

Prisoner Release as Conflict Management

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ABSTRACT

Asymmetric prisoner release initiatives (APRI), such as Israel's trade of 1027 security prisoners for one soldier, differ in kind from diplomatic POW exchanges and remain both undertheorized and unexamined. Most explanations tend toward the psychological or sociological. My data-driven plausibility probe finds that regime (democratic) and conflict (counterinsurgency) type are likely background conditions for APRI. Cross-case comparison of four democracies (Israel, UK, US, Spain) uncovers specific commonalities. Prisoner Discourse (international law/norms; "terrorist" belligerents; "worthy" prisoner) dictates state negotiation posture; societal support for asymmetric exchange, and underlies counterinsurgency praxis. These practices, the "Democratic Counterinsurgency Complex", paradoxically lead to prolonged conflict; favor recourse to "counterinsurgency through capture", and consequently create a "prisoner marketplace" which makes kidnapping state personnel a viable insurgent tactic. But APRI is contingent; not all democracies executed an asymmetric exchange during counterinsurgency. An Historical Institutionalist, within-case study of Israel from 1978-2011, shows that Menachem Begin faced a critical juncture of energy insecurity, Egypt peace negotiations, and electoral pressures. Begin's APRI (76 prisoners/one soldier) was socially and politically contested in 1979. By 1988, Israeli APRI had hardened into path-dependent praxis, and "social fact" by 2011. Specific cross-case factors strongly linked to APRI are a "no negotiation with terrorists" stance; external safe haven for insurgents; and family access to leaders. Denying cross-border access to insurgents, and limiting family access to leaders is important. But without a diplomatic posture/negotiation structure which allows direct talks with belligerents, democratic regimes are unlikely to be successful in counterinsurgency, and also more likely to execute APRI.

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GENERAL AUDIENCE ABSTRACT

Asymmetric Prisoner Release Initiatives (APRI), such as Israel's trade of 1027 Palestinian prisoners for one soldier still mystify some observers. I have found that there are specific conditions which explain APRI: first, democracies engaged in counterinsurgency campaigns are most likely to execute APRI. Second, specific factors such as the Prisoner Discourse (international law/norms; "terrorist" belligerents; and state prisoners considered especially "worthy"); and democratic counterinsurgency practices lead states into a tactic where mass detention of prisoners becomes routine. This prisoner imbalance makes insurgent kidnapping of state personnel a viable tactic. The factors most strongly associated with APRI include third-country safe haven for insurgents; a "no negotiation with terrorists" policy; and family access to state leaders. An absence of these, results in a less likely recourse to asymmetric prisoner exchange. It appears that if a government controls for these factors it is more likely to conduct successful counterinsurgency and be less likely to require such uneven prisoner trades.

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Any mistakes or omissions remain mine alone.

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Prelude: Beirut 1982-1992

In September 1985, there were ten US hostages held in the Bekaa Valley, numerous other European captives throughout Lebanon, and over 300 US and French dead from suicide bombings in the capitol. Thus, it was no surprise when four Soviet diplomats were kidnapped that month from what was the largest diplomatic mission still in Beirut. One of the Soviet personnel was killed by his kidnappers during or shortly after the abduction. The captors demanded that the USSR pressure Syria to stop its attacks on the Lebanese city of Tripoli. The Soviets had other plans.

Most contemporary western news sources based their description of the Soviet response on the reporting of Benny Morris, who at the time was diplomatic correspondent for the Jerusalem Post. According to United Press International, “The KGB won the release of three kidnapped Soviet diplomats in Beirut by sending a key Moslem fundamentalist leader the severed testicles of an abducted relative and threatening more such mutilations, an Israeli news report said Monday” (UPI, “Kidnapped Soviets released through castration” 1986). Coughlin (1993) says it was a finger. Nevertheless. The three Soviet diplomats were freed within a day, and there were no further abductions of Soviet personnel.

The next year, in February 1986, two Israeli soldiers were kidnapped by Hezbollah in a preplanned operation. In response, the IDF developed the Hannibal Protocol, a controversial order stating that all means necessary to halt the abduction of an IDF soldier were to be taken: this included the killing of the Israeli hostage by his own troops as a last resort. In October of that same year, an Israeli Air Force navigator, Ron Arad, was captured alive after he bailed out of his stricken aircraft. There are differing accounts of what happened next.

In the popular telling, Amal, the populist Shia movement with the closest ties to Israel (Norton 1988), had custody of Arad, and their condition for Arad’s safe return was the release of all Lebanese civilians in Israeli custody. Israel refused these demands outright, and by the time the government had reconsidered, Arad was handed over to the more extremist Hezbollah, a cleric-controlled and Iran-centric Shia movement headquartered in the Bekaa Valley. This version is refuted by one of my interview subjects. In any case, Arad has never been seen again.

The attacks on Americans would continue. On July 31st 1989, a video portraying the battered body of LtCol Rich Higgins, hanging from a noose inside a Beirut apartment, was released to US authorities. Higgins, a US Marine attached to the UN Truce Supervision Organization (UNTSO),

had been kidnapped in Lebanon 17 months prior, following a meeting with leaders of the Amal militia. Despite personal appeals from the President of the United States, as well as a UN Security Council resolution demanding by name his safe return, Higgins was killed sometime in that 17-month period. There was never a rescue attempt, nor was there ever a real negotiation for his return (Higgins 2000).

A major stumbling block regarding US policy toward its Lebanon hostages was the demand most often made for their release: an exchange of 17 Shia prisoners who had been arrested in Kuwait for a series of 1983 bombing attacks there. Hezbollah's abduction campaign in Lebanon was a “direct response to the arrest and conviction” of two Amal members in Kuwait, who were relatives of high-ranking Shia officials in Lebanon (Ranstorp 1997, 91) . The US was in no position to even discuss, much less execute such a trade. This is because, in addition to the Reagan administration’s refusal to negotiate with “terrorists”, the US was forced to contend with the tactical structure which Israel’s counterinsurgency practices had created in Lebanon. This despite the fact that the US was not fighting a counterinsurgency of its own there.

The presence of large detainee numbers under Israeli control in Lebanon and the Occupied Palestinian Territories (OPT) had fostered a “prisoner marketplace”; this made kidnapping Western hostages as currency for asymmetric prisoner exchanges a viable insurgent tactic. For instance, mass detention at both the Ansar camp and the Khiam prison in Lebanon had become a flashpoint for Shia insurgents after 1982 (Amnesty International 1992); in 1986 Hezbollah demanded the release of 260 detainees specifically from the Khiam detention center in exchange for two civilian UK hostages (Ranstorp 1997, 98).

This marketplace is a common feature of what I term the “Democratic Counterinsurgency Complex”, a series of practices and structures which have characterized democratic counterinsurgency since roughly 1945. The democratic counterinsurgency complex is a necessary but not sufficient condition which underlies all asymmetric prisoner release incidents. Indeed, it creates the conditions which necessitate use of Asymmetric Prisoner Release Initiatives (APRI) as conflict management. APRI are those deals made for prisoners or hostages that are so unbalanced as to seem inexplicable, often without the pretense of ending a conflict, usually as an outcome of the “asymmetrical game” between non-state actors and a recognized nation-state (Bligh 2017). The Democratic Counterinsurgency Complex (DCC) consists of both a tactical and a political structure.

The first structure within the DCC is comprised of the “Lyall-Wilson factors”. These are specific tactical practices or conditions (Lyall and Wilson 2009) which are linked to defeat and intractability in a counterinsurgency (COIN) operation. The first is state use of heavily mechanized forces, resulting in poor human intelligence (HUMINT) gathering; second, the presence of an external safe haven for insurgents; and last, perception of the state force as an occupier. My research shows that these factors are also linked to the execution of asymmetric prisoner release initiatives by incumbent democratic regimes.

The protracted conflict created by the Lyall-Wilson factors in turn leads to state reliance on what I term “COIN through capture”. COIN through capture is the state’s political response to long-term insurgency caused by the Lyall-Wilson factors. The COIN through capture sequence begins with a self-declared emergency, which allows the state to derogate its responsibilities under international human rights law; sets emergency statutes which criminalize political behavior, and ends with mass detention of political prisoners, all in accordance with (while explicitly avoiding) international law.

Reagan’s unwillingness to negotiate, combined with the Israeli-created Democratic COIN complex in Lebanon, forced the US government into extreme measures. The Iran-Contra scandal was ostensibly the result of the administration’s attempt to trade weapons to Iran in exchange for the release of US hostages held in Beirut. This was political window-dressing. The evidence does not entirely support the Reagan administration’s humanitarian explanation.

It is more likely that US hostages were used to emotionally manipulate US public opinion regarding the Iran-Contra scandal. The hostage issue became a humanitarian cover for government contacts and weapons deals with Iran using Israeli proxies. In a tranche of four declassified DoD documents regarding US-Israel negotiations on “Tipped Kettle” (the first US-Iran weapons deal) from the summer of 1984, not a single mention is made of hostages as a motive; the disagreements concerned Israeli demands for large cash payments in exchange for brokering a deal with Iran (US Department of Defense 1984).

The Reagan administration’s inadequate tactical response to Shia abductions was not unique: Israel and other western states were also unable to formulate an effective counter to kidnappings. This collective democratic inaction resulted from a combination of the democratic COIN complex, the Prisoner Discourse, and domestic pressures peculiar to democracies, all of which I discuss below.

In the case of Lebanon, the Prisoner Discourse dictated negotiation strategy, because the belligerent category “terrorist” as attributed to Hezbollah prevented the US, UK and Israel from direct talks. As for prisoner type, US hostages were initially portrayed as “unworthy” of rescue, a technique which the Reagan administration used to keep its failed Levant policy out of the public eye. This discourse would cynically switch to a discussion of “worthy” prisoners when using their release to excuse secret arms sales to Iran after 1986.

The Prisoner Discourse underlies regime decisions and perceptions regarding prisoner negotiations within modern counterinsurgency. It is composed of three structures all of which effect democratic political regimes conducting counterinsurgency: international law; belligerent category; and prisoner type.

First, international human rights law (IHRL) and attendant norms governing prisoner treatment have become a powerful factor in regime decisions to execute APRI. International human rights law, which focuses attention on government policies to safeguard individual rights, has increasingly replaced International Humanitarian Law (IHL, the Laws of War) in guiding regime actions during counterinsurgency. Indeed, IHL jurists still have not fully codified regulations for non-state conflict: but IHRL has ably filled that gap (Foster 2012). The ascendance of IHRL with its attendant “universal jurisdiction” and a state’s “duty to investigate” allegations of human rights violations has had a paradoxical effect. While IHRL strengthens individual rights, it also incentivizes states facing insurgency to declare national emergencies, criminalize political behavior, and detain malefactors under national law. This is because such a process is permitted under many IHRL codes, such as Article 15 of the European Code of Human Rights (ECHR). This “derogation clause” allows states to use their own court systems to combat insurgents rather than submit to the Laws of War; but increasingly domestic courts are aligning with IHRL to forbid such practices as holding prisoners for use as bargaining chips. Concurrently mass detention also creates incentives for insurgents (who are not bound by court decisions) to capture single soldiers in order to trade for large numbers of its own held captive.

Second, the categorization of the belligerent/insurgent by the democratic regime and public not only affects government policy (“no negotiation with terrorists”) but also public opinion. This “civilized/savage” or “state/nonstate” discrimination (to simplify) is not merely discursive: for instance, Dov Yermiya’s IDF civil affairs unit was tasked with providing displaced Lebanese civilians with food and water during the 1982 invasion, but prohibited from assisting Palestinians

at all, even the women and children. In fact, Yermiya explicitly attributes the massacres at Sabra and Shatila to Israeli government categorization of “the Palestinians” as outside the laws of humanity (Yermiya 1984). The idea of an enemy as savage will affect how both the government and public perceive their own captive’s lot. Military POWs have the expectation of relatively good treatment as dictated by the Geneva Convention (the Laws of War); but IDF captives of Hezbollah and Hamas might be expected to receive less-tender mercies.

Finally, the prisoner type, i.e., whether the nation’s hostage comes from a privileged class (usually military) or is considered outside a state’s protection (for example by working as a journalist in a chaotic location), will dictate a government’s willingness to execute uneven trades. The idea of prisoner type is, however, dyadic. Newly-released Israeli state archives show that the captured Israeli agents who had been recruited to spy on Egypt during the Lavon Affair were placed in a special category not only by the Israeli government, but also by the Egyptians: Egypt demanded that military prisoners be exchanged all-for-all but refused to treat Israeli intelligence agents as enemy combatants. Further, it is changeable: even military prisoners such as LtCol Rich Higgins can be considered “unworthy” if it is perceived that they violated the regulations put in place to heighten their own security.

The events in 1980s Beirut illustrate the Democratic COIN complex and the Prisoner Discourse writ small: first, democracies conduct COIN differently than autocracies. Their practices often lead to protracted conflict and a prisoner imbalance which favors kidnapping as an insurgent tactic. Second, prisoners are a special category, protected by international law, and which the public often elevates, even above the fallen. But all prisoners are not equal. Third, belligerent category and prisoner type shapes negotiation strategy: “terrorists” cannot be spoken to, and unworthy prisoners may be left to their own devices. Finally, both domestic constraints and international pressures weigh in government approaches to prisoner release, with domestic constraints such as bureaucratic dysfunction and electoral concerns taking the highest priority.

The events in Beirut also serve to more broadly contextualize the use of APRI as conflict management. Unlike many conflicts, there is no “hurting stalemate” in hostage situations: the insurgent can almost always wait out a democratic electorate, especially if military rescue is not an option (Sahadevan 176, in Faure and Zartman 2010). Thus, Asymmetric Prisoner Release Initiatives are contingent upon a specific set of political and tactical conditions. In this study I

examine use of APRI by democracies between 1978 and 2011, arguably the period in which Israeli APRI became an institutionalized practice.

Asymmetric prisoner release became a conflict management technique in the late 1970s because *democratic* governments were fighting protracted, domestic insurgencies which at the time seemed both intractable and unwinnable. Democratic regimes resorted to mass internment of insurgents in response to three specific factors prevalent during the late 1970s: first, the impact of international law and consequent “widening” of their domestic insurgencies. The 1977 Additional Protocols to the Geneva Conventions codified “dissident” struggles as falling under the laws of war (ICRC 1987), an innovation which placed democratic regimes under the handicap of adhering to IHL while their opponents did not. International law presupposes liberal democracy as a necessary condition for that law to apply (Hadden 1999). As seen in Beirut, neither autocratic regimes nor nonstate actors played by the same rules as democracies.

These protocols reflected a growing international focus on “peoples” (Andreopoulos 1994) which manifest in both a lessening of attention to state sovereignty claims and a vocal distaste for neocolonial conflicts in the United Nations. Additional Protocol I included “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination” as a category of recognized war where combatants on both sides were protected by international humanitarian law . Additional Protocol II additionally brought civil wars under IHL. The Protocols, however, “[did] not apply to situations of internal disturbances and tensions”, thus giving governments an incentive to criminalize and thus “domesticate” political behavior.

