surrounding bacha bazi have often been dismissed by US Army officials. When asked to comment, “Col. Brian Tribus, spokesman for the American command in Afghanistan wrote, ‘generally, allegations of child sexual abuse by Afghan military or police personnel would be a matter of domestic Afghan criminal law.’ He added that ‘there would be no express requirement for U.S. military personnel in Afghanistan to report it.’”⁸² Claiming that sexual abuse by Afghan commanders is a legal issue for which the Afghan government is responsible for dealing with is not non-interference, it is complacency. The Afghan government has repeatedly demonstrated its ability or lack of desire to act against the abusers. The 2017 Special Inspector General for Afghanistan Reconstruction (SIGAR) Quarterly Report to Congress revealed that, “Afghan officials remain complicit, especially in the sexual exploitation and recruitment of children by Afghan security forces. Victim-protection efforts remained inadequate, as all but one government-run shelter for trafficking victims remained closed during the reporting period.”⁸³ There is little doubt that part of the reason why progress towards stopping the abuse has been so slow is because of a lack of pressure from foreign actors due to a reluctance to become more closely involved in Afghan affairs.

⁸¹ Norland, Rod. *Afghan Pedophiles Get Free Pass From U.S. Military, Report Says*. January 23, 2018. <https://www.nytimes.com/2018/01/23/world/asia/afghanistan-military-abuse.html>.

⁸² Goldstein 2015

⁸³ Special Inspector General for Afghanistan Reconstruction. *Quarterly Report to the United States Congress, July 30th 2017*. SIGAR, 2017.

The refusal to become involved has been framed in various ways, be it to remain culturally sensitive or to maintain a policy of non-interference. Yet no matter how it is framed the consequences of inaction have likely had a negative impact on the entire mission in Afghanistan. Turning a blind eye to the abuse may have been intended to maintain good relations with the ANSF and ANP, yet it resulted in implicated foreign forces in the cycle of abuse. By not acting against the abuse committed by ANSF and the ANP, ISAF and American forces were likely seen as being ineffective and hypocritical by the local population. Furthermore, the reluctance to become involved in Afghan affairs is ironic given the fact that by entering Afghanistan US and foreign forces became automatically involved in Afghan affairs. Counterinsurgency forces must deal with all the issues that come up, they cannot simply pick and choose the ones that are easier or more convenient to deal with.

Situations such as the ones faced by LCpl Buckley and Dan Quinn are complex and difficult to navigate when considering the broader picture. As Paul Robinson notes in his commentary about the actions of Dann Quinn, “it is doubtful that his actions achieved any positive result... acting forcibly against indigenous forces who are deemed to be acting unethically would be likely to cause a breakdown in relations with them and possibly even violent conflict...”⁸⁴ Robinson proceeds to say that the only option soldiers have is to report matters up the chain of command.⁸⁵ Unfortunately given the lack of will to do something on the matter, informing the chain of command has been relatively ineffective in putting a stop to the abuse.

⁸⁴ Robinson, Paul. "Determining the Limits of Moral Compromise: The Case of the Impunity of Afghanistan's Indigenous Security Forces." *Journal of Military Ethics* 14, no. 3-4 (2015): 278.

⁸⁵ *ibid*

Some hope does remain that the practice of bacha bazi will come to an end. As of January 2018, new laws have been codified that make bacha bazi illegal, it is expected that the new laws will start to be enforced by the end of 2018. The new laws also contain special provisions aimed at targeting abuse by ANFS and ANP members, “Afghanistan National Security forces, involved in the practice of Bacha Bazi could face average punishment of up to 15 years [in prison].”⁸⁶ It remains to be seen whether the new laws will make a difference, because without adequate enforcement nothing will change.

By doing nothing to stop abuse on its bases, the United States neglected one of the crucial (but under emphasized) principles outlined within FM 3-24, “ultimate success in counterinsurgency operations is normally gained by protecting the population, not the counterinsurgency force.”⁸⁷ The unwillingness to speak against the actions of the ANFS and ANP is a clear example of protecting the force and not the people. Joseph Nagal and Brian Burton rightly comment that, “gaining the loyalty of the population requires the difficult process of nation building, which consists of improving the ability of a government to secure its citizens and developing its capacity to provide essential services, including security to the population.”⁸⁸ By ignoring the abuse, the US Army and ISAF failed at this crucial task, it neglected the security of Afghan citizens, and failed to provide or at least support the delivery of essential services.

The utilitarian “bigger picture” arguments voiced by US commanders directly affected the local population in a very visible way. The people affected by this abuse (both directly and indirectly) are unlikely to accept the utilitarian point of view because of their proximity to the

⁸⁶ Jalal Shajjan , Sayed . *The revised Afghanistan criminal code: an end for Bacha Bazi?* 01 24, 2018. <http://blogs.lse.ac.uk/southasia/2018/01/24/the-revised-afghanistan-criminal-code-an-end-for-bacha-bazi/>.

⁸⁷ United States Army 2014, 7-1

⁸⁸ Nagal, John A, and Brian M Burton. "Dirty Windows and Burning Houses: Setting the Record Straight on Irregular Warfare." *The Washington Quarterly* 32, no. 2 (2009): 93

situation and their relationships with the victims. The victims and their families will be unwilling to acknowledge any attempts at justifying inaction to protect the relationship between ISAF, ANFS, and ANP. By claiming to be concerned with the bigger picture, counterinsurgency forces end up losing sight of the smaller details. When enough small problems are neglected several major ones tend to take their place. Failures such as these in an Afghanistan that continues to struggle politically, socially, and economically, create space for the Taliban to return. The bacha bazi case is only one example among many that demonstrate how volatile using political or public acceptance as one's only source of legitimacy can be.

2.4: Jus in bello and legitimacy through action

Given the emphasis on public legitimacy there should be an equal emphasis on strictly adhering to all aspects of just war theory. As the principles of *jus ad bellum* gained prominence philosophers soon realized that without predetermined restrictions war would become too dangerous and too costly. *Jus in bello* deals with the conduct of those who are fighting in war and is intended to prevent excessive violence and destruction during war;⁸⁹ it creates restrictions to prevent the endless escalation of violence which would lead to total war. The fundamental principles of *jus in bello* (discrimination and proportionality) are manifested in the Geneva conventions as well as other international agreements that limit what weapons and tactics states can use in war.⁹⁰ Discrimination is centred on the idea of non-combatant immunity which requires that belligerents limit the likelihood of harming non-combatants (i.e. civilians who do not directly engage in combat).⁹¹ The principle of proportionality demands that “the destructive

⁸⁹ Coleman 2013, 67

⁹⁰ Coleman 2013, 67

⁹¹ Dowdall, Jonathan, and M L.R Smith. "Counter-insurgency in the Grey: The Ethical Challenge of Military Conduct." *Contemporary Security Policy* 31, no. 1 (April 2010): 36; Coleman 2013, 177

effects of an act of war must not be out of proportion with the object sought.”⁹² The two principles are considered equally relevant to *jus in bello*, but, “discrimination can be said to be subordinate to the overarching importance of the proportionality principle”⁹³ *Jus in bello* does not prohibit actions that may harm civilians; instead it acknowledges that actions that harm civilians are at times unavoidable and seeks to limit the harm done.

A major issue with FM 3-24 and AFM 1-10 is not that they neglect *jus in bello*; in fact, both manuals address the need for soldiers to ensure that they do not act indiscriminately or disproportionality. FM 3-24 recognizes that, “any use of force produces many effects, not all of which can be foreseen. The more force that is used the more ineffective the counterinsurgency operations may become.”⁹⁴ The problem is that FM 3-24 and AFM 1-10 transform legitimacy from a result of adhering to *jus ad bellum* to a function of *jus in bello*. The frameworks perceive legitimacy as something that can be gained by ensuring that the actions of COIN forces are discriminate and proportional; they neglect the fact that any legitimacy that is derived through just action alone is inherently unreliable as one unjust action may be perceived as out-weighting several just actions. The bacha bazi case study demonstrates one of the many ways in which war is not conducive to political legitimacy gained through action; the fog of war makes it difficult to predict the outcomes of one’s actions and mistakes often have dire consequences

3. ALTERNATIVE STRATEGIES

Given the shortcomings of FM 3-24 and AFM 1-10, some counterinsurgency theorists have proposed alternative strategies which they consider to be more effective. The first alternative strategy discussed here, was proposed by Edward Luttwak who advocates for the

⁹² Dowdall and Smith 2010, 36

⁹³ Dowdall and Smith 2010, 36

⁹⁴ United States Army 2014, 7-1

abandonment of *jus ad bellum* and *jus in bello* entirely. Luttwak suggests that the only way in which counterinsurgency forces are guaranteed to be successful is through the use of extreme force. Alexander Dawoody proposes a strategy that is the complete opposite of Luttwak's. Dawoody argues that all foreign policy and military strategies should be based on the principles of nonviolence. This section will examine the foundations and feasibility of these two alternative strategies.

3.1: Extreme violence, abandoning just war ethics

Early just war philosophers writing about *jus ad bellum* sought to limit when states went to war not what they did in war. They viewed war as an opportunity for a state that was a victim of aggression to receive its deserved compensation and retribution. Francisco Vitoria wrote that: "in just war one may do everything necessary for the defence of the public good... a prince may do anything in just war which is necessary to secure peace and security from attack..."⁹⁵ These practices were not meant to limit the effects of war. Instead allowing the use of any means necessary was intended to ensure that war was swift and decisive.

Vitoria's view that states were permitted to win a just war by any means necessary became less acceptable as the principles of *jus in bello* were developed. Given the destructive capabilities of modern technology an inter-state war "by any means necessary" would be more devastating than any early just war thinkers could have imagined. Yet, when discussing counterinsurgency, modern scholars such as Edward Luttwak have suggested that such a strategy may indeed be the most effective (if not the only) way to successfully destroy an insurgency. In his critical review of FM 3-24, Luttwak refers to various points in history where extreme

⁹⁵ From, On the Law of War, Question 1, Article 4 found in: Reichberg, Syse and Begby 2006

violence was used to suppress rebellion or insurgency. Luttwak writes that, “during the Ottoman Empire the Turks were too few in numbers to hunt down hidden rebels, they believed that a massacre every once in a while remained an effective warning for decades. By applying social pressure rather than brute force the Ottomans preserved their rule.”⁹⁶ Luttwak’s argument is that cases of severe violence against local populations served as a deterrent by dis-incentivizing those populations from supporting the rebels.