Second, in response to internationalization, and as a way to skirt the ever-increasing influence of international law, regimes increased their reliance upon “colonial” COIN doctrine: which was based on domestic laws, specifically criminalization and internment. In the cases of both Israel in the OPT and the UK in Ulster, neither accepted the authority of the Geneva Conventions over their specific conflict.

Finally, democratic regimes fighting domestic counterinsurgency faced the use of innovative tactics by insurgents, which were difficult to counter in the face of internationalization. In the case of the Palestinians it was kidnapping rather than bombings, which put the onus on Israeli governments to act in order to free its own citizens. Israel attempted numerous responses; none save APRI were successful in sparing the citizen’s life. In the case of the IRA, its tactical

innovation became participation in the political process, which the democratic UK regime could not combat.

The period from about 1972 (when both Northern Irish and Palestinian insurgents created tactical dilemmas for the incumbent state that they were combatting) to 2011 (when Israel traded 1027 prisoners for one IDF corporal) was nearly unique in Western military history. Established democracies were engaged in COIN operations against their own citizens, and colonial warfare was still doctrine in many armies; technologies of control, whether human intelligence or electronic were much less developed than today, and Cold War international architecture made outside support for insurgents fighting “Western” regimes much more likely than at present. Such tactics as kidnapping by insurgents are no longer considered innovative or surprising, nor is COIN through capture practiced as widely by incumbent regimes, due to the ascent of international human rights law.

The precedence for asymmetric prisoner trades had been set by Menachem Begin in 1979 when he exchanged 76 Palestinian prisoners for one Israeli soldier who had been captured in Lebanon the year before (Jewish Telegraph Agency 15 MAR 1979); but six years later Israel refused to negotiate for Ron Arad until it was too late. The USSR used secrecy, unconventional relationships with Druze militias, and brute force, far removed from international law, to bring its people back. Democracies, on the other hand, found themselves responding to domestic, tactical, and discursive pressures which restricted their options and left them fumbling for solutions. These pressures, and democratic regimes’ response to them in an effort to retrieve their citizens is the theme of this dissertation.

Introduction

Prisoners, like the poor, are always with us. The “governance of war” has largely been an attempt to deal with the problem of stricken people on the battlefield, whether wounded and captured combatants, or hapless civilians. Since Westphalia, the principle of trading all of one side’s prisoners for all of the other’s (“all-for-all”) has governed the negotiation of most treaties and ceasefires between states. In many of these conflicts there may be hundreds or thousands of prisoners exchanged, but even if the numbers are not equal, they are hardly “asymmetrical” in the sense that both states get their people back at the end of hostilities within the bounds of accepted diplomatic praxis.

On the other hand, there are certain deals made for prisoners or hostages that are so unbalanced as to seem inexplicable. Often, they are made without the pretense of ending a conflict. The reasons given range from the humanitarian (which Menachem Begin stated in regard to Private Avraham Amram, who was exchanged for 76 Palestinian prisoners in 1979, the first such trade in Israel) to the unsatisfying (Sharon’s “it was a Jewish decision” in regard to freeing 400 prisoners in exchange for Colonel Elhanan Tannenbaum) to the puerile “they just want their people back” (which might be scant consolation to the families of James Foley or Daniel Pearl, who were beheaded by ISIS after the US refused to pay ransoms for them).

I argue that these asymmetric prisoner exchanges are the result of an unbalanced prisoner “marketplace” between a state and an insurgent force. This “marketplace” situation is created through the interplay of two structures. First is the Democratic Counterinsurgency Complex, a set of modern politico-military practices which are linked to protracted conflict, democratic defeat, criminalization of political activity and mass detention under criminal codes. Second is the Prisoner Discourse which drives political decision-making and social responses to the capture of a state’s citizen.

The democratic counterinsurgency complex results from specific factors associated with modern COIN practice (Lyall-Wilson 2009). These are the increased mechanization of counterinsurgency forces, which has resulted in a deterioration of human intelligence (HUMINT) capability in such forces; the presence of a safe haven for insurgents, usually supplied by another state, and finally, the perception of the state’s COIN forces as an occupier within the insurgents’ territory.

Protracted conflict understandably leads to state frustration. This frustration with the course of its counterinsurgency operations leads to a practice which is widespread among democratic regimes: “COIN through capture”. COIN through capture follows a predictable pattern intended to keep the insurgency a domestic affair beyond the reach of international law. Simply put: the state declares an Emergency, it then derogates its obligations under international law, political behavior is criminalized under Emergency statutes, and large populations are detained under these new, domestic, criminal codes.

Counterinsurgency through capture creates an imbalance in hostage numbers, and leads directly to an asymmetric battlefield where a state’s “worthy” citizen (usually military) must be traded for hundreds of the enemy in order to appease both insurgent and domestic audiences.

While democratic COIN praxis paradoxically supports certain insurgent tactics, it is the Prisoner Discourse which drives state reactions to this form of kidnapping. Absent a military rescue, state response becomes a political issue, and the Prisoner Discourse has the greatest effect on government decision-making processes and public responses. This discourse is based on the hegemony of international law and norms, government categorization of insurgents, and public perception of the hostage as worthy or unworthy of rescue.

For instance, international human rights law increasingly takes precedence over domestic law, which creates conflict for a state attempting to circumvent international law as a COIN technique; categorization of belligerents as “terrorists” prevents many western governments from conducting hostage negotiations, and a polity which considers the hostage especially worthy may create powerful social movements threatening a politician’s re-election if the captive is not freed.

My research question addresses these topics by asking: *What factors account for a state’s decision to execute asymmetric prisoner release initiatives (APRI) in conditions of protracted conflict? Specifically, this dissertation examines the military structures, domestic political conditions, and legal and discursive framings leading to asymmetric prisoner exchanges. It goes on to ask, why are APRI executed in some cases but not others which appear to be similar? I also explore whether there are specific conditions which might help predict whether states will recourse to APRI in situations other than end-of-conflict prisoner exchange.*

This study attempts to provide an explanation for democratic states’ use of asymmetric prisoner release initiatives (APRI), largely within counterinsurgency (COIN) operations. First, I describe the effect of the democratic COIN complex (the Lyall-Wilson factors and the COIN through

capture sequence), especially the creation of a prisoner marketplace which makes kidnapping of the state's military personnel a profitable insurgent tactic. Second, I discuss the prisoner discourse (international law/norms; prisoner type; belligerent category) which ultimately drives a government's COIN praxis, its negotiation strategy and the society's response to prisoner release scenarios. And finally, I explore domestic political constraints, such as electoral pressures, social movements, and policy priorities on regime decisions to execute APRI as a conflict management technique.

These prisoner trades are described by Alexander Bligh (2017, 230), an authority on Israeli prisoner of war policies, as an outcome of the "asymmetrical game" between non-state actors and a recognized nation-state. Consequently, I will use his terminology when describing these extrajudicial exchanges outside of accepted end-of-conflict negotiations: in this work they will be described as "asymmetric prisoner release initiatives", or APRI. I operationalize APRI as "***an extrajudicial/procedural release of prisoners, military or civilian, primarily "criminalized" offenders for a much lesser number of the state's citizens, in a situation which does not legally require such an action from the leader.***"

As the name implies, APRI are uneven trades executed extrajudicially, often (though not always) outside of normal armistice or peace treaty negotiations, restricted mainly to uneven trades for a states' military personnel. In democratic regimes they fall almost exclusively under the authority of individual presidents/prime ministers or their cabinets, and they often occur without the legal requirement of senatorial or parliamentary approval.

Asymmetric Prisoner Release Initiatives are largely a phenomenon of democratic regimes in conflict with non-state actors, usually with the added temporal aspect of long conflict duration (Balcells & Kalyvas 2014). My focus is on democratic recourse to APRI between the years 1978-2011. This encompasses the time from Israel's Operation Litani in southern Lebanon to Netanyahu's exchange of 1027 Palestinian prisoners for Corporal Gilad Shalit in 2011.

While it would be of interest to examine the response of dictatorships and their use of APRI, my work examines the prisoner release behavior of democratic regimes toward nonstate actors largely within counterinsurgency praxis. The literature does confirm that democracies find their policy options restricted by a variety of circumstances that do not inhere to dictatorships. These restrictive factors may be roughly divided for purposes of this work into discursive, tactical, and domestic.

The literature on counterinsurgency as practiced by democratic regimes is voluminous, as is that of democracies making policy decisions based on belligerent category (“no negotiations with terrorists”). But much sparser is the literature on how democracies use prisoner release as a conflict management tool. While the plight of prisoners has been a major factor in numerous conflicts, prisoner release has been largely a conflict *resolution* tool: in South Africa and Ulster, for example, prisoner releases were accompanied by total amnesty as part of a peace agreement.

Israel, on the other hand refuses amnesties (and re-arrests many prisoners freed as part of peace agreements), leading to charges that it purposely uses prisoner release not to build mutual confidence but as a political ploy to buy time or political space while executing other operations (Rudoren, Kershner and Gordon 2014). The *Addameer Prisoner Support and Human Rights Association*, a Palestinian NGO, contends that while 1200 Palestinian prisoners were released in 2007 and 2008, 5000 were imprisoned at the same time, thus negating any feeling of “compromise” which may have resulted from prisoner releases (Addameer 12 August 2013). This leads to the view that Confidence-Building Measures (CBM) should be regarded with a skeptical eye as *Realpolitik*, rather than as a true method of building trust (Desjardins 1996).

The varied types of prisoner release initiatives usually found in military and diplomatic praxis do not meet the definition of APRI. APRI differs qualitatively and quantitatively from other types of prisoner release. It is primarily a phenomenon of *democratic regimes*, which are *actively engaged in counterinsurgency, often protracted*; APRI is usually *executed between the democratic regime and a non-state actor in order to free the state’s military hostages. The decision rests almost entirely on the state’s individual leader.*

Military prisoner exchanges, usually “all-for-all”, as part of a treaty or ceasefire between warring states at conflict termination, do not meet the criteria for APRI; APRI seldom, if ever, occur at the formal cessation of hostilities. The temporal aspect of long conflict duration also means that APRI is usually a conflict management and not conflict resolution technique.

Nor is APRI merely hostage exchange by another name. Menachem Begin’s 1979 decision to exchange 76 prisoners for one IDF soldier was a new type of negotiation: even Ahmed Jibril, leader of PFLP-GC and later architect of the infamous “Jibril Agreement” in 1985, was not prepared for Israel’s change of tactics. A few weeks after capturing Avraham Amram in southern Lebanon, Jibril only demanded a “soldier-for-soldier” trade: Private Amram “in exchange for some Palestinians [combatants] captured by the Israelis in the invasion of Lebanon” (Davar

Newspaper 14 April 1978). No mention was made of any incarcerated security prisoners. The Israeli newspaper *Ma'ariv* explicitly called the Amram exchange a qualitative change in negotiating posture, because of the inclusion of convicted terrorists for an IDF soldier captured in a combat zone (*Ma'ariv*, "Crossed Red Lines" 1986).

Diplomatic prisoner exchanges, in the usual sense, are based on an equal accounting of a hostage's worth; one spy for one spy is a common trope in a non-combat prisoner exchange. APRI, even if executed outside of actual combat, are by definition not a one-for-one trade. Even ordinary prisoner release in the midst of conflict is based on a relatively equal exchange between relatively symmetrical opponents in the area of operations, and is often left to military leaders in the field. APRI is left to a nation's leader and is not settled on the battlefield.

Finally, prisoner releases as part of a peace settlement between government and insurgents, or as part of a regime change, are largely a matter of "transitional justice", and are agreed-upon by negotiators and often a popular referendum. APRI are seldom negotiated between political parties, but are almost always the province of individual leaders who may or may not go outside their small advisory group before making such a decision.

Thus, APRI are not necessarily the default position for democratic governments even in cases of an asymmetrical diplomatic game. The mystery remains: why do democratic governments conduct APRI in the midst of counterinsurgencies? And what are the mechanisms within democratic regimes which make execution of APRI possible?

This focus on the individual leader is consequential. In fact, APRI is perhaps the most "authoritarian" political act allowed in a democracy, which helps to explain its comparative rarity. For instance, a feature of the Indian constitution is that individual states are responsible for their own security (Shapiro, et. al., 2017). This places the onus on state governors to fight insurgencies within their territories. But these governors are not allowed to use APRI as part of a COIN strategy: in Chhattisgarh, the central government's refusal to allow APRI at the state level resulted in Operation Green Hunt, where all insurgents engaged between 2009-2010 were killed rather than captured (Shapiro, 42). In West Bengal, the Indian central government pressured the state to deny POW status to captured Maoist insurgents, and explicitly disallowed the release of 52 insurgent prisoners as part of negotiations (Shapiro, 80). Not all democratic COIN results in APRI; democratic leaders are channeled into their decisions by a combination of strategic structures, discursive pressures, and domestic constraints.

Strategic Structures: The Democratic Counterinsurgency Complex

While the idea of COIN as a unique method of combat is contested (see Porch 2013; Gentile 2013), insurgency as a discrete type of war is linked to protracted conflict in research models (Balcells & Kalyvas 2014). Democratic regimes are under political pressure to end such wars but are often unable to withdraw from or win them quickly. Democratic regimes respond to protracted insurgencies in a predictable way, derived largely from British post-war decolonization conflicts (Palestine, Malaya, Aden, Kenya, to name a few).

This classic model had the goal of putting a malleable government in power, but still under “colonial” mentorship. The model depended upon characteristic practices in a specific sequence: first, the declaration of an emergency; second, the criminalization of political behavior, which kept the insurgency a domestic affair outside the purview of international law. Third, the incumbent formed a robust intelligence capability (usually joint civil-military units) to support the capture, segregation and concentration of insurgents. Finally, these practices allowed for large-scale detention of insurgents under national criminal codes.

The modern version of this sequence, (COIN through capture), has changed only slightly. The goal is different (usually maintenance of the incumbent power rather than a malleable new government), and modern COIN practice minimizes the formation of HUMINT capabilities, which leads to unwanted outcomes in the long term (Lyall & Wilson 2009).

The strategic impatience of democratic regimes, and the short-term success of COIN through capture creates a battlefield dynamic which makes kidnapping a reasonable tactic for insurgents to utilize in order to force asymmetric prisoner exchanges upon a state government. This is especially true if the prisoner discourse categorizes the insurgents as “terrorists” and its soldiers as “worthy”; or if domestic attitudes demand low casualties; or if international opinion sees large-scale detention as a violation of the insurgents’ human rights.

These various factors may drive a leader’s decision to grant general amnesties to political opponents (a conflict resolution technique currently under fire; see Sabbagh 2020), or make seemingly uneven trades with a belligerent in order to recover the state’s citizens. Further, the tendency of democratic and transitional governments to grant mass amnesties to political prisoners (Jorgensen 2017) often strengthens extremists at the expense of moderates (E. Bueno de Mesquita July 2005), creating an arena favorable for insurgents to force APRI on governments, based on the prisoner imbalance. This is especially true as the conflict goes on.

The capture of a state's soldier can be solved one of two ways: militarily or politically. Most such scenarios are ultimately solved by some form of negotiation. State decision-making and negotiation strategy are influenced largely by domestic constraints and the Prisoner Discourse.