According to Luttwak, “all insurgencies follow the same pattern. Locals who are not sympathetic to begin with and who cannot be recruited to the cause are compelled to collaborate by the fear of violence, readily reinforced by the demonstrative killing of those who insist on refusing to help the resistance. Neutrality is not an option.”⁹⁷ Luttwak argues that, “occupiers [in this case foreign counterinsurgency forces] can be successful without the need for any specialized counterinsurgency methods or tactics if they are willing to out-terrorize the insurgents, so that the fear of reprisals by the counterinsurgents outweighs the fear created by the insurgents.”⁹⁸ Luttwak admits that the required level of extreme violence needed to “out-terrorize the insurgents” is unacceptable in the modern political context, but he contends that the alternatives presented in FM 3-24 are insufficient in taking away the power insurgents have over local populations.⁹⁹ Proponents of Luttwak’s strategy may claim that extreme violence is the only solution; some may also claim that the resurgence of the Taliban is a direct result of not destroying them completely when they were at their weakest. A strategy of limitless violence

⁹⁶ Luttwak, Edward N. "Dead end: Counterinsurgency warfare as military malpractice." *Harper's Magazine*. February 2007: 41.

⁹⁷ *ibid*, 42

⁹⁸ *ibid*, 41

⁹⁹ *ibid*, 42

may be desired by hardliners, but it would have serious repercussions beyond the current operating theater.

David Kilcullen heavily criticizes Luttwak's support of extreme violence; saying that his arguments are ill-founded, radical misreadings of history and of the situation in Iraq and Afghanistan.¹⁰⁰ According to Kilcullen, Roman and Ottoman counterinsurgency techniques were not based on extreme violence alone but, "included very significant non-lethal, political, governance and economic development components and applied violence in ways that were in step with contemporary norms in the ancient world."¹⁰¹ In his essays on perpetual peace, Immanuel Kant wrote that, "no state shall, during war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible: such as the employment of assassins, poisoners, breach of capitulation, and incitement to treason in the opposing state."¹⁰² Although Kant does not directly refer to extreme violence, one can assume that excessive force may have the same effect. Kant's articulation that nothing should be done to diminish the chances of long-term peace is critical to this discussion; it speaks to the necessity of states to maintain honor and justice while always viewing a stable future peace as the end goal. The foundations of just war theory prevent Luttwak's approach from being accepted. Counterinsurgents must hold themselves to a higher standard if they are to maintain legitimacy in the eyes of the local population and adhere to the essential principles of *jus in bello*. To accept such a level of violence would be to abandon morality in the hope of victory.

¹⁰⁰ Kilcullen 2012, 148

¹⁰¹ Kilcullen 2012, 148

¹⁰² Kant, Immanuel. "Perpetual Peace: A Philosophical Sketch." 1795.

3.2: Nonviolence and minimal interventionism

In direct opposition to a strategy of extreme violence is the strategy of nonviolence. Nonviolence calls on leaders to hold themselves to a higher standard and to promote a more peaceful and cooperative world. According to Alexander Dawoody, “nonviolence is in essence, the highest stage of citizen consciousness that leads governance toward ethical responsibility.”¹⁰³ Proponents of nonviolence see war as, “a choice of last resort in response to aggression and threats to national security.”¹⁰⁴ In many ways nonviolence is an idealistic doctrine that sees itself as, “a force at the disposal of humanity and human governance mightier than the most powerful weapon of destruction. Non-violence is the evolution of governance toward a higher dimension based on the rejection of fear, paranoia, and violence.”¹⁰⁵ It sees war as, “justifiable only in cases of self-defence and in a context proportional to the evil imposed...nonviolence justifies wars of self-defence, it rejects wars of choice...”¹⁰⁶ A strategy of nonviolence embodies just war theory and sees war as only being acceptable under the strictest conditions, no just cause other than self-defence is considered acceptable under a strategy of non-violence.

Dawoody argues that nonviolence is based on the ethics of obligation and relativism. Obligationism refers to, “the belief that the actions of a nation-state, while prescribed by each nation’s unique set of values, must adhere to a universal code of ethics and desirable behaviour.”¹⁰⁷ Obligationists see the world as, “an interconnected human family...in which all political and administrative systems, norms, and structures are viewed equally in accordance with the common interest of the integrated networks of political and administrative norms in the

¹⁰³ Dawoody, Alexander R. "Examining the Preemptive War on Iraq." *Public Integrity* 9, no. 1 (Winter 2006-7): 73

¹⁰⁴ *ibid*, 63

¹⁰⁵ *ibid*, 71

¹⁰⁶ *ibid*, 73

¹⁰⁷ *ibid*, 66

world regardless of size and power.”¹⁰⁸ To the obligationist, “war goes against the principle of human interconnectedness, and instead it advocates for change from within, tyrannical governments should be outed and exposed as such by the international community in order for their people to change them from within.”¹⁰⁹ Obligationism relies on a highly structured and cooperative world order that is able to come to a common consensus on a standard set of ethical principles such as the Universal Declaration of Human Rights.