Domestic constraints

Some domestic restrictions on a government's freedom of maneuver are obvious, such as adherence to one's own legal system (the Israeli Supreme Court outlawed the detention of Palestinian prisoners for use as bargaining chips in 2000), or dependence upon a favorable electorate in order to maintain power. Even more constricting is adherence to a hard line, such as refusal to negotiate with terrorists. While some argue that such a hard line actually makes negotiating easier (Lee 2013; Putnam 1988) it also creates expectations among allies and the electorate which reduce policy options.

Other domestic factors are less obvious and ubiquitous, but just as potent, such as organizational infighting. The Reagan administration's seeming blindness when confronted with problems in the Middle East was partially the result of disagreements between agencies about which factors (Israel, the USSR, access to oil) should drive US policy (Hooglund 1988). The respective agencies would often act without coordination, purposely freezing other entities out of the decision-making process; Oliver North's work on the National Security Council (NSC) was famously a symptom of this problem.

Discursive pressures

The Prisoner Discourse has existed in conflicts between sovereignty claims, military necessity, and international norms since the 15th century, and has become the prime mover in shaping prisoner policies across the globe. One can trace a nearly direct line between 16th-century Spanish Imperial law and International Humanitarian Law today; similarly, the Geneva Conventions are a direct descendant of the Union Army's Lieber Code of 1863; and the principle that military orders are to be obeyed in all cases, famously disavowed and punished at Nuremburg, was surreptitiously removed from US Army Law of War manuals only in 1944. This continuity strengthens the argument that adherence to international law is not automatic, but is a contingent political decision.

These discursive pressures may exert a more powerful force than reckoned with initially. First, the Prisoner Discourse creates expectations from friend, foe, and the world at large as to how military operations and diplomatic overtures will be conducted. Further, the category of the belligerent shapes national and government attitudes about how the belligerent is to be fought, and if necessary, imprisoned.

In the case of NATO personnel in the Global War on Terror (disregarding Turkish casualties in operations against Kurdish units in Syria), the survival rate of troops captured by insurgents is less than 20%, while NATO troops captured by state actors (primarily Iran) have all survived (Jorgensen 2017). It is not difficult to see why belligerent category may make a difference in how both governments and their publics, view APRI, especially in the case of nonstate captors.

Another discursive factor is hostage category or “prisoner type”. This seems to affect public attitudes and government decisions, based on several factors, such as civil/military status, or citizenship of the hostage. For instance, citizenship was more important than ethnicity in Israeli deliberations regarding hostage exchange. In 1984/5, Hezbollah kidnapped several leaders of the Jewish community in Lebanon. They never figured in Israeli prisoner exchange calculations on par with Israeli citizens held by Hezbollah. Indeed, there was a hint from some quarters that by remaining in Lebanon these community leaders were courting trouble and perhaps deserved their fate (Jewish Telegraphic Agency January 15, 1987), an opinion which the US government seemed to share regarding its own hostages in Lebanon. All of the kidnapped Lebanese Jews were later murdered by their captors (Bergman 2008, 117). While this fact may be difficult to process and accept, some hostages are worth more than others.

Organization

This dissertation attempts to explain the underlying causes for asymmetric prisoner release initiatives. It describes and compares the effects of the prisoner discourse (international law/norms governing state treatment of POWs; belligerent category; and prisoner type); the democratic COIN complex (the Lyall-Wilson factors and COIN through capture); and domestic constraints (electoral pressures, organizational dysfunction, or the presence of prisoner-related social movements) on a democratic leader’s decision to moot or execute APRI. While prisoner release remains largely the province of individual leaders, various external factors must influence the decision to grant general amnesties to political opponents, or make seemingly uneven trades

with a belligerent in order to recover the state's citizens. This interdependence between local, national, and global politics has been apparent to social scientists since the 1960s, a phenomenon which James Rosenau called "Linkage Politics" (Rosenau 1969; Putnam 1988).

I focus my attention on democratic regimes for two reasons. First, based on current and heretofore largely anecdotal evidence, democratic regimes are more likely to use APRI to manage conflict with non-state actors than are autocratic regimes. Second, democratic regimes share certain political characteristics such as constituent pressure, electoral concerns, and adherence to international norms that dictatorships largely avoid (Moravcsik 1997; Legro & Moravcsik 1999; Ripsman 2002; Jervis 2005). This commonality may make it easier to isolate the APRI decision process within and between democratic regimes because of their shared structures.

Democratic regimes respond to hostage events in a similar way: this is because military options, negotiation strategy, and public pressures are all influenced by the Prisoner Discourse and the Democratic COIN Complex, and all lead to similar tactical structures when fighting an insurgency.

This structural similarity is apparent in such factors as belligerent category, whereby every democratic government studied was initially constrained by its position of "no negotiation with terrorists". Further it was common for each state to execute the "COIN through capture" sequence, which eventuated in all of them facing an asymmetric prisoner marketplace. Such commonalities support a hybrid research model combining comparative analysis and case studies.

In several early chapters I discuss these common aspects of asymmetric prisoner release, and make comparisons between differing democratic regimes confronted with APRI scenarios. These comparisons are not case studies per se: my focus is on the specific structural aspects underlying nearly all democratic APRI, in order to show which conditions underlie the decision to make an asymmetric trade, and which do not.

However, I also conduct detailed case studies of the two incidents which bookmark Israel's APRI experience. This study of Israeli APRI shows that the structural argument is sound, and that APRI decisions exhibit both a structural continuity as well as a cultural one.

The dissertation is organized into eight chapters, focused on the period from 1978-2011; these years included several hostage crises, such as the 1980s Lebanon Crisis and the ETA campaign

in Spain. This period is also framed by two critical APRI events, both involving Israel: Menachem Begin's lopsided trade of 76 Palestinian prisoners for one soldier in 1979, which arguably made APRI politically permissible in Israel, and the Gilad Shalit exchange of 1027 Palestinian prisoners for one IDF soldier in 2011.

In Chapter 1, I establish and discuss the scale of my study, specific definitions, and parameters of my research question. First, I show that APRI as a political practice is underexamined and undertheorized and thus inherently difficult to study through recourse to the literature. The typical level of analysis for APRI (nearly always an individual leader) does not lend itself to simple explanation from much of the IR or comparative politics theory.

I argue that in modern democratic regimes, the tactical structure created by democratic COIN praxis creates a situation where political, rather than military, solutions are often the only way to solve a hostage crisis. Indeed, the democratic COIN complex is largely the product of political practice, not military decisions. It is not an apologia for militaries bogged down with insurgencies to state that much democratic COIN is an attempt to solve strategic problems with tactical solutions. The prisoner discourse has an outsize effect on this political process. Thus, the prisoner discourse must be placed on an equal footing with international and domestic politics when discussing democratic decisions to execute APRI.

Any theory which is meant to explain APRI must show first, that it has an effect on utility calculations by leaders and their circle. These effects are felt by, and create an impetus for action in, individual leaders confronting an actual or potential armed conflict. I will not discuss transitional justice initiatives, although prisoner release and transitional justice are often linked (as in Northern Ireland or South Africa). In reality, APRI has little to do with transitional justice, an-end-of-conflict phenomenon (see Bell and Badanjak 2019) and more to do with contingent conflict management at the height of hostilities.

Second, I analyze the specific theoretical explanations for such rare but fraught decisions by leaders and rulers. There are few theories of either international relations or government policy which serve to explain APRI. In addition to these grand theories I explore and ultimately reject the few alternative sociological explanations presented to explain APRI. Neither humanitarian concerns; an ethnic or nationalistic focus on friendly hostages, nor the often-touted military covenant of "No Man Left Behind" (NMLB) serves to adequately explain democratic APRI decisions. While there may be other factors which influence APRI in democratic regimes, I

examine three specific areas of political praxis (the democratic COIN complex, the prisoner discourse, & domestic constraints), which seem most likely to assist in understanding and explaining APRI, whether through effects on norms, policies, or political behaviors. These effects are best explored through a Historical Institutionalist (HI) lens, whereby sudden breaks in state prisoner policies followed by subsequent dependence on APRI as conflict management may be explained through path-dependence.

I begin with democratic COIN praxis: the “democratic COIN complex”, which is the foundation for the asymmetric prisoner structure underlying APRI. The democratic COIN complex comprises a set of practices (the “Lyall-Wilson factors”) that are linked to incumbent defeat and to intractable conflict. This intractable conflict frustrates democratic governments, who turn to the state of exception in order to combat insurgents. This declaration of emergency initiates a second structure, the COIN through capture sequence. COIN through capture eventuates in mass detention of insurgents and fertile fields for a politics of APRI.

A small literature of conflict management has been established in regard to the specific phenomenon of democratic COIN praxis, and the commonalities between democracies fighting domestic counterinsurgency. This literature supports my contention that democratic COIN praxis creates a structure which makes hostage-taking a viable tactic; and that the Prisoner Discourse shapes the state’s response to such a capture.

Wilkinson (2006, 64-66) acknowledges the low-risk, high-reward aspect of terrorist acts, but points out that such acts seldom bring about the fall of democratic regimes, given the inherent legitimacy of an elected government. Wilkinson points out that democratic regimes resolve conflict through structural reforms; in the case of democratic COIN praxis, such reforms cannot happen soon enough to effect APRI situations. Wilkinson’s study supports my contention that APRI is by definition a conflict management technique, used to give the government political space to try and defeat the insurgency. MacGinty (2006) discusses the role of liberal democracy in conflict management, showing that prisoner release by democratic incumbents purposely brings short-term “peace” at the expense of true structural change.

While democratic COIN praxis creates the structure, which makes hostage capture a viable insurgent technique, other conflict management literature supports the idea that a prisoner discourse of international law, belligerent category and prisoner type drives government strategies. For instance, research shows that democratic states rely more on international support

for their sovereignty claims (and by extension for their domestication/criminalization practices when fighting COIN) than “hearts and minds” campaigns to combat domestic insurgency (Brigg 2008). This fits squarely with the use of international law to support democratic COIN praxis.

Jan Pospisil (2019) observes that “conflicts over territory, often framed as ‘status questions’, favour situations of permanent non-solution” (127-130) primarily because international law has not evolved sufficiently to cover the territorial aspect of such conflicts, especially in light of sovereignty claims by democratic regimes. Ethan Bueno de Mesquita (2005) exposes perhaps the most difficult aspect of democratic conflict management: government concessions initially lead to even greater terrorist excesses because at first only moderates accept such concessions. Thus, social movements based on the prisoner type, and the attendant electoral pressures from such movements may force a government to make concessions which are antithetical to the state’s real interests, and serve only to extend the conflict.

This literature supports my contention that states are dependent upon the *Prisoner Discourse*. This structure, centuries in the making, is the product of international law, belligerent categorization, and hostage type. It drives regime treatment of hostage situations, dictating COIN praxis as well as negotiating strategy and the effectiveness of social movements. Much of the Prisoner discourse is based on states’ response to the development of an international POW regime after WW1, which continues to evolve and contest state sovereignty claims. It is no accident that democracies involved in domestic counterinsurgency first attempt to disavow international humanitarian law (especially the Geneva Conventions) by criminalizing insurgency, rather than admitting to the presence of a recognized armed force within its borders.

Third, I discuss the domestic pressures which democratic regimes face while attempting to manage conflict through APRI: these include electoral timing, prisoner-focused social movements, and paradoxically their own high courts’ legal findings, which have begun to support international law over sovereignty arguments.

Chapter 2 is a data-based attempt to justify my concentration on democratic recourse to APRI, and to support my argument that democratic regimes tend toward APRI more so than autocratic regimes. Historical Institutionalism calls for specific background conditions to explain similarities between cases. In the case of Israeli, the United Kingdom (UK) and the United States’ APRI execution, a democratic state engaged in domestic COIN is a common background

condition. I hypothesize that this is because democracies are more likely as a rule to execute such asymmetric exchanges to begin with.

I conduct a plausibility probe of this hypothesis using both Qualitative Comparative Analysis (Ahram, Kollner and Sil 2018; B. Rihoux 2006) and chi-squared analysis, in order to ascertain whether there is a quantitative difference between regime types and conflict types when resorting to APRI. I analyze 50 conflicts between 1945-1995 using randomly generated cases from the 209 conflicts found in Ganzler and Schwinghammer (2000) as my sample set. This dataset was selected because it defines war by action rather than by number of casualties, allowing for a greater selection of disparate cases worldwide.

In this preliminary analysis I examine five basic questions regarding the incumbent (usually state) party to each examined conflict: 1) Was there an APRI? 2) At what stage of conflict was this initiative mooted? 3) What was the Regime Type of the mooted party? 4) What was the Conflict Type? 5) How did the number of APRI differ between regime and conflict types?

A plausibility probe should give a clear indication (though not necessarily statistical significance) as to whether regime type and conflict type have an effect on APRI execution (Lyall and Wilson 2009; Heupel & Zangl 2010), and whether democratic regimes tend more to APRI than autocratic regimes. The preliminary evidence in Chapter 2 supports my hypothesis: despite small sample size, my data show evidence that democracies are indeed much more likely to resort to APRI than autocratic governments

In Chapter 3 I examine the structures underlying asymmetric prisoner release: these are the Prisoner Discourse and the Democratic Counterinsurgency Complex (DCC).

I explore the Prisoner Discourse at length, revealing its outsized influence upon military operations, political decision-making, and public opinion. I then discuss the strategic structure underlying asymmetric prisoner release initiatives, which creates a large reservoir of prisoners. This structure results from a specific counterinsurgency praxis which I call the “Democratic Counterinsurgency Complex”.

The Prisoner Discourse in its modern, Western form can be traced to what Carl Schmitt (2003) called “the driving force in European thought and politics for 200 years”: first contact between Iberian explorers and indigenous natives of the New World. The Salamanca School lectures of Francisco de Vittoria between 1537-1539 created the first explication of the idea that humanity was governed by *secular* laws which sovereigns were bound to obey. This created a discourse

which first addressed “the rights of strangers” (Cavallar 2002) before being particularized to stricken battlefield personnel. The prisoner discourse has evolved such that it still governs the Law of Land Warfare/ International Humanitarian Law in regard to both the wounded and POW and increasingly, detention (the Geneva Conventions). It meanwhile shapes the opinions of public and policy-makers worldwide. Indeed, Risse, Ropp & Sikkink (1999) have shown that norm diffusion and acceptance within specific states is the result of a cycle of contestation.

They find, however, that international norms are largely uncontested once put in place. The authors have further proven that these same international norms (especially IHRL) are increasingly capable of changing domestic practice. Other scholars go so far as to claim that a hallmark of democratic societies is a willingness to allow international law to shape domestic codes (Moeckli, et al. 2018). Thus, the prisoner discourse often becomes one of the few structures where international law is still contested by states attempting to skirt international law; while international actors contest such practices by demanding that non-state actors be recognized and negotiated with.