Relativism is in many ways opposite to obligationism; it refers to, “the view that there are no objective ethical truths. Ethical facts hold relative only to a given nation-state; there are no ethical absolutes.”¹¹⁰ Furthermore, “relativism argues that nation-states are autonomitized entities relative to their specific political and administrative cultures. Outsiders have no obligation or duty to interfere in matters relative to a system of governance they are not party to.”¹¹¹ Relativism views acceptable governance as being dependent on the norms, values, and culture of individual states. Similarly to obligationists, relativists recognize that totalitarian and authoritarian regimes often commit atrocities, but relativists insist on change happening from within, without any influence from outsiders.¹¹² Relativism and obligationism both see non-interference as a key component peace and stability.

FM 3-24 and AFM 1-10 clearly reflect relativist thinking in their assessments of how norms and values are dependent on individual cultural contexts and their emphasis on the need for cultural awareness. Modern counterinsurgency frameworks try to appear impartial by attempting to uphold relativist principles that allow host nations to choose how they govern

¹⁰⁸ Dawoody, 2006-7: 66

¹⁰⁹ *ibid*, 67

¹¹⁰ *ibid*, 69

¹¹¹ *ibid*

¹¹² *ibid*

themselves. The way in which FM 3-24 and AFM 1-10 use relativist ideas to shape its strategic thinking is problematic because: at its core modern counterinsurgency is an intervention or interference within another state, while relativism at its core is non-interventionist.

A nonviolence based counterinsurgency strategy would need to be non-interventionist and would only be able to be used if an intervening state was attacked by the insurgency. If the new strategy used an obligationist framework it could use political and diplomatic efforts to support the state facing the insurgency, but it would not be able to intervene militarily unless it was attacked. The issue with an obligationist counterinsurgency strategy is that in order to be successful it is dependent on a host nation that has a strong and effective state structure, is open dialogue, and that cares about the ethical conduct of the political and administrative systems within the state; this is often not the case in states that are battling serious insurgent movements. On the other hand, a strictly relativist counterinsurgency policy would only permit military action against an insurgency if the intervening state was attacked by the insurgency; but a relativist strategy would not allow the counterinsurgency force to work to change the host nations political or administrative system in anyway. Furthermore, a relativist counterinsurgency strategy would require states to move away from the responsibility to protect (R2P) doctrine. States would need to accept the fact that atrocities will happen in other countries but that it is up to the people within those countries to fight on their own behalf.

A strategy of nonviolence based on obligationism would be the closest example of a strategy that fully adheres to both *jus ad bellum* and *jus in bello*; but, it would require states to hold themselves to a higher standard of behavior. For such a strategic approach to work, all states must respect a set of universal values such as the ones outlined in the Universal Declaration of Human Rights. In addition, the structure of the United Nations would need to treat

all UN members as equal partners within the global community in order to better foster an environment open to dialogue and debate. States must be able to, “discuss issues of nonviolence, peace, and ethical behaviour; because if they do not they in invite the opposite to take hold.”¹¹³

Before such an approach is implemented there would need to be significant changes to the structure of the UN and to the way in which states interact with one and other need to occur.

4. ADDITIONAL CONSIDERATIONS

4.1: The responsibility of the state to its military

Supporters of FM 3-24 and AFM 1-10 may argue that given the separation between *jus ad bellum* and *jus in bello* that military field manuals do not need to be concerned with *jus ad bellum* because it is the job of the military to fight wars not decide when to go to them. The separation between *jus ad bellum* and *jus in bello* has been a foundational part of the ethics of war for centuries, during the 1500’s Francisco De Vitoria wrote on the issue, “...even though the war may be unjust on one side or the other, the soldiers on each side who come to fight in battle or to defend a city are all equally innocent.”¹¹⁴ Michael Walzer explains that, “we draw the line between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible, at least within their own sphere of activity.”¹¹⁵ It is commonly accepted that soldiers are only responsible for their own actions during war, not whether the war is just to begin with. Soldiers are considered tools of the state meant to carry out its orders; as such they are “considered neither morally nor legally responsible for the aggressive actions

¹¹³ Dawoody 2006-7, 74

¹¹⁴ Reichberg, Syse and Begby 2006

¹¹⁵ Walzer, Michael. *Just and Unjust Wars*. New York: Basic, 1977: 38-39

entailed by the war itself.”¹¹⁶ This of course does not excuse them from acting immorally in war; a just war can be fought unjustly, and an unjust war can be fought justly.