Next, I describe the Democratic Counterinsurgency Complex’s components, which are strongly linked to protracted conflict and APRI. First are the three “Lyall-Wilson factors”: mechanization of the state’s COIN forces, with attendant weakening of human intelligence (HUMINT) capability; perception of the state’s forces as occupiers within insurgent territory, and third-state provision of safe haven for insurgents. Second is “COIN through capture”, which is a democratic response to protracted conflict and creates the unbalanced prisoner situation leading to kidnappings as an insurgent tactic, and APRI on the part of the incumbent government. Indeed, it appears that without COIN through capture, it is difficult to imagine APRI as a viable insurgent goal.

Chapter 4 is a between-case comparison of four domestic COIN campaigns prosecuted by democratic regimes. I compare the examples of Israel in Lebanon and the Occupied Palestinian Territories (OPT); the UK in Northern Ireland; the US in Lebanon, and Spain’s campaign against ETA to illustrate my hypothesis, that western COIN praxis creates the uneven prisoner landscape which makes APRI a viable insurgent strategy. Some democratic governments conducting COIN campaigns do not resort to APRI, and I show why APRI is not always an option (or necessity) and occurs in only specific situations. This brief cross-case comparison is the foundation for my deeper dive into one particular state example, that of Israel.

In Chapters 5, 6, and 7, I conduct a within-case study of Israeli prisoner praxis. I highlight the domestic constraints which lead democratic governments to moot and execute APRI. I explore how the Prisoner Discourse shapes domestic negotiation strategy and decision-making in the face of strategic structures imposed by the democratic COIN complex. I discuss how governments face electoral pressures created by hostage situations; how leaders juggle policy priorities which may be more important to them than the prisoner's plight; how organizational infighting or positioning among various entities within democratic administrations influences information flows, and the pressures exerted by prisoner-centered social movements. Social movements for example, have become almost a given in prisoner release scenarios, especially in the case of democracies which refuse to negotiate with terrorists.

While there have been some examples of social movements under authoritarian regimes, to include the USSR's Mothers of Afghanistan Prisoners, and its WW2 Veterans' Movement (Edele 2014), most social movements which are designed to effect political processes are found in democracies. Social movements have proven to be effective in changing prisoner policies throughout the West; Ronald Reagan reportedly became aware of the US prisoner discourse regarding Lebanon after hearing about a rash of yellow ribbons tied to trees (Tessler 1990), reminiscent of the 1980 US Embassy hostages. He famously vowed not to let that same embarrassing trend taint his administration (Draper 1991).

Israel is arguably the most well-known user of, and the state most likely to resort to, APRI. Its recourse to APRI is easily traced to a specific incident in 1978-1979, and its successive governments show a continuity in the use of APRI for conflict management. Further, the challenges which Israel has faced in fighting domestic COIN are illustrative of the common structural factors which most democracies face in the same situation.

Electoral pressures, political priorities, and social movements drove and still drive Israeli strategies reinforcing the precedents set by earlier governments, a phenomenon called "path dependency". Meanwhile Israeli COIN praxis continues to create a prisoner marketplace which makes hostage taking a viable insurgent strategy even to the present. In fact, Israeli practices in southern Lebanon, especially "COIN through capture" (whereby thousands of Lebanese Shia were detained and held without trial) were largely, though not entirely, responsible for creating the conditions which led to the Lebanon hostage crisis of the 1980s, thus forcing other democratic regimes to cope with a battlefield which Israel had created.

Israel offers an archetypical example of path dependency with regard to its prisoner praxis, and Chapters 5, 6, and 7 bookmark the evolution of Israeli APRI. Chapter 5 is devoted to Menachem Begin's 1978-79 negotiation with Ahmed Jibril's Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Chapter 6 acts as a bridge between 1979 and 2011, and follows the evolution of Israeli prisoner praxis as APRI became a political institution between 1982 and 2003. Chapter 7 then concentrates on the 2006-2011 negotiations between the Israeli government and Hamas for the release of IDF Corporal Gilad Shalit.

Menachem Begin was confronted by a variety of domestic challenges which effected his negotiations for the life of IDF Private Avraham Amram, captured by PFLP-GC in 1978. Among these were tactical innovation on the part of Palestinian fighters using Lebanon as a safe haven; Anwar Sadat's peace initiative and its effect on Israeli energy security; a large Israeli peace movement; bureaucratic dysfunction, and a Mizrahi voting bloc (Jews of Arabic origin, often still marginalized in the 1970s), a group to which Avraham Amram belonged, and which demanded Amram's safe return. All of these occurred within a milieu wherein no IDF soldier had ever been exchanged for Palestinian security prisoners.

The disastrous 1982 invasion of Lebanon resulted in a variety of APRI situations which resulted in the transformation of APRI from a shameful act to an accepted "social fact". Asymmetric trades in 1983 and 1985, followed by an unsuccessful reset of the policy in 1986 (the Ron Arad disappearance) created an expectation by both the Israeli public and Palestinian operatives that APRI would be executed to save IDF hostages.

The Israeli governments which bargained for Gilad Shalit between 2006-2011 faced many of the same challenges as their predecessors. But in addition to these factors the government had to contend with the fact that APRI had been an accepted practice since 1979; even the Jewish diaspora became a pressure group demanding such a trade. In Historical Institutional terms, Israeli APRI decisions had become *path-dependent* by the late 1980s. The mystery is why Shalit's exchange still took five years and spanned two administrations. I explain this at some length through original research and subject interviews.

In Chapter 8, the conclusion, I summarize, analyze, and synthesize my research. While asymmetric prisoner release seems easy to explain, it is rather, a complex, contingent, and emotionally-laden technique which assists the state's leaders to manage conflict. I have found specific common trends throughout democratic APRI situations, and also indicators which

provide some capacity to predict an APRI event. I describe the most important factors which influence democratic leaders to execute APRI (as well as those factors which mitigate against APRI decisions); and finally, I discuss avenues for further research. Some of the findings surprised me; I trust that they will edify the reader.

CHAPTER 1: Theory

In this chapter I explore the theoretical constructs which explain the rationale for Asymmetric Prisoner Release Initiatives (APRI) by democratic regimes engaged in domestic counterinsurgency operations. I show that APRI is undertheorized as both a political practice, and as a conflict management technique. This is due to its rarity and contingent nature, as well as to its short lifespan and recent appearance within current political practice. Also problematic for theorization is the level of analysis, which is ultimately an individual leader, in some cases influenced by his cabinet.

Asymmetric Prisoner Release Initiatives are a recent phenomenon, largely restricted to democratic regimes fighting “domestic” insurgencies, and situated within a limited temporal period, about 40 years between 1978 and 2011. A characteristic of such initiatives is that their first appearance exhibits a marked discontinuity with previous practices regarding hostage exchange, such as Spain experienced with ETA in 1979; a break which appears to be a permanent policy in the case of Israel. That said, APRI is not automatic; states may still exhibit nuance in their execution of prisoner release, highlighting the practice’s contingent nature.

In October 2011, Corporal Gilad Shalit was welcomed home from Gaza after five years of captivity at the hands of Hamas. His freedom was the result of a deal which involved the trade of 1027 jailed Palestinian prisoners in exchange for his safe return. The Netanyahu government had not begun the negotiations for Shalit’s release, but ultimately completed them. Netanyahu himself, in his 1995 book *Fighting Terrorism*, had listed ten principles to which Western governments should adhere in order to prevent terrorist actions. Number 8: “*Do not release jailed terrorists*” (Netanyahu 1995, 144).

Three years later, on September 7, 2014, Avraham Mengistu, an Ethiopian immigrant and Israeli citizen, crossed the border fence near Ashkelon, from Israel into Gaza. He was recorded on surveillance cameras and even observed by IDF personnel who did not halt his progress. Mengistu was detained by Hamas fighters, who captured another Israeli citizen (an Arab Bedouin) crossing into Gaza the next year. Hamas demanded, in exchange for Mengistu’s safe return, the release of around 56 of its operatives. These militants were previously freed in the Shalit exchange, but had been rearrested in the West Bank, ostensibly for terrorist activity.

Netanyahu refused these demands. Both of these Israeli citizens currently remain in Hamas captivity.

How to explain the difference between Israel's response to these two events? It is clear that both fall squarely into the circumstances associated with APRI: a lone Israel citizen, captured by insurgents, who demand a large number of their compatriots in exchange for the hostage's life.

I posit three primary explanations for a state's execution of APRI. The *first* is the Democratic COIN Complex and the strategic structure developed through democratic COIN praxis. "COIN through capture" creates a prisoner marketplace which makes capture of a state's personnel to be used as a bargaining chip a viable insurgent technique. Without this dynamic the tactic of insurgent hostage-taking could not force democratic governments into APRI scenarios. Asymmetric prisoner release is a product of COIN through capture, filtered through the prisoner discourse, and made manifest by responses to specific political pressures which are time-and-context driven.

In the case of Israel, the democratic counterinsurgency complex has created a marketplace of prisoners, where several thousand Palestinians remain incarcerated. This marketplace was flourishing when Gilad Shalit was captured, and remains in place to a lesser extent today. However, despite the existence of this marketplace, another structure, the prisoner discourse, works against the current Israeli hostages; primarily because neither is considered a "worthy" prisoner within the public discourse. This is in contrast to Gilad Shalit, whose status as the scion of a heroic Ashkenazi family made him a *cause celebre*, both in Israel and in the Diaspora. Finally, while a combination of access to individual leaders, potent social movements, electoral pressures, and international policy priorities combine to make APRI a viable, and ultimately expected, Israeli government practice in some cases, none of these are applicable for either Israeli citizen presently captive in Gaza.

Once a soldier has been captured, the *second* factor which influences state response is the Prisoner Discourse, consisting of three components: International Law/norms; belligerent type; and prisoner category. Each has an impact. International law governs the POW regime which demands humane treatment by the state while perhaps not exerting as much influence over ruling behavior. The identity of the kidnappers, or what I call "Belligerent Category" (i.e. "terrorist") is the major factor in shaping a state's negotiation strategy, while prisoner type ("worthy" versus

“unworthy”) is the foundation for popular pressures, often social movements, upon government to execute APRI in order to secure the state’s citizen.

The *third* explanation is specific political pressures upon the national leader/government. These may be policy priorities which could be endangered by a hostage situation, such as Menachem Begin faced in 1978 while negotiating a peace treaty with Egypt; electoral concerns, especially if the state hostage is from an ethnic or constituent group important to the leader’s political party; organizational infighting, as in the Reagan administration during the 1980s, where negotiations with Iran and Hezbollah were kept hidden from disapproving cabinet officers and elected officials; or social movements in support of especially worthy prisoners, as seen in the case of Gilad Shalit.

There have been few competing theories mooted by researchers. Because APRI is ultimately a leader’s decision, the general response to asymmetric prisoner release is inescapably partisan and often *ad hominem*. The APRI field is thus fertile ground for examination and building of new theories. I next discuss in detail the three factors which best explain democratic recourse to APRI.

The Democratic Counterinsurgency Complex

It can be said that counterinsurgency is fought in the incumbent capitol; it is largely a political decision, rather than a special form of warfare. During insurgency, the democratic state’s actions and decision-making are exposed to both domestic and international audiences; such observation is unwelcome. At its heart, democratic COIN praxis is based first on concealing the presence of insurgency. In the case of democracies fighting domestic insurgents, there is an identifiable praxis which evolves after unsuccessful attempts to hide the presence of an insurgency.

First, because of electoral pressures and international norms, democratic regimes attempt to gain a quick victory over any insurgents while keeping casualties to a minimum. Counterintuitively, democratic governments often combat insurgency within a set of conditions (mechanization, occupation, safe haven for insurgents) which are linked to incumbent state defeat and protracted conflict.

Second, and once quick victory is impossible, political pressure to solve the crisis reinforces a tendency for democratic regimes to “domesticate” the insurgency. This is done in order to bypass the norms of international humanitarian or human rights law, which are increasingly privileged

over sovereignty claims. This leads to mass detentions (COIN through capture) and fosters the conditions which allow an uneven prisoner marketplace to thrive.

Elected governments have an interest in avoiding the appearance of armed rebellion in their territory, and go to great lengths to do so. As Rosenau (2009) points out, insurgency is often a simple matter of grievance. If a state will not acknowledge the grievance, it probably will not attempt to ameliorate it; though Paul, et al., (2013) find “redress” to be of minimal importance in solving insurgency. This dynamic, whereby the presence of an insurgency is downplayed, has been widespread. It can be seen in Vietnam, Ulster, Malaya, and Iraq. The final recognition and admission of insurgency by the state is what subsequently becomes an “Emergency”.

Scholars of modern COIN are divided on whether counterinsurgency constitutes a peculiar form of warfare. Unsurprisingly, many practitioners of the “art” (Galula 2006; Nagl 2002; Fall 2018; Kilcullen 2010; Mansoor 2013) contend that it is a separate discipline for a special type of conflict. Some scholars agree, if only as a method to categorize different levels of war. For example, Ballcells and Kalyvas (2014, 1) find that insurgencies “last significantly longer than all other types of conflict”, defining insurgencies as conflicts wherein “the government’s conventional military faces lightly armed rebels” (2014, 4) which differs slightly from those who say COIN forces themselves are “unconventional”.

There is a vocal component of scholars who disagree with the premise that counterinsurgency is “special”. Feldman (2009) claims that counterinsurgency is not radical, but instead reactionary: old colonial policing techniques that do not translate well into modern practice. Both Gian Gentile (2013) and Douglas Porch (2013) point out that counterinsurgency has become an end in itself, and not a means to an end; Gentile (46) calls COIN “a religion”, and ineffective as a concept for warfighting. Both claim that COIN is merely a tactic which has been mistakenly utilized as a strategy.

Porch goes so far as to state that counterinsurgencies are not won or lost based on doctrine or tactics, but because “the strategic context in which the wars were fought defied a tactical remedy” (Porch 2013, 162). Other scholars (Cunningham & Lemke 2013) argue that war is war: information asymmetry, commitment problems, and issue indivisibility are phenomena common to all types of conflict. They are present in the APRI negotiations between Israel and Hamas, for instance.

Which is why I say that COIN is fought in the capitol. Once an insurgency is recognized, if not necessarily acknowledged publicly, the government acts to put it down quickly. In the democratic COIN complex, this series of democratic practices has two major components, the tactical and the political. The tactical component of the democratic COIN complex is influenced by the “Lyll-Wilson” factors, as described in their 2009 paper, “Rage against the Machines: Explaining Outcomes in Counterinsurgency Wars”. Of the many factors which Lyall and Wilson examine, three in particular are strongly linked to defeat, and in my extended analysis to protracted conflict: the mechanization of COIN forces, external support for insurgents, and status of COIN forces as occupier.

Mechanization of COIN forces, with concomitant weakness in HUMINT gathering, is a phenomenon which turns “classical” COIN on its head, in that purpose-built intelligence organizations were a basic component of British anti-colonial counterinsurgency. Mechanization has become a part of military force structures since at least WW1. But this mechanization and subsequent weakness in HUMINT is not restricted to military force structures: Galula (2006, 37) attributes the “under-administration” of his Algerian sub-district in 1956 to government officials who used cars rather than horses. Consequently they could not leave the roads and visit remote villages. Paul, et al., (2013) find strong support for the importance of intelligence gathering in bringing COIN operations to a successful conclusion. Jim Scott is perhaps the best-known proponent of topography as insurgent force multiplier (J. C. Scott, 1998; 2010).

The second Lyall-Wilson factor is *external support for the insurgents*, particularly in the sense of a safe haven. The decision to enter a conflict where this condition exists is made by politicians, especially in a democratic society. Further, the way the safe haven’s sovereignty is treated during such a war is an international law concern, and not a military one. Paul, et al., (2013) find strong support for border control and “tangible support reduction” in their analysis of successful COIN operations. In fact, the authors find that “tangible support reduction” is present in every successful COIN operation. This makes fighting an insurgency which has external support problematic.

In the case of most APRI events, external support for insurgents is a key factor: it is extremely difficult to launch military rescues into another nation’s territory. But it is also difficult for insurgents to kidnap and keep hostages without such safe havens. Moorcraft (2012, 131) ascribes some of the failure of the Indian Peacekeeping Force (IPKF) in Sri Lanka to the phenomenon of

Tamil policemen (who were part of the IPKF!) bringing Tamil Tigers to Tamil Nadu in India, allowing them to recuperate, then bringing them back into the fight.

The final Lyall-Wilson factor is *status of the incumbent as occupier*. While “occupation” may be a chicken-and-egg question in some cases, the nationalist impulse which drives many insurgencies is strengthened by the incumbent’s presence in contested territory. This nationalism also calls the occupier’s legitimacy into question; Paul, et al., (2013) link legitimacy in the use of force as a necessary condition for ending an insurgency.

This dynamic is evident from Northern Ireland despite the domestic nature of the operations. It is especially so in the Israeli case, where the Palestinian areas are actually called the Occupied Palestinian Territories (OPT) by many international sources. Wiener (2008) identifies the weakness in attempts to enforce international law or norms based on legal or “constitutional” validity alone, even if supported by diplomatic practice between states (“social validity”). While her case studies deal with Pacific Basin states, in the context of democratic prisoner discourse, Wiener shows that such tools as Emergency Statutes which criminalize political behavior and bypass international law lack “cultural validity” in effected communities, and can build a sense of heightened nationalism, an effect seen in both carceral and international communities such as Northern Ireland and Palestine.

If COIN operations are conducted within the Lyall-Wilson factors, protracted conflict is the result. Paul, et al., find that of the the 71 ongoing insurgencies which they analyze, median length is 118 months; winning takes 132 months while losing takes 95 (2013, xxv). These are not timelines which please a democratic citizenry, and this leads to alternative government attempts at putting down the insurgency.

The second component of the DCC is the democratic regime’s response to protracted conflict. This is the “COIN through capture” sequence, and begins when the incumbent state acknowledges the presence of an insurgency in its territory or sphere of influence. Democratic states are more likely to execute this sequence because of their adherence to international law, and because other democracies are less likely to approve of such a sequence when executed by an autocracy . For example, since 1950 there have been 19 derogations of human rights obligations under Article 15 of the European Convention on Human Rights (ECHR), nine involving states of emergency dealing with insurgency or terrorism. Only four nations have ever

been asked to justify their derogations (Ireland, UK, Greece, and Turkey). And only one, Greece under autocratic military rule, was disallowed its derogation.

The COIN through capture paradigm follows a predictable political sequence. This sequence reflects the state's desire to "domesticate" an insurgency by fighting it under its own criminal codes and reducing international involvement. This remains contemporary praxis: the most recent is the case of Ukraine, which is fighting an insurgency in its eastern regions after a Russian-sponsored invasion (categorized as the Donbas War of 2014-present; #993 in the Correlates of War intrastate war database). The Ukrainian case is useful because it tests the theory of a democratic COIN sequence despite Ukraine's weak position vis-à-vis the insurgents.

Ukraine must abide by international law and treat the Russian invasion as an insurgency because the international community refuses to confront Russia as a hostile invader of another sovereign state. In the case of Ukraine it is actually the international community which wishes to hide the insurgency; we can see the Democratic COIN complex enacted by a democracy which is the *weaker* party.

First, the state declares an Emergency. In contemporary practice, this is done in order to comply with international law. For instance, the ECHR states "The right of derogation can be invoked only in time of war or other public emergency threatening the life of the nation". Ukraine is currently in a state of self-declared emergency, and has been since 2014 (Council of Europe 2018).

Next, the state derogates its obligations under international law. Article 15 of the ECHR allows for such derogation. In the case of Ukraine, this derogation has been invoked and will last "until the moment of withdrawal" of all Russia-supported armed groups (Verkhovna Rada Ukraine 2015).

Third, the state criminalizes political activity. In the case of Ukraine, this is accomplished through its criminal code with additional Emergency codicils. Article 67 mandates extra punishment for crimes committed during national emergencies: the whole of Chapter XV discusses "Crimes Against the Authority of Government, Local Government or Associations of Citizens" which include membership in proscribed groups (Government of Ukraine 2015).

Finally, the state enforces this criminal code through emergency statutes. The ECtHR has expressed concern about Ukraine's use of thirty days preventive detention without trial (Council of Europe 2018), though there is little proof that Ukraine has actually used this statute. This is

because of the fact that Russia controls much of Ukraine's eastern territory and insurgents can find safe haven there.

Ukraine has some limited support in its efforts at COIN through capture; for instance, in July 2020 the Belarussian government arrested 32 Russian employees of the Wagner security company near Minsk. The "mercenaries" were interrogated, and 14 of them admitted that they had been active in Donbas. The Belarussian foreign minister has invited the Ukrainian ambassador to discuss the issue, and perhaps to take custody of these individuals (RIA Novosti 2020).

The Ukrainian case illustrates a theoretical basis for COIN through capture; democratic governments execute the sequence as a matter of course under international law. But because of its position as the weaker party, and the presence of a safe haven for insurgents, Ukraine's execution of the concept is ineffective compared to Russia's. This also gives strength to the argument that without effective COIN through capture and creation of a marketplace, APRI is not a factor.

On September 7, 2019, Russia and Ukraine executed an all-for-all trade with 35 prisoners exchanged on each side. But the asymmetry was evident, with Ukraine on the "losing" side of the trade. The Ukrainians released Volodymyr Tsemakh, who commanded a rebel anti-air unit in the sector where Malaysian Air Flight MH17 was downed, killing 298 people. As Radio Free Europe reported, "Ukraine's security service (SBU) chief Ivan Bakanov said the exclusion of Tsemakh on the prisoner exchange list would have led to 'the cessation of negotiations with Russia'" (RFE/RL 08 SEP 2019).

Tsemakh was wanted for questioning by the Netherlands government in regard to the downing of the aircraft, though he was not one of the four Russians and Ukrainians indicted for the incident. The exchange was at its heart an APRI, with Ukraine giving in to Russian pressure to release Tsemakh; perhaps to avoid his extradition to the Netherlands either as witness or defendant. But not a puzzling one in that Russia, the most powerful actor, dictated the terms of the exchange. The puzzle is why the weaker force in many cases dictates such uneven terms.

The democratic COIN complex creates the strategic structure which makes APRI a factor in some insurgencies. Another set of discursive structures effects regime negotiation strategies: the Prisoner Discourse.

The Prisoner Discourse

The Prisoner Discourse has manifested in conflicts between sovereignty claims, military necessity, and international norms since the 15th century, and has become the prime mover in shaping prisoner policies across the globe. One can trace a nearly direct line between 16th-century Spanish Imperial law and current International Humanitarian Law; similarly, the Geneva Conventions are a direct descendant of the Union Army's Lieber Code of 1863; and the law of military necessity ("I was only following orders"), famously disallowed at Nuremberg, was surreptitiously removed from US Army Law of War manuals only in 1944.

The prisoner discourse consists of three discursive structures: International law/norms; belligerent type; and hostage category.

International Law/Norms

First, international law/norms create expectations from friend, foe, and the world at large as to how military operations and diplomatic overtures will be conducted. Second, the category of the belligerent shapes national and government attitudes about how the belligerent is to be fought, and if necessary, imprisoned. Finally, the public's perception of the (friendly) prisoner shapes not only its level of sympathy for that prisoner, but pressures on the government to free him.

Perhaps the earliest European example of a POW discourse occurs in Francisco de Vitoria's law lectures (Vitoria 1917/1964) presented at the University of Salamanca between 1537-39. In these lectures Vitoria defends the rights of Amerindians under Natural Law (which, Vitoria argues, was the supreme arbiter of international law), and expressly denies the right of Spain to imprison or enslave natives who have not declared war upon the Spanish Empire. This Spanish cleric further stated that definitions of just war did not cover wars that were intended to expand either empire or Christianity.

A half-century later Hugo Grotius, a Dutch diplomat (nominated but not selected to be a drafter of the Treaties of Westphalia) agreed with Vitoria regarding natural law and the humanity of non-Europeans not engaged in active warfare; his 1604 treatise on maritime law denied any exclusive right of Europeans to the sea and popularized the idea of international versus territorial waters. On the other hand, in his 1625 work On the Law of War and Peace, Grotius claimed absolute rule of princes. Anyone captured in just war could be summarily executed, whether

man, woman, or child; this was actually considered more merciful than enslaving them, at least among Christian populations in Europe (see Draper in Bull, 1990).

By 1758, when Emer Vattel wrote his Law of Nations (Vattel & Kaposy 1758/2008), indiscriminate killing of prisoners was considered murder, and only military necessity allowed for killing POWs. George Washington, Benjamin Franklin, and Thomas Jefferson all owned the 1760 English translation of Vattel, and thus Vattel's view of prisoners as protected personnel became the US norm by the late 18th century. This is not to say that prisoners could not be harmed. The right of reprisal, whereby prisoners could be executed in response to enemy atrocities, was recognized in the laws of war. Francis Lieber's treatise (US War Dept 1863/2005) on the law governing guerilla warfare was promulgated by Abraham Lincoln to the Union Army as General Order No. 100. Reprisal, and killing of captured enemy for self-preservation, was explicitly allowed therein. Reprisal would not be forbidden until the 1929 Geneva Conventions, a prohibition that was viewed unfavorably by major belligerents (Wylie 2009 points out that the Germans especially were skeptical of the 1929 Geneva Conventions).

Lieber's was perhaps the first codification of a difference in the way war was fought depending on conflict category and belligerent classification. In contrast to its uniformed combatants, Confederate civilians and leaders were considered non-state actors and were subject to greater penalties than say, British personnel would have been in a declared war. Since at least Grotius' time, military necessity and authority had been the supreme value governing treatment of POWs. It is noteworthy that the much-maligned "Nuremburg Defense" was part of US doctrine until the Second World War.

This is not to say that murder of prisoners was accepted wholesale, however. During the Philippines Revolt, US Marine Corps Major Littleton Waller was tasked with conducting a patrol across the island of Samar. US Army Brigadier General Jacob Smith gave a direct order to Waller: kill all males over the age of ten(!) encountered on his patrol. Waller disobeyed the order, but on his own initiative executed twelve of his native porters without trial. Waller was "honorably" acquitted (Adams 1911, 237) on the basis that he, as a commander in the field, had the responsibility to make such a decision. BGen Smith was not prosecuted for war crimes, but rather charged with "behavior prejudicial to good order and discipline". He was admonished, and forced to retire; a verdict whose harshness was blamed on President Roosevelt's politicization of the war (Couttie 2004/2014).

A copy of the 1940 US Army FM 27-10 (Law of War) exists, where a pen change softening the absolute force of a superior's lawful order was directed to be made in the manual. In a second copy, the printed amendment is dated November 1944. This change was almost certainly made in preparation to prosecute Axis officials who had similar regulations regarding superior orders. Such a change in US policy suggests that the prisoner discourse is a contingent political decision rather than an ahistorical norm of humanity. Indeed, this idea that international norms and regimes can be a function of state power is supported by numerous historians and theorists, as I illustrate below.

The Nuremberg tribunals were contested by contemporary legal scholars for a variety of reasons: foremost among these was the lack of a protocol governing punitive international tribunals, and the idea of one universal norm regarding the conduct of war. In a foreshadowing of recent conflict patterns, the Nuremberg tribunal also attempted to govern the actions of soldiers fighting concurrent conventional wars and insurgencies (from the German perspective, especially in the occupied East). Kim Rubenstein (2006) provides an insightful examination of how modern conflict patterns confound international law, and how the law of war conflicts with traditional international relations, national sovereignty, and conflict resolution praxis.

The role of regime type is important in relation to APRI as shaped by the prisoner discourse. While dictatorships have regularly violated both the spirit and the letter of the Prisoner Discourse and its attendant legal strictures, democracies (arguably) are better at letting the law take precedence over state interests or even military necessity. Indeed, scholars of international law posit that a difference between democracies and autocracies comes down to their view of international law: the dichotomy between “is and ought” (Staubach 2018).

Further, scholars of sovereignty predicted as early as the 1960s that the recognition of nonstate actors by NGOs and regional organizations would create *de facto* states, and an expectation that democracies deal with insurgents through interlocutors such as the ICRC, even if the favor was not returned (see Lyon in Luard 1970). This in turn created social norms which soon manifested into new restrictions on democracies in APRI situations (Clapham 1998); thereby creating a “sovereign entity” where before there was merely a “bandit”.

Belligerent category

At the same time that these questions of sovereignty are being played out, the category and reputation of the belligerent will shape operational planning for combat as well as social attitudes about the fate of friendly hostages. In most interstate wars, for instance, POWs are treated well enough that the majority of prisoners return home in reasonably good shape at the conclusion of hostilities. Thus, even a harsh state enemy is not perceived as beyond the pale as long as a war is being waged within the rules of the state system.

That said, states that refuse to negotiate with “terrorists” are inextricably bound by belligerent category; and states that refuse to extend some form of political recognition to their enemies (as is quite common in domestic COIN for various reasons) will be forced to use intermediaries whose interests may not be wholly congruent with their own.

Prisoner Type

Another discursive factor is hostage category or what I term “prisoner type”. This affects public attitudes and government decisions, based on several factors, such as civil/military status, or citizenship of the hostage. For example, the Lebanese Jews captured in Beirut by Hezbollah during the mid-1980s, 12 according to Bergman 2008, or 6 according to the Jewish Telegraphic Agency (Jewish Telegraphic Agency 3 APR 1985), never figured in Israeli calculations on par with Israeli citizens held at the same time by Hezbollah. All of the Lebanese hostages were later murdered by their captors (Bergman 2008, 117; Jewish Telegraph Agency, 3 APR 1985). While this may be difficult to process and accept, some hostages are worth more than others (emotionally or politically) to both the government and public at large. The US government is notoriously unsuccessful in getting civilian hostages back from nonstate actors. It is clear that prisoner type is a major factor in the public prisoner discourse and in government response to hostage-taking during COIN.

In the case of journalists James Foley and Steven Sotloff (both murdered by their captors), it was forbidden under US criminal law for families to be in contact with, much less pay ransom to, entities such as ISIS which kidnapped Americans. In fact, French journalist Nicolas Henin, who spent several months in captivity with Foley, (to include a week handcuffed to him), and who was released with three other French citizens after their government paid \$18 million in ransom, told the BBC he felt the UK and US governments were putting their people at risk by not

negotiating with the terrorists (Le Huffpost avec AFP 2014). After Sotloff was beheaded, in retaliation for a US rescue attempt against Foley's captors, President Obama announced slight changes to US law, in order to facilitate negotiations, while still claiming the right to refuse such negotiation as a matter of national security.