One of the reasons why counterinsurgency theory needs to consider *jus in bello* as well as *jus ad bellum* is because of the complicated relationship the military has with the state. The military often holds a special position within many states where it must balance between carrying out the will of the government and protecting the interests of the state and its people; additionally, the military must also protect its own from unnecessary harm. By incorporating the principles of *jus ad bellum* and *jus in bello* into all strategic frameworks the military may be able to simultaneously advocate for the best interests of their soldiers and the state. Political decision makers often fail to protect the armed forces from being deployed to fight in unnecessary and unjust wars; strategic doctrines that incorporate just war theory can be used by military leaders to advocate for better decision making on the part of political leaders.

4.2: Insurgent legitimacy and state illegitimacy

If one sees just war theory as applicable only to states, then the logical conclusion would be that insurgencies can never be just because they fall outside the state centric framework of *jus ad bellum*. Furthermore, because modern insurgency has evolved, “it no longer fits into the typology of an independence movement in the context of a decolonisation struggle. Other actors such as non-governmental organizations, diaspora groups, criminal gangs, and virtual audiences complicate the picture these conflicts present.”¹¹⁷ Kevin Pavlischek argues that, “insurgency warfare is fundamentally ethically different from conventional warfare because insurgency

¹¹⁶ Coleman 2013, 153

¹¹⁷ Rich and Duyvesteyn 2012, 11

warfare is almost always unethical.”¹¹⁸ Christopher Coker shares a similar view, stating that insurgencies are inherently unjust because, “[states] do not enter into contracts with insurgents, and because they [the insurgents] have not signed up to the Geneva Convention.”¹¹⁹ Coker’s and Pavlischek’s arguments are based on the flawed assumption that because insurgents use unethical tactics (such as terrorism or assassination) they are automatically unethical. The assumption that unethical action equals unethical cause fails to acknowledge that *jus ad bellum* and *jus in bello* remain independent of one and other. Furthermore, Coker and Pavlischek completely disregard the possibility that an insurgency could be just.

Michael Gross warns against assuming that all insurgencies are unjust and believes that, “there is a misguided tendency to see many national guerrilla organizations as nothing but a prop for Al Qaeda [and other terrorist groups]. As such, we overlook important questions of justice that surround many struggles for national self-determination.”¹²⁰ The morality of an insurgency is determined by how they meet the principles of *jus ad bellum* and by how they act in combat (*jus in bello*). Neglect of one path does not negate the validity of the other. All insurgencies should be evaluated critically based on the principles of *jus ad bellum* and *jus in bello* to avoid mischaracterizing potentially legitimate insurgencies as criminal or terrorist groups, as this misrepresentation causes the validity of their struggle to be ignored.

Determining whether an insurgency has just cause can be difficult. Movements of national self-determination are often extremely divisive in nature and states will likely always seek to maintain their own sovereign and territorial integrity. Gross interprets “just cause as

¹¹⁸ Pavlischek, Kevin. "The Ethics of Counterinsurgency." *The New Atlantis* 23 (2009): 15

¹¹⁹ Coker, Christopher. "Ethics of counterinsurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 119-127. Abingdon: Routledge, 2012: 121

¹²⁰ Gross, Michael L. *Moral Dilemmas of Modern War. Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*. Cambridge: Cambridge University Press, 2010: 2

reaching beyond traditional notions of territorial self-defence and affords some insurgents the right to use armed force as they strive for national self-determination.”¹²¹ Under international law, the only types of self-determination movements that can express this right are: “people under colonial occupation, people subject to foreign occupation who are entitled to political independence and racial and religious groups entitled to ‘internal’ self-determination (autonomy, adequate political representation, and/or minority protections).”¹²² The categories above were a direct response to movements in Portugal, Israel, and South Africa, respectively.¹²³ A just insurgency must pursue justice and independence for oppressed peoples, while an unjust insurgency may often be engaged in criminal and terrorist activities under the guise of self-determination.

Groups that try and undermine the state are often vilified and made out to be disruptive and unjust. During the time of decolonization insurgent groups fighting against colonial occupiers were often seen as having just cause because they were resisting foreign control and sought freedom and independence. As the number of colonies diminished, movements of national liberation have become less common. Currently, most insurgencies are unlikely to fall under one of the internationally recognized categories of justifiable movements of self-determination making it all the more difficult for potentially legitimate insurgencies to gain recognition. An insurgency can also have just cause in cases of collective self-defence; insurgencies can be seen as just if they seek to prevent genocide, ethnic cleansing, or any other type of crimes against humanity.

¹²¹ Gross 2015, 21

¹²² Gross 2015, 26

¹²³ Gross 2015, 24-25

In the case of insurgency, the burden of proof is more difficult to manage since typically, “anyone killing without the state’s permission is a criminal.”¹²⁴ Gross explains that, “for state actors, legitimacy comes with sovereignty, beneficence, and effectiveness, not necessarily with democratic representation.”¹²⁵ For insurgencies to have some form of legitimate authority they must satisfy certain conditions. Insurgents must be able to show effectiveness, they must also be able to prove that they can lead and achieve the goals which they set out to achieve. Insurgents must also have domestic recognition along with proven representation. Without recognition and representation an insurgent group cannot begin to claim that they are acting in the interests of the people. Finally, insurgent groups must gain international approval, without which they are unlikely to gain additional support which may be vital for maintaining their efforts.¹²⁶ It can be argued that relying on political legitimacy and public acceptance as the only measures of legitimacy may give more power to an insurgency. For example, if an insurgency has public support, then it could be considered a legitimate authority. If an insurgency is accepted as legitimate on the basis of public support alone, then it would also need to be accepted as a legitimate political entity and not as an enemy of the state. If an insurgency is considered a legitimate authority, then COIN strategy must reflect how to deal with it; in such cases it is entirely possible that a counterinsurgency strategy is not the best method and a political solution may be more successful.