“The U.S. government may itself communicate with hostage-takers, their intermediaries, interested governments, and local communities to attempt to secure the safe recovery of the hostage,” according to a statement from the White House. “The U.S. government may also assist private efforts to communicate with hostage-takers to secure the safe recovery of a hostage, whether directly or through public or private intermediaries; these efforts will be focused on ensuring the safety and security of a family to prevent them from being defrauded or further victimized by a hostage-taker. In short, we will not abandon families in their greatest time of need”

(The White House: Office of the Press Secretary 2015).

Domestic Constraints

Some domestic restrictions on a government's freedom of maneuver are obvious. Public opinion shapes much government policy and in democracies electoral concerns of course carry much weight. Another domestic constraint is adherence to one's own legal system (for example the Israeli Supreme Court outlawed the detention of Palestinian prisoners solely for use as bargaining chips in 2000, halting a longtime practice; see Bligh 2017). Even more constricting is adherence to a hard line, such as refusal to negotiate with terrorists. While some argue that such a hard line actually makes negotiating easier (Lee 2013; Putnam 1988), it also creates expectations among allies and the electorate which reduce policy options.

Other domestic factors are less obvious and ubiquitous, but just as potent, such as organizational infighting. The Reagan administration's seeming blindness when confronted with problems in the Middle East was partially the result of disagreements between agencies about which factors (Israel, the USSR, access to oil) should drive US policy (Hooglund 1988). The respective agencies would often act without coordination, purposely freezing other entities out of the decision-making process; Oliver North's work on the National Security Council (NSC) was a

symptom of this problem. The 1980s chaos in the Levant could in part be explained by US tunnel vision on Central America and Libya to the detriment of attention toward events in the Gulf, and by extension, Lebanon (Blight, et al 2012; Christopher 1985; Byrne 2017; Walsh 1998; Kornbluh 1993).

As discussed above, social movements form a great part of political discourse in democracies. The Four Mothers movement in Israel was lauded for turning attention to the plight of Israeli casualties, though in reality it was entirely focused on pressuring the Israeli government to withdraw from southern Lebanon (Sontag 2000; Fleischmann 2003; Hutchison 2016). Even in autocracies, social movements can form, flourish and ultimately shape policy: the Palestinian women's movement extant between 1920-1948 in both Christian and Muslim communities (Fleischmann 2003), and the USSR's "Mothers of Afghanistan Prisoners", as well as its WW2 Veterans' Movement (Edele 2014) became formidable social forces. Hutchison (2016) calls attention to bereaved political or national groups, calling them "affective communities" and showing that a communal discourse can create domestic policy. For instance, the identity of "soldier" in Israel is a near-universal one; Hutchison posits that this image will create a different prisoner discourse than in the US, where the term "soldier" is more a reverence object and less a universal condition.

The bereavement discourse leads to casualty aversion, according to Levy (2012). This oft-mentioned phenomenon is seldom invoked outside of political and military elites, and usually in theoretical terms. In actual practice, there is little evidence that casualty aversion is a modern democratic phenomenon; for example, there were and still are passionate arguments about the First Marine Division's casualty count during the 1944 battle of Peleliu, a time when ostensibly there was no casualty aversion (Margaritis 2018; Murray 2016; Manhoff 2018). Indeed, in 1991 the Center for Naval Analysis mooted 10,552 casualties for the First Marine Division alone during the initial week of Operation Desert Storm (Quilter II 1993; subject interview 1-2020 S 06 Mar 2020). This did not stop the invasion from taking place.

That is not to say, however, that elite opinion and political decisions are not swayed by casualties, only that they are seldom a principal consideration. Levy (2012) sees recruitment mechanisms as an arbiter of casualty aversion: societies with conscript forces are more likely to try and balance casualty risk vs military gain than societies with all-volunteer forces.

The tendency of both democratic and especially transitional governments to offer or grant mass amnesties to political prisoners often strengthens extremists at the expense of moderates (E. Bueno de Mesquita (2) 2005; Getmansky 2013), creating an arena favorable for insurgents to force APRI on governments, based on the prisoner imbalance. Selectorate theory (B Bueno de Mesquita, et al 2003) suggests that this amnesty is granted as a cheap public good which serves to increase the number of supporters for the leader. Getmansky (2013) builds upon selectorate theory in the case of democracies and COIN, showing that at least in the case of Iraq, public goods provision helps build better intelligence networks, leading to more effective COIN. This also supports my contention that democracies fight COIN differently than autocracies, and use APRI differently within conflict management praxis.

Asymmetric Prisoner Release and under-theorization

There are inherent difficulties in theorizing an unexamined political phenomenon like APRI. I analyze the possible theoretical explanations for such rare but fraught decisions by leaders and rulers, examining the explanatory power of classical and structural realism; Liberal IR/IG theory; Democratic Peace theory; Institutionalism; and social movements theory. I find that each answers a small piece of the question: realist theories accept the outsized role of individual leaders but ignore the domestic pressures which are invariably a part of APRI scenarios. Liberal IR/IG theory explains the power of international law and constituent preferences on democratic regime decisions, but does not shed light on regime attempts to circumvent such laws; such circumvention of international law, however, is the foundation of democratic COIN praxis.

Several alternative social theories, such as “No Man left Behind” are sometimes presented as cultural explanations for democratic regime execution of APRI. I also explore and ultimately reject these theories.

Institutionalism, however, is a promising avenue for theorization and framing of APRI. Historical Institutionalism (HI) provides an explanation for continuity of government policies through increasing political returns and path dependence (Pierson 2000). However, asymmetric prisoner exchange was an explicit and extreme break in Israeli government policy when Menachem Begin executed Israel’s first APRI in 1979. A criticism of Historical Institutionalism is that it fails to provide explanations for such breaks in policy (Peters, Pierre and King 2005).

My dissertation addresses this weakness and provides an explanation for Begin's normative break while also explaining the continuity of subsequent Israeli prisoner release praxis.

Asymmetric Prisoner Release Initiatives are little understood because they are rarely examined. The scholarly literature on the phenomenon is sparse. There is only one book-length treatment of governmental POW policy, Alexander Bligh's 2017 study, which concentrates solely on Israeli prisoner releases. In keeping with many Historical Institutionalist accounts, Bligh's work focuses on government actions without attempting to explain the mechanisms which may have affected the leader's decision to execute APRI (Bligh 2017). Yagil Levy's study of the sociological basis for Israeli defense policy and combat doctrine (2012, 2) devotes only 1.5 pages to the prisoner discourse, with one line given to the Gilad Shalit exchange. Most discussion of APRI is actually found in newspaper editorials.

Further, while prisoner initiatives figure in virtually all conflicts (usually as part of a conflict resolution phase), "prisoner release" is noticeably absent as a level of analysis even in comprehensive databases dealing with war or conflict. Part of this is because these projects largely collect and collate information, rather than discuss the political or tactical machinations inherent during armed hostilities: there is little attention paid to conflict management in such databases. For example, neither the Correlates of War (CoW) database, which examines 420 separate intrastate conflicts (Sarkees 2010), nor the Uppsala Conflict Data Program (UCDP) mentions prisoner release within their analysis.

Additionally, the original CoW data was designed to disregard the type of conflict which is most likely to result in APRI. The very definition of war, defined by 1,000 deaths per year, was "a threshold that was established to eliminate colonial or imperial struggles that dragged on for long periods of time, but which suffered variable levels of fatalities" (Sarkees 2010, 50). The democratic COIN complex is strongly linked to both colonial doctrine and prolonged conflict.

Some of this reticence to discuss prisoner release is also due to scale. The democratic praxis of "COIN through capture" is designed to neutralize insurgent threats with minimum fatalities (to both sides), thus rendering much domestic COIN a less-lethal endeavor than outright war. It takes 25 fatalities in a year for a situation to be defined as "armed conflict", and in some domestic insurgency this threshold may not even be reached.

On the other hand, the University of Edinburgh Peace Agreements Database (PA-X) does list prisoner release as a topic (among 230) under "transitional justice", and its database of peace

agreements shows that prisoner exchange is sometimes a baseline demand in negotiations and ceasefires. This indicates that little attention is paid to APRI as conflict management in the midst of hostilities; prisoner release is largely considered conflict resolution by researchers.

Even so, among the 1900 agreements in the PA-X database from 1900-2019, only 135 mention prisoners, with a bias toward “all-for-all” exchanges. Joshi et al., (2015) do include prisoner release as part of a relatively small comprehensive peace agreement (CPA) database. Their database includes 34 comprehensive peace agreements between 1989 and 2012, and 20 of these agreements include prisoner release. None of the datasets, however, address such asymmetrical exchanges as the Bowe Bergdahl (one US soldier for five high-ranking Taliban) or Gilad Shalit (one IDF soldier for 1027 Palestinian prisoners) trades, or differentiate APRI from general prisoner exchange agreements. This gap is significant given the effect of prisoners and their conditions, as well as demands for their release, on the course of conflict. While there is a rich literature regarding prisoner release as conflict resolution or restorative justice, this is not part of my study.

Consequently, my dissertation is an attempt to build a theory which serves to explain the use of APRI by democratic regimes in conflict management situations. I hypothesize that regime type (Democracies) and conflict type (Counterinsurgency) have an effect on the extent to which APRI is executed, and in fact are background conditions for APRI in the framework of historical institutionalism. Based on current and heretofore largely anecdotal evidence, democratic regimes (both long-standing and transitional) are more likely to use APRI to manage conflict with non-state actors than are autocratic regimes. Further, democracies are less likely to use APRI when involved in conflict with other states than they are when in conflict with non-state actors. The preliminary evidence from my plausibility probe of the data in Chapter 2 supports this hypothesis, and supports the decision to concentrate my research on democratic regimes engaged in COIN operations.

The use of APRI is undertheorized for a variety of specific reasons. First, it is rare. As David Spiro (1994) relates in his critique of the Democratic/Liberal Peace theory, war is rare; war between democracies, by definition even rarer. The same applies to circumstances necessitating prisoner release, and especially so to APRI.

Our current age of low-intensity conflict contributes to the trend of declining numbers of POWs between 1945 and the present. Edele (2017, 23) tabulates 5.75 million Soviet prisoners

captured on the Eastern Front alone from 1941-1945. About 170,000 UK and Commonwealth troops were captured in all theatres of WW2; three decades later, just over 500 US POWs were released at the end of the (much longer) Vietnam War (Jorgenson 2017). Prisoners and hostages in low-intensity conflict are increasingly individuals and not members of large units which have surrendered on the battlefield. Currently, prisoners of war are rare, and the conditions under which APRI may occur are even rarer.

Second, ceasefire agreements, especially in low-intensity conflict, are also uncommon. Christine Bell, et al., (2019) have collated 1789 peace agreements between 1900 and 2018 in their Peace Agreements (PA-X) database. The data are worth noting: of these 1789 agreements, 819 are ceasefires; only 135 of the 819 ceasefires mention prisoners. But within the category of intrastate/local conflict, there are only 61 agreements, 20 of which are ceasefires. Of the 1789 agreements, only 213 mention prisoners, and not all of the 213 mentions are in the context of prisoner release. A random sample of the first 80 agreements which mention prisoners show that 60 of them (75%) were not in relation to an unconditional release of all prisoners. Only 20 agreements called for this, and of this 20, only three mentioned “all for all”. Indeed, the bias toward “all-for-all” exchanges tilts toward former Warsaw Pact nations, with the former Yugoslavia, Ukraine and Russia most likely to demand such a trade. This trend was seen in the Tsemakh trade between Russia and Ukraine in 2019 wherein power imbalances created an asymmetric trade though the actual number of prisoners exchanged was equal.

Given the rarity of conflict; the low numbers who surrender in most scenarios; the difficulty of kidnapping a soldier for ransom and thus the low incidence of asymmetric prisoner situations; and the statistical scarcity of ceasefire agreements/negotiations, it is reasonable to find that APRI are undertheorized as a political phenomenon. In addition to this rarity however, another factor, the level of analysis, presents problems to social science researchers.

APRI and Level of Analysis: The individual leader or his advisory group?

While the capture of a prisoner may be accomplished by the lowliest private soldier, asymmetric release of prisoners is almost always the province of the individual ruler. The fact that such release initiatives outside of interstate warfare are both rare and often extrajudicial merely points out, as Schmitt stated, “Sovereign is he who sets the state of exception” (quoted in Agamben 2005). The power to pardon or release is one of the few absolute powers still granted

to democratic leaders and accepted as such by the populace. This does not imply, however, that such “authoritarian” decisions are uncontested by political opponents, international actors, or belligerent conflict groups; or that they are done without an eye to political consequences. Indeed, researchers such as Lisa Blaydes (2008) and Thomas Pepinsky (2013) show that institutions have a constraining effect even on authoritarian rulers.

Because amnesties, pardons and prisoner exchanges remain the province of individual leaders, even in democracies, the leader himself is rightfully the initial level of analysis when exploring APRI. But since all leaders, whether autocratic or democratic, wish to maintain office, their public explanations are often self-serving or obscure, as was seen in the case of Menachem Begin in 1979, or the Reagan administration’s recourse to US hostages as the explanation for Iran-Contra.

In the case of Israel’s APRI (arguably the most prevalent and asymmetric of all current prisoner praxis), official biographers of individual statesmen are strangely reticent when discussing a personal motivation for such initiatives. For instance, the first APRI within Israeli politics was Menachem Begin’s 1979 swap of 76 Palestinian prisoners for one Israeli soldier captured during Operation Litani, an invasion of southern Lebanon (NYT 15 March 1979).

This revolution in Israeli prisoner policy gets no mention in either Shilon’s (2012) or Gordis’ (2014) biographies of Begin. Interestingly, Ariel Sharon’s biographer, David Landau (2014, 532; 601) is more forthright in discussing Begin’s psychological reasons for executing Operation Litani (to eradicate Israel’s Vietnam-type syndrome attributed to the 1973 war). But the asymmetric prisoner exchange necessitated by the killing and capture of Israeli soldiers at Sultan Yakub is mentioned by Landau only in a footnote, and without discussion of its significance in later Israeli political praxis.

In January 2004 Israel exchanged over 400 Arab prisoners, as well as 59 Arab bodies for the remains of three dead Israeli soldiers and one live IDF Colonel, Elhanan Tannenbaum. At the time, Ariel Sharon stated “I have no other word to describe the decision to bring the boys home, to the homeland, carrying a heavy price other than a ‘Jewish Decision’” (IMRA 29 JAN 2004), or based on “Jewish Feeling” (Gutman 2004). This belies the fact that Sharon’s cabinet only approved his plan by a vote of 12-11. Sharon was not required to take a cabinet vote, but promised to do so based on the repugnance with which Tannenbaum was viewed by much of the public.

Further, not only were two “bargaining chips” (high-value Arab prisoners captured specifically for trading purposes) released in the transaction, but critics claimed that Sharon had traded IAF navigator Ron Arad’s life for Tannenbaum, a man of questionable character (Jewish Telegraphic Agency 2003). This incident is not mentioned in either Landau (2014) or Dan (2006).