If a state operates under the assumption that all insurgencies are unjust it risks wrongfully engaging in war, and an unjust intervention against an insurgency may undermine the moral standing of the intervening state. What current counterinsurgency thinking fails to address is how

¹²⁴ Gross 2015, 38

¹²⁵ Gross 2015, 39

¹²⁶ Gross 2010, 41

COIN operations may be affected if they are seen as supporting and strengthening an illegitimate state or government. After all, “legitimate host country governments rarely-if ever-invite in the army of another nation to take the lead in quelling their domestic insurgencies. Allowing foreigners to kill citizens would only inspire further rebellion and indicate a loss of governmental sovereignty and legitimacy.”¹²⁷ The bacha bazi case study demonstrates this exact problem; by allying with corrupt officials American and foreign forces became guilty by association. International forces sought to gain legitimacy from sources that had little to no legitimacy to begin with. Current counterinsurgency doctrine is so heavily predicated on the need for public legitimacy that the strategy was doomed to fail from the beginning.

5. CONCLUSION

One of the purposes of *jus ad bellum* is to ensure that a states only engage in just (legitimate) war; by adhering to *jus in bello* states can maintain their legitimacy during war. Cases of abuse, murder, torture, and civilian casualties have caused contemporary counterinsurgency to lose not only public legitimacy but also legitimacy in terms of being representatives of justness. If all the criteria of *jus ad bellum* are met, a state is able to engage in war knowing that it is representing what is right and what is just. War is never a clean affair, which is why there are rules and ethical guidelines. When strategies neglect pre-existing guidelines then it is unlikely that a counterinsurgency force (or any other force) will be able to make the right decisions when faced with ethical dilemmas.

¹²⁷ Melton, Stephen L. *ALIGNING FM 3-24 COUNTERINSURGENCY WITH REALITY*. 2013. <http://smallwarsjournal.com/jrnl/art/aligning-fm-3-24-counterinsurgency-with-reality>.

Whenever the topic of ethics comes up within FM 3-24 it revolves around the need for leadership “to be trained and educated to... understand the legal and ethical implications of their actions...”¹²⁸ Saying that there is a need for training is not enough if senior leadership and decision makers ignore those lessons. The cases of LCpl Buckley and Dan Quinn serve as an example of soldiers trying to stand up for what is right and being ignored. If senior decision makers ignore the importance of *jus ad bellum* before engaging in war, it is likely that they will also ignore issues that arise during war which can negatively impact legitimacy. FM 3-24 and AFM 1-10 would be better served if just war ethics was more integrated into their strategic thinking. Hopefully by highlighting the importance of *jus ad bellum* and *jus in bello* before going to war, decision makers will put more thought into the decision to go to war.

Despite frequent media reports warning that United States is moving closer to war with one country or another, be it with Russia, China, or North Korea, the reality remains that the likelihood of a conventional war erupting between any of these parties remains rather small. As the likelihood of large scale conventional warfare continues to diminish due to the fact that, “high-intensity conflict against states with similar capabilities has become too dangerous, the probability and demand for counterinsurgency and stabilization operations continues to increase.”¹²⁹ Given that the number of asymmetric and irregular wars continues to increase, effective strategies are needed to prevent future interventions from failing. In a 2007 article Colin Kahl suggested that, “the most probable scenarios for large-scale U.S. interventions in the decades ahead are incursions into failed states or post conflict operations in the wake of forcible regime change.”¹³⁰ Eleven years later it appears that Kahl’s prediction was indeed correct, with

¹²⁸ United States Army 2014, 7-4

¹²⁹ Nagal and Burton 2009, 96

¹³⁰ Kahl 2007, 176

the US intervening to various degrees (not necessarily with ground troops) in Libya, Syria, Pakistan, Yemen, Niger, Uganda, and Somalia, to name only a few.¹³¹ Not all of these interventions have been in the form of counterinsurgency operations, but they certainly cannot be classified as large scale conventional wars. With the continuing likelihood of future US engagement in COIN operations, it is crucial that western states re-examine their counterinsurgency strategies to address the current failures.

Criticisms of current counterinsurgency strategies touch on nearly every aspect of current COIN doctrine. Given the deficiencies of the current framework it is clear that research and development must continue in a direction which finds ways to better deal with counterinsurgency's problem areas. Insurgencies "will always use asymmetric approaches designed to neutralize our [US/western] strengths and exploit our relative weaknesses."¹³² The failures of American and Western forces in Iraq and Afghanistan have in some ways encouraged "both state and non-state actors to continue to use a variety of insurgent methods to try and keep the U.S. [and other Western militaries] off balance."¹³³ There is little doubt that despite their progressive nature, FM 3-24 and AFM 1-10 require significant reassessment. Continued honest, critical, and comprehensive evaluations of all successes and failures of counterinsurgency operations conducted in Iraq and Afghanistan are needed because the current doctrine, "still offers no roadmap or silver bullet, but merely a collection of tentative lessons learned."¹³⁴ FM 3-24 can serve as a foundation or benchmark for what has and hasn't work in the current theaters

¹³¹ Myer 2018

¹³² Nagal and Burton 2009, 96

¹³³ Nagal and Burton 2009, 97

¹³⁴ Ucko, David H. "Whither Counterinsurgency. The rise and fall of a devious concept." In *The Routledge Handbook of Insurgency and Counterinsurgency*, 67- 79. Abingdon: Routledge, 2012.: 71

of operation, and should be used to help develop better and more comprehensive counterinsurgency strategies.

Regardless of the direction that any new policy approaches or strategic developments take, the moral guidelines of just war theory must be ingrained into any counterinsurgency policy. Just war theory represents centuries of thinking about the ethics of war and has developed to provide the most comprehensive guidelines for minimizing the initiation of unnecessary wars and to limiting the damage the wars which do break out. By abiding by the principles and practices outlined in just war theory it may be possible for the world to move closer towards a stable and lasting peace.

Bibliography

- Abdul-Ahad, Ghaith. *The dancing boys of Afghanistan*. September 12, 2009. <https://www.theguardian.com/world/2009/sep/12/dancing-boys-afghanistan>.
- Afghan Independent Human Rights Commission. *Causes and Consequences of Bacha Bazi in Afghanistan*. Afghan Independent Human Rights Commission, 2014.
- BBC. *Iraq Profile - timeline*. October 3rd, 2018. <https://www.bbc.com/news/world-middle-east-14546763>.
- Beckett, Ian. "The Historiography of Insurgency." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 23-31. Abingdon: Routledge, 2012.
- Boyle, Michael J. "Do counterterrorism and counterinsurgency go together?" *International Affairs* 86, no. 2 (2010): 333-353.
- British Army. "British Army Field Manual Volume 1 Part 10 Countering Insurgency." Warminster, October 2009.
- Bunker, Robert J. "Changing Forms of Insurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 45-53. Abingdon: Routledge, 2012.
- Chin, Warren. "From Belfast to Lashkar Gar via Basra. British counterinsurgency today." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 276-285. Abingdon: Routledge, 2012.
- Coker, Christopher. "Ethics of counterinsurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 119-127. Abingdon: Routledge, 2012.
- Coleman, Stephen. *Military Ethics And Introduction with Case Studies*. New York: Oxford University Press, 2013.
- Dawoody, Alexander R. "Examining the Preemptive War on Iraq." *Public Integrity* 9, no. 1 (Winter 2006-7): 63-77.
- Dowdall, Jonathan, and M L.R Smith. "Counter-insurgency in the Grey: The Ethical Challenge of Military Conduct." *Contemporary Security Policy* 31, no. 1 (April 2010): 34-60.
- Encyclopedia Britannica. *Islamic State in Iraq and the Levant*. July 23, 2018. <https://www.britannica.com/topic/Islamic-State-in-Iraq-and-the-Levant>.
- Giustozzi, Antoni. "Insurgency in Afghanistan." In *The Routledge Handbook on Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 218-226. Abingdon: Routledge, 2012.

- Goldstein, Joseph. *U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies*. September 20, 2015. <https://www.nytimes.com/2015/09/21/world/asia/us-soldiers-told-to-ignore-afghan-allies-abuse-of-boys.html>.
- Griffin, Stuart. "Iraq, Afghanistan and the future of British military doctrine: from counterinsurgency to stabilization." *International Affairs* 87, no. 2 (March 2011): 317-333.
- Gross, Michael L. *The Ethics of Insurgency A Critical Guide to Just Guerrilla Warfare*. Cambridge: Cambridge University Press, 2015.
- Gross, Michael L. *Moral Dilemmas of Modern War. Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*. Cambridge: Cambridge University Press, 2010.
- Jalal Shajjan , Sayed . *The revised Afghanistan criminal code: an end for Bacha Bazi?* 01 24, 2018. <http://blogs.lse.ac.uk/southasia/2018/01/24/the-revised-afghanistan-criminal-code-an-end-for-bacha-bazi/>.
- Kahl, Colin H. "COIN of the Realm: Is There a Future for Counterinsurgency?" *Foreign Affairs* 86, no. 6 (2007): 169-176.
- Kant, Immanuel. "Perpetual Peace: A Philosophical Sketch." 1795.
- Kilcullen, David. "Countersinsurgency. The state of a controversial art." In *The Routledge Handbook of Insurgency and Counterinsurgency*, by Paul B Rich and Isabelle Duyvesteyn, 128-153. Abingdon: Routledge, 2012.
- Luttwak, Edward N. "Dead end: Counterinsurgency warfare as military malpractice." *Harper's Magazine*. February 2007. 33-42.
- Lyall, Jason. "5 key lessons from the Taliban's deadly resurgence in Afghanistan." *The Washington Post*. August 19, 2018. <https://www.washingtonpost.com/news/monkey-cage/wp/2018/08/19/5-key-lessons-from-the-talibans-deadly-resurgence-in-afghanistan/?noredirect=on>.
- Melton, Stephen L. *ALIGNING FM 3-24 COUNTERINSURGENCY WITH REALITY*. 2013. <http://smallwarsjournal.com/jrnl/art/aligning-fm-3-24-counterinsurgency-with-reality>.
- Metz, Steven. "Rethinking Insurgency." In *The Routledge Handbook of Insurgency and Counterinsurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 32-44. Abingdon: Routledge, 2012.
- Mockaitis, Thomas R. "Trends in American counterinsurgency." In *The Routledge Handbook of Insurgency and Counter Insurgency*, edited by Paul B Rich and Isabelle Duyvesteyn, 251-262. Abingdon: Routledge, 2012.
- Myer, Greg. *The Military Doesn't Advertise It, But U.S. Troops Are All Over Africa*. April 28, 2018. <https://www.npr.org/sections/parallels/2018/04/28/605662771/the-military-doesnt-advertise-it-but-u-s-troops-are-all-over-africa>.