In the case of Corporal Gilad Shalit, exchanged for 1027 Palestinian prisoners, Netanyahu is said (by Ehud Barak) to have at first resisted any deal, but then created a publicity coup once his hand was forced (quoted in Times of Israel 24 AUG 2015). Indeed, Netanyahu seemed to hedge his bets in his public statement upon Shalit’s release, spreading the praise and by extension any blame for the deal. He thanked his staff and personal mediators; the chief of Shin Bet; the Egyptian government as well as the Egyptian intelligence services; the German mediators and the German Prime Minister; and the entire IDF.

Given that negotiations for such hostage exchanges are usually protracted, it is clear that the decisions to execute APRI are not solely based on a leader’s conscience or immediate preferences, but result from various other pressures. A lesson learned from the chaos of 1980s Lebanon was that Israel’s immediate refusal to negotiate with Amal over Ron Arad created a situation where Arad was never seen again. Information regarding his fate has become a factor in every subsequent Israeli hostage situation.

A similar dynamic was present in the Obama administration’s actions to free Sergeant Bowe Bergdahl. This years-long negotiation was not the mere product of President Obama’s feelings or even US societal preferences. The process was largely affected by discourse, in that Obama had in many cases continued the Bush policy of “no negotiation”. Bergdahl however, did not fit the hostage type of “innocent soldier” (based on rumors of his defection), and the belligerent category of “nonstate savage” (which often serves to demonize the captor) was softened by the fact that Bergdahl had left his post and then been taken up by the Taliban, making Bergdahl less sympathetic to the US public. Some other domestic factor must have been involved; evidence suggests that Bergdahl’s release was akin to many Israeli APRI events, based on a similar and nearly unique political factor discussed below.

The challenge thus presented to the researcher is how to explain an action that an individual leader undertakes, in such a way as to make general mid-range predictions about state behavior. One recourse to individual analysis is small-institution analysis. In both Israeli and US cases involving APRI, the leader’s cabinet was a factor. Evidence suggests that the cabinet’s work and

opinion was as important as the leader's preferences in executing APRI, thus providing another level of analysis, as well as bringing institutions into the discussion.

As for scholarly explanations, both neoliberal and neorealist theories share a commitment to rationalism (Wendt 1992). But given that a major criticism of APRI is the lack of a rational calculus (G. Steinberg, personal communication, May 31, 2020), neither framework is in a strong position to explain APRI.

Realist IR theories recognize the dilemma faced by states caught in APRI scenarios. Democracies engaged in domestic COIN find themselves trying to thread the needle between international law; domestic insurgents; external supporters of the insurgents; and constituent pressures to terminate the conflict. Realism predicts that such states will attempt to demonstrate power by asserting some form of sovereignty (usually COIN operations) as the only defense against internal attack within an anarchical situation.

Classical realism fails, however, to provide an explanation for such democratic APRI as Israel's lopsided POW exchanges; the US obsession with Cold War/Vietnam War POWs (Franklin 1993; P. Gallagher 2018); or the casualty aversion which some scholars attribute to democratic polities when waging war.

Waltz's structural realism discounts this domestic (second-image/level) factor in international relations, and thus falls short in explaining international negotiations regarding POWs outside of ceasefires. Further, it fails to explain the events surrounding conflict between state and nonstate actors, the very heart of most APRI scenarios. It is clear that in the case of prisoner release, Realism has little explanatory power.

Liberal theories suffer similar shortcomings. Liberal IR/IG, while predicting that a democracy engaged in COIN will turn to international law as a cooperative measure, cannot explain why democracies both disavow such law (a fundamental action within the democratic COIN complex), meanwhile engaging in extra-judicial operations against their own citizens. Democratic/Liberal peace theory holds that democratic practice increases the credible commitment of regimes to treaties and contracts (Jahr and Rector 2014). This theory provides no explanation for why leaders resort to asymmetric releases, especially given the undemocratic impulses which drive most democratic COIN praxis. Indeed, Israel's propensity to renege on prisoner release deals seems to weaken the connection between credible commitment and democratic norms (Dorsey 1984).

Social movements theory situates social mobilization as the major factor in articulating prisoner interests to power (Nagle 2016 84). That said, this theorization is divided by those who see contextual factors, essentially “an advantageous opportunity structure” (Wouters and Walgrave 2017) as the factor most likely to bring success to a social movement; and those attributing greater agency for social movements, where “right makes might”. The question is an important one if social movements theory is to help explain APRI: do pro-prisoner social movements create the field for negotiations (the worthy prisoner) or do other political calculations?

Katrin Uba’s (2009) meta-analysis of 74 studies from 1990 to 2007 utilizes the contextual frame of public opinion, regime type, and impact of lobbying groups to test contextualism’s link to social movements. Uba found that lobbying groups were more effective than social movements in forwarding policy goals; this explains the effectiveness of family access to leaders, as well as the family-led POW/MIA organizations in the US. She also shows that social movements were more likely to have direct effects on democracies than on other regime types; and makes the subtle observation that public opinion and social movements of the “right” kind (read: “worthy prisoner”) are more important than mere percentages or numbers might suggest. In tandem with Tilly’s four-stage WUNC model (Tilly & Wood 2009), the “worthy” versus “unworthy” definition of a particular prisoner by the public provides a specific example of how the prisoner discourse can affect policy.

But neither Nagle’s emphasis on widespread, cross-grain protests in the midst of hostilities, nor Uba’s weak linkage between public opinion and social movement effectiveness explains why Shalit had a social movement behind him while Mengistu does not. Gamson, (in Goodwin and Jasper 2015) explicitly decries the inability of social movements theory to explain the dichotomy between humanity-based and identity-based social mobilization. My use of the prisoner discourse recognizes, and is weakly supported by theories of social mobilization; but they still do not provide a framework for the milieu surrounding APRI (democratic COIN praxis and the Prisoner Discourse) nor for the specific policy discontinuities exhibited by early APRI.

There are also sociological “theories” as to why leaders execute APRI. They are almost invariably connected to the public pronouncements of the leaders themselves, and are seldom offered with any supporting evidence. There are four major categories. First, humanitarian concerns; second, ethnicity or nationalism; third, a basic concern for getting citizens back; and

finally, the military covenant or ethos of “no man left behind” (NMLB). I do not intend to examine or rebut them at any length in this chapter, but will show why I have considered and rejected them in favor of more realistic possibilities which better explain state recourse to APRI.

In 1979, Menachem Begin approved (without the knowledge of his cabinet) the trade of 76 militants, “none with blood on their hands” for one IDF soldier, Avraham Amram.

“Israeli authorities maintained that the exchange did not involve questions of policy but was an executive action undertaken on humanitarian grounds. They said the condition of Amram’s family had warranted this approach” (Jewish Telegraphic Agency 15 MAR 1979).

This official announcement does not hold up under examination. At the same time that Begin was worrying about Amram’s family, he was negotiating a peace treaty with Anwar Sadat which was so momentous that it earned them both the Nobel Peace Prize. Further, Begin was still reckoning with the domestic discontent which attended Operation Litani; and in an even more sensitive initiative, was using Moshe Dayan and Ezer Weizman as secret emissaries to the Shah of Iran to continue negotiations for Project Flower, a covert oil-for-weapons scheme which would bypass US armament export controls and promised to give the Shah a nuclear capability (US Embassy Teheran Iran 1979; Parsi 2007; Sciolino 1986).

Thus, it seems more reasonable to view Begin’s APRI as a way to appease a voter base (Amram was from a Mizrahi family); as well as show a peaceful face toward states with whom he had sensitive ongoing talks, rather than a humanitarian gesture.

The next alternative theory, ethnicity, is unsatisfying for a number of reasons. Sharon appealed to a “Jewish Decision” (IMRA 29 JAN 2004), or “Jewish Feeling” (Jerusalem Post 30 JAN 2004) when explaining his APRI decision in 2004.

First, as early as 1908, political scientists such as Arthur Bentley were asking “why it was that the Aztecs and the Red Indians, being apparently of the same ethnical stock, had such different histories, if psychic qualities determine development” (Bentley 1908 fn 24). Bentley argued and proved through comparative studies that government decisions which dealt with the prisoner discourse were a result of structural and institutional systems rather than ethnicity or culture.

Second, in 2003 Sharon had begun to develop a disengagement plan which would withdraw Israeli troops from Gaza. It was in his interest to show that he was willing to act reasonably in pursuit of peace deals, and it made sense to deal with Hezbollah in Lebanon, which was still quite active in 2003. Further, by December 2004 Sharon had directed his security officials to

shorten Palestinians' prison sentences, in an attempt to curry favor with Egyptian president Mubarak, whose cooperation was necessary in creating and perpetuating the mechanics of Gaza disengagement.

The political pressures under which the Sharon administration operated provide a much more believable explanation for his APRI than a Goebbels-like appeal to the "Jewish mind".

A third alternative theory posits the simple desire of a government to get its people back. This needs little argument to refute. A consistent failure to come to the aid of its citizens overseas is a near-shibboleth among US civilian workers abroad. The case of US citizens in 1980s Lebanon is of a type with that of US journalists slaughtered by ISIS in the last decade.

A more rational and less emotive explanation is the prisoner discourse. Prisoner type (worthy vs unworthy, which in many cases means "military" versus "civilian") is a much better predictor of government APRI or rescue than citizenship or ethnicity. There was no IDF response to the abduction and murder of nearly a dozen Jewish notables in Lebanon during the mid-1980s; instead the Government of Israel sent a letter of protest to the UN (United Nations General Assembly Security Council 1986). Contrast this with the eyewitness testimony of a US Marine who saw an entire IDF brigade deploy out of Metula in response to the taking of two GSS agents in southern Lebanon in the same time period (von Wald 2020).

An argument made against rescuing US hostages in Lebanon was that the hostages had been informed of the dangers and stayed in Beirut anyway. In fact, Oliver North admitted that there were no plans in place to rescue US hostages in Beirut (Coughlin 1993). By 1987, a similar trope was evident with the Jews of Lebanon who were "advised" to emigrate in response to the dangers they faced (Jewish Telegraphic Agency January 15, 1987). There have been similar pronouncements recently regarding journalists in Syria (Hitchens in Daily Mail 1 JUN 2013).

The US government has in the past created hierarchies for citizens' lives. For instance, in the 1980s and 1990s the military standing orders throughout NATO in regard to hostage-taking were explicit (Milmo 2009): if a nuclear weapon were seized and captives taken, the weapon was to be recovered at all costs. Hostages were "not a consideration".

Another factor governing US inaction toward "lower priority" hostages is the official negotiating stance of "no deals with terrorists", a function of belligerent category. This stance is considered inviolate by many uninformed citizens; and there would be an electoral price to pay if that were to be changed in the face of hostage-taking by an adversary. It would probably be less

politically harmful to deliberately change the policy before such pressures existed. So, while secret negotiations will almost certainly continue between US government officials and “terrorists”, it is doubtful that the US government will openly pay ransom for its civilians the way that many European states do. Nor is this a recent phenomenon brought about by Islamist terrorism: debate over the efficacy and righteousness of US ransom for captives shaped hostage negotiations with the Comanche and Apache tribes during the 1860s and 1870s (Zesch 2004).

Finally, the last alternative is the “No Man Left Behind” (NMLB) theory, which is supposed to explain the covenant between warriors, and between the government and its soldiers. The saga of combat search and rescue (CSAR) is a long and romantic one: the first CSAR on record was the daring rescue of one downed pilot by another at Gallipoli in 1915 (Galdorisi & Phillips 2008).

The Israeli Defense Force is explicit in its public statements that it will leave no soldier behind if captured. Levy (2012) shows that in conscription societies especially, “death (in battle) is destiny” while capture starts discussion of the “contract” between conscript and government. While NMLB is a meaningful sentiment, it is untrue. As Robin Higgins recounts in her memoir “Patriot Dreams” (2000), her husband LtCol Rich Higgins USMC was kidnapped and killed in Lebanon while a UN Military Observer, with no governmental plans to rescue him despite personal attention to his case from high level US and UN officials. Indeed, an effort was made to make Higgins appear responsible for his own fate (von Wald interview 2020; W. McHenry, personal communication, June 20, 2020).

Admittedly, NMLB is an emotional issue with great resonance. A large portion of the US public still exhibits a sense of betrayal regarding Vietnam-era POWs ostensibly left behind (Bell & Veith 2004; Gallagher 2018). This is a very recent development, however. Charles S. Young claims that “prisoners of Vietnam were perhaps that war’s most successfully heroicized group... while in 1953, prisoners returning from Korea got the opposite treatment” (2014, 1).

Indeed, Vietnam POW/MIA activists created a movement composed primarily of family members and veterans (a departure from other wars where the US military quietly registered the dead and missing), which has had a profound conservative influence on US politics (Allen 2009). For instance, in 1982 President Ronald Reagan proclaimed “National POW-MIA Day” based on a joint resolution of Congress which had been passed in 1979 (Reagan Library 1982). Because of Reagan’s political attention, the black and white POW/MIA flag flies “at least once a year over

every state capitol”, and is regularly flown “at the White House, the U.S. Capitol, the Pentagon, military bases, town squares, schools and homes. In Massachusetts, there's a decal of it on every state vehicle” (Price 2017). This provides some support for Katrin Uba’s findings which show that lobbies are more effective than social movements in changing government policies (Uba 2009).

The POW/MIA effect has been achieved, arguably, through a narrative of distrust in government; Franklin (1993, xv) notes an August 1991 Wall Street Journal/NBC News poll in which 69% of respondents believed that Americans were still prisoners of war in Southeast Asia and 52% thought the United States government was not doing enough to get them back. Research has found little real evidence of government under-reporting in regard to MIA numbers, and much more evidence of its refusing to list presumptive deaths, for instance when an aircraft was seen by multiple witnesses to crash with no visible survivors (Franklin 1993). Even the true number of Vietnam MIA are contested. Numerous sources cite 2500 US personnel still missing in action from the Vietnam War (Franklin 1993; Doyle 1992); these numbers appear to be conflated, however, combining those presumed dead but unrecovered with those whose status remains as missing with fate unknown. The 1973 US diplomatic cable, “Note to Democratic Republic of Vietnam Concerning the Missing in Action” lists only “more than 1,300” missing in action and unaccounted for, about half of the oft-cited total (US Department of State 1973).

In the case of Israel, the NMLB ethos took on an even more extreme cast. There are revelations of the “Hannibal Directive” (Baconi 2018, 298n24; Mathews 2008), which states that “in case of capture, the main mission becomes rescuing our soldiers from the captors even at the cost of hitting or wounding our soldiers...” (Levush 2014, 2). This order, drawn up in 1986 at the height of hostage tensions in Lebanon (Leibovich-Dar, Haaretz 21 MAY 2003), was controversial. Blumenthal (2014, 21) describes its effects, stating that the Hannibal Directive was “a long-standing policy designed to prevent politically painful prisoner swaps, by immediately eliminating captured soldiers and anyone in the vicinity of the captors.”