- Nagal, John A, and Brian M Burton. "Dirty Windows and Burning Houses: Setting the Record Straight on Irregular Warfare." *The Washington Quarterly* 32, no. 2 (2009): 91-101.
- Norland, Rod. *Afghan Pedophiles Get Free Pass From U.S. Military, Report Says*. January 23, 2018. <https://www.nytimes.com/2018/01/23/world/asia/afghanistan-military-abuse.html>.
- Pavliscek, Kevin. "The Ethics of Counterinsurgency." *The New Atlantis* 23 (2009): 13-24.
- RAND Corporation. "History and Mission." *RAND Corporation*. 2018. <https://www.rand.org/about/history.html>.
- Reichberg, Gregory M, Henrik Syse, and Endre Begby, . *The Ethics of War Classic and Cotemporary Readings*. Malden: Blackwell Publishing, 2006.
- Reis, Bruno c. "The Myth of British Minimum Force in Counterinsurgency Campaigns during Decolonisation (1945–1970)." *The Journal of Strategic Studies* 34, no. 2 (April 2011): 245–279.
- Rich, Paul B, and Isabelle Duyvesteyn. "The Study of Insurgency and Counterinsurgency." In *The Routledge Handbook to Insurgency and Counterinsurgency*, by Paul B Rich and Isabelle Duyvesteyn, edited by Paul B Rich and Isabelle Duyvesteyn, 1-19. Abingdon: Routledge, 2012.
- Robinson, Paul. "Determining the Limits of Moral Compromise: The Case of the Impunity of Afghanistan's Indigenous Security Forces." *Journal of Military Ethics* 14, no. 3-4 (2015): 276-279.
- Smith, Craig S. *Kandahar Journal; Shh, It's an Open Secret: Warlords and Pedophilia*. February 21st, 2002. <https://www.nytimes.com/2002/02/21/world/kandahar-journal-shh-it-s-an-open-secret-warlords-and-pedophilia.html?module=inline>.
- Somade, Jesutofunmi E. *Bacha bazi: Afghanistan's darkest secret*. August 18, 2017. <https://humanrights.brightblue.org.uk/blog-1/2017/8/18/bacha-bazi-afghanistans-darkest-secret>.
- Special Inspector General for Afghanistan Reconstruction. *Quarterly Report to the United States Congress, July 30th 2017*. SIGAR, 2017.
- Ucko, David H. "Whither Counterinsurgency. The rise and fall of a devisive concept." In *The Routledge Handbook of Insurgency and Counterinsurgency*, 67- 79. Abingdon: Routledge, 2012.
- United Nations. "Charter of the United Nations." October 24, 1945.
- United States Army. "U.S. Army/Marine Corps Field Manual (FM) 3-24/ Marine Corps Warfighting Publication (MCWP) 3-33.5 Insurgencies and Countering Insurgencies." Washington, DC: Marine Corps War Publishing 3-33., May 2014.
- Van Heerden, K WJ. "Defeating Communist Insurgency Robert Thompson." *Scientia Militaria, South African Journal of Military Studies* 12, no. 4 (1982): 67-68.

Walzer, Michael. *Just and Unjust Wars*. New York: Basic, 1977.

Younkyoo, Kim, and Stephen Blank. "Insurgency and Counterinsurgency In Russia: Contending Paradigms and Current Perspectives." *Studies in Conflict & Terrorism* 36 (2013): 917-932.

Zaalberg, Thijs Brocades. "Counterinsurgencies and Peace Operations." In *The Routledge Handbook of Insurgency and Counter Insurgency*, by Paul B Rich and Isabelle Duyvesteyn, 80-97. Abingdon: Routledge, 2012.