Note that Blumenthal disavows the NMLB theory in his description of the directive, describing APRI as a political decision and not part of any covenant between government and soldier. Nor was it especially effective; Mathews (2008, 34-40) describes an incident where a battalion commander refused to execute the Hannibal Directive because of the threat to his own troops by

mines and IEDs; only later were aircraft dispatched to try and block the kidnappers' reentry into Lebanon.

Thus, NMLB has little explanatory power when it comes to APRI; it appears that at least in the Israeli case, APRI is a last resort after the Hannibal Directive and subsequent contingency plans had failed.

The three major institutionalist theories are related but show important differences. Sociological institutionalism focusses on the role of culture, rules, habits, norms, and legitimacy to shape political behaviors (Hall, Neitz and Battani 2004, 13-15; von Billerbeck 2017). While there is room for personal preferences in explaining a leader's behavior, Sociological Institutionalism is not well suited to explain major breaks in national policy, such as Menachem Begin's 1979 APRI, or Barack Obama's trade for Sergeant Bowe Bergdahl.

Rational choice institutionalism, based on calculated personal benefit through the use of institutional effects (Reykers 2017), has some explanatory power when dealing with specific political or electoral issues. Reykers' principal-agent model is illustrated through his examination of regional proxies as UN peacekeeping agents (in Oksamytna and Karlsrud 2020); he shows how such actors as the UN security council can forward their security interests without harming their own political standing. But the rational choice model cannot predict, much less explain, the willingness of democratic politicians to execute APRI when seemingly no rational calculus supports such a trade; and when it appears that the public is not entirely supportive of the asymmetric trade. In the case of APRI, to quote Jonathan Kirshner "the strong rational expectations hypothesis cannot be accepted as a serious empirical hypothesis." (Kirshner 2014).

Historical Institutionalism and explanatory power

Of the three "new" institutionalisms, Historical Institutionalism (HI) is best suited to explain anomalies, and more importantly, their continuity, within domestic politics.

Historical Institutionalism theorizes that government policy is largely stable. But after policy breaks do occur, future political decisions are constrained by the earlier choices (Greener 2005). Further, this change does not always exhibit a gradual, evolutionary process; such political change is often revolutionary and occurs in a recognizable temporal sequence.

Breaks in state policy are the result of discrete ruptures within a heretofore stable system at a specific *critical juncture*, (a phenomenon called "punctuated equilibrium"). This is followed by a

process of positive reinforcement for the leader who initiates the new policy. Afterwards, there is a “lock-in” of the process as it hardens to a “social fact” (Thornhill 2008). Subsequent political actions are thus constrained by the limits of the new and generally accepted policy (“Path dependence”), until another critical juncture is forced by later events. Greener (2005, 62) claims that path dependence is “arguably, historical institutionalism’s most distinctive feature.”

Initially an economic theory, HI explores such innovations as the worldwide adoption of light water nuclear reactors (Bupp and Derian 1978), a US technology which was initially resisted by both the French and British. It also explains the century-long hegemony of the QWERTY keyboard (David 1985), which has proven to be less efficient than other keyboards.

Through a combination of *systems compatibility* (with the advent of touch-typing, typists were trained on QWERTY nationwide thus creating a standard “software” which reinforced the hardware); *economies of scale* (Remington had taken over mass manufacturing and others followed suit with the keyboard because of the number of QWERTY keyboards already extant, as well as the universality of the “software”), and *quasi-irreversibility* (learning and habituation within US businesses because of the first two factors), the QWERTY keyboard became and remains the standard to this day. David attributes the persistence of the QWERTY keyboard to a simple fact, which HI recognizes and tries to trace: it is “privately profitable in the short run to adapt machines to the habits of men.” The same holds true of political decisions, especially after a policy break becomes a social fact.

Thomas Ertman (2010) provides an example of political analysis utilizing HI. He discusses the period from 1828-1835, the years immediately before and after the UK’s Great Reform Act of 1832. Constitutional norms which had favored specific classes and religions through Parliamentary gerrymandering (“Old Corruption”) were overturned and the change in UK suffrage patterns created a new two-party system, and larger national participation in politics. Ertman finds that the Reform Act had long-range effects, to include electoral expansions in 1867, 1884, and 1918.

Ertman also illustrates that a critical juncture is not necessarily a bolt from the blue; his critical juncture lasts from 1828-1835, and is “an accumulation of related events during a relatively compressed period” (Ertman 2010, 1009). Within his theoretical framework Ertman highlights the importance of structure, culture and agency. Demands for reform, which reflected an evolution of political and cultural norms, along with Catholic emancipation changed the cultural

underpinnings of the electorate; save for a series of financial crises, demands based on these new cultural norms might have created a critical juncture before 1828.

Paradoxically, the economy proved in the end to be a structural underpinning for the 1832 Act: economic distress caused greater calls for reform, as did the “contagion” effect of the 1830 revolution in France and Belgium, combined with several other Parliamentary Acts unrelated to suffrage or representation.

Finally, the personal intervention of Prime Minister Wellington and Robert Peel, leader of the Commons, show that agency of the leader is necessary for change, especially in democracies: without the willingness of both Peel and Wellington to change their policy toward civil liberties, Parliamentary leaders would not have been able to push through the Reform bill. Reform was indeed bipartisan, and came about through a combination of cultural, structural, and agency factors which “no one could have anticipated even five years earlier” (Ertman 2010, 1009).

In the case of asymmetric prisoner release, background conditions for the US, UK, and Israel were similar: all were part of the international state system, one based on anarchy and power while their antagonists were non-state actors. All three states were democracies, bound by international law, and all three had domestic codes in place which gave agency to leaders in setting the terms for prisoner release or exchange.

In addition to basic background conditions, Historical Institutionalism also privileges a second set of historically specific conditions, which Goldstone (1998) calls “initial conditions”. In the case of the UK, US, and Israel these conditions are Domestic Insurgency; the democratic COIN complex; the Prisoner discourse; and an explicit policy which forbids negotiations with “terrorists” as well as dictating prisoner exchange protocols (no ransom, 1-for-1, etc.) while giving the leader a great deal of leeway in prisoner release scenarios.

For example, Israel had a history of refusing to negotiate hostage situations until military options were exhausted (the “Rabin Doctrine”), and it further refused to allow asymmetric trades even when confronted with military failure. The capture of an IDF private, Avraham Amram, in 1978 should have been just another in a decade of similar situations.

But a set of cultural pressures (to include a nascent peace movement and *de facto* recognition of the PFLP during the negotiations); structural dysfunction (to include a prisoner marketplace produced by Israeli COIN praxis); and Menachem Begin’s own policy priorities (energy security, reelection, and the Egypt peace process) combined to create a critical juncture whereby

decisions were taken to exchange Amram for 76 PFLP prisoners, thereby undoing decades of Israeli policy. More important, this decision, wholly unforeseen and bitterly contested by the Israeli public and Knesset, somehow coalesced into a specific and expected Israeli praxis of asymmetric prisoner release. The one attempt to reset Israeli “APRI as praxis” involved Ron Arad, a downed Israeli Air Force navigator. His subsequent disappearance and the negative public feedback which ensued, as well as the bureaucratic entrenchment dedicated to avoiding another such refusal to negotiate, made it nearly impossible to take any other path but APRI.

This is not to say that history has a set trajectory, or that past decisions become a deterministic force. At a “critical juncture” there are several options which might have been taken; for instance, in the case of a conscious break with policy, maintaining the *status quo* is also a possible decision for a leader. Nor does the critical juncture have to mark a catastrophic event. For example, secret negotiations between a government and a “terrorist” group may set the stage for a change in either negotiation posture, political recognition, or the public acknowledgement of prisoner talks, all of which might have been against stated policy before the critical point.

A weakness attributed to Historical Institutionalism is an unwillingness or inability to go beyond process and examine immediate causation for breaks in policy (Capoccia 2015). My dissertation does not fall into such a trap. In addition to showing why APRI is used or not used in certain instances, I will explore the specific factors which drove Begin to create the policy of “APRI as praxis” nearly from whole cloth in 1978-79.

Conclusion

Asymmetric Prisoner Release is a political decision, taken primarily by democracies fighting domestic counterinsurgency; it is not the only option for an elected government, nor is execution of APRI a foregone conclusion when a democratic state’s citizens are captured by hostile forces. Explanations for APRI are hard to find in current social science literature. APRI is undertheorized, based on its rarity; based on modern battlefield conditions which have reduced mass surrenders of regular troops; and based on the fact that the individual leader is the level of analysis, a factor which is difficult to examine in ordinary circumstances.

Asymmetric Prisoner Release within democratic regimes is a function of three forces which do not have the same effect on autocratic regimes: the prisoner discourse, the democratic counterinsurgency complex, and domestic constraints. The three are linked. The prisoner

discourse, which consists of international law/norms regarding prisoner treatment; the category of the belligerent, whether state or nonstate, “civilized” or “savage”; and the typology of the state hostage (innocent/non-innocent, military/civilian) is the most important of these factors, effecting both domestic politics and international pressures. The prisoner discourse is the product of a centuries-long evolution in Western jurisprudence shaped in turn by just war, natural law, the law of war, international humanitarian law, and international human rights law. Each of these innovations has successively weakened state sovereignty claims.

Connected to the prisoner discourse, the growth of a global POW regime has created both international and domestic pressures upon democratic leaders to negotiate with non-state actors within COIN operations. Democratic regimes fight COIN in a way which emphasizes criminalization and detention; these tactics create not only “carceral” affective communities in the targeted populace, but create an imbalance of prisoners such that hostage-taking and demands for APRI become a viable alternative for insurgents.

Such COIN techniques also trigger global attention, under the auspices of the global POW regime, to the conditions under which detainees are arrested, charged, tried, and confined. The solely democratic concerns of electoral anxiety and constituent preferences combine with new concepts of and challenges to sovereignty claims, to create conditions which bring linkage politics to the fore. Both domestic and international communities, basing their criticisms upon global prisoner discourse, demand the freedom of the single hostage and the detained belligerents simultaneously. Often APRI is the easiest method to solve this dilemma.

As for theoretical explanations, neither realist nor liberal theories suffice. Nor do alternative sociological theories such as humanitarian concerns; ethnic/nationalistic sympathies; and the military ethos of “No Man Left Behind” adequately explain APRI. Historical Institutionalism is the mode of inquiry with the greatest explanatory power for discussing the societal and political break in democratic prisoner release policies in the late 1970s, and subsequent continuation of this policy to the present day. My concept of the democratic COIN complex; the prisoner discourse, and domestic constraints best explain this phenomenon within democratic COIN operations.

I have shown that these factors are linked to democratic regime use of APRI as a technique within COIN operations. In Chapter 2 I conduct a minor analysis and plausibility probe of post-

WW2 conflicts to test whether democracies are actually more likely to execute APRI as a conflict management tool than are autocracies.

CHAPTER 2: Regime Type and Asymmetric Prisoner Release Initiatives

Regime type has an effect on the frequency with which a leader resorts to APRI; there is anecdotal evidence that democratic regimes are more likely to make uneven trades in order to spare the lives of their personnel. It appears that as far as APRI are concerned, the US and Israel are most likely to execute such initiatives. Indeed, Avi Kober (2003) moots a new type of war, “‘postmodern’ Low-Intensity Conflict” (LIC). Kober points out that although LIC has been very common since the 1980s, the US and Israel, (the states most likely to use APRI), are largely involved in “postmodern” LIC while other nations, even other Western democracies are not. He claims that postmodern LIC can be summed up in two rules: “You cannot get killed” and “You cannot kill”.

While perhaps oversimplified as an explication of wartime doctrine, Kober’s discussion of the postmodern turn in counterinsurgency does serve to point out that specific regimes may be more likely to use APRI: not only because of their different approaches to war, but also because democratic counterinsurgency tends to be protracted (Kober 2003, 19), leading to a need for APRI as conflict management. My research points out a specific reason for this which I shall explicate in later chapters, lending some support to Kober’s thesis.

In his examination of democracies (specifically the US and Israel) fighting COIN, Kober further states: “The main argument is that as a result of a change in values in Western democratic societies, the conduct of LICs by Western democracies has become significantly constrained by the need to manage such conflicts morally and in a less costly manner” (Kober 2003, 3).

This difference in the way regimes approach war has become a well-worn trope: Lake (1992) is probably the best early explication. His discussion of democratic versus autocratic impetus for war emphasizes the importance of *voice* (read: electoral pressure and social movements) in democratic decision-making. Dobransky (2014) updates Lake’s data, and points out that alliances play a greater role in democratic warfighting than previously thought. This insight lends support to the research of Magyar & Danopoulos, eds. (1994), who found that prolonged war (a characteristic feature of the democratic COIN complex) has a measurable effect on superpower interests and drives their desire to solve long-term conflicts by pressuring smaller states to make peace. Filson & Werner (2004) claim that democratic regimes are more likely to settle conflicts than dictatorships, especially if the democracy has been attacked. These findings

provide supporting data points for my contention that democracies tend to use APRI as a conflict management technique more often than autocracies.

That said, why democracies approach prisoner release or exchange as conflict management is nebulous, because there is so little research on the subject. The field of conflict resolution itself is still fairly young, and much of its theory is based on limited practice and even more limited theoretical explication. Ramsbotham (2017, 2013) arguably provides the most useful discussion of theory-building in the Conflict Resolution field. But he also states that the perhaps the simplest conflict resolution dynamic, “dialogue between enemies” (2013, 56) is willfully ignored and thus undertheorized. There is little literature addressing the causal factors that influence prisoner release within either political or conflict resolution praxis outside of treaties or ceasefires. Thus, my methodology will focus on hypotheses testing and theory building rather than theory verification.

I use Bruce Bueno de Mesquita’s (2002) analytical method as a guide. While he does not concentrate on conflict management *per se*, his institutional bent and logical method supports my research requirements. His analytical focus is on the individual leader as catalyst for momentous national policies: in the case of APRI, prisoner release is one of the few “autocratic” privileges granted to democratic leaders.

Bueno de Mesquita suggests a specific method of inquiry composed of three parts: first, “careful archival research to evaluate whether specific decision makers really analyzed problems in the ways our theories suggest”; second, “statistical analysis to see if our explanations fit well the broad history of many decision makers and their states”; and finally, an “explicit formal logic to ensure that the ideas tested in archives and through statistics are logically coherent” (B. Bueno de Mesquita 2002, 4-5).

In my case, I first attempt to prove a democratic tendency toward APRI by analyzing large numbers of conflicts, and examining specific variables such as regime type and conflict type. I use a sample of 50 conflicts to determine whether democracies generally execute APRI more often than autocracies, especially when engaged in counterinsurgency.

The second part of this framework is theory development, where I attempt to create a “logic” of APRI: structural, cultural, and political mechanisms for the actions of leaders which plausibly suggest causation, such as the prisoner discourse and the democratic COIN complex as covered in Chapter 3; a cross-case comparison of APRI decisions in Chapter 4; and finally, I conduct in-

depth studies of specific cases (Avraham Amram and Gilad Shalit) to explain specific causes for APRI and its continuity within Israeli politics in chapters 5,6, and 7.

In keeping with Bueno de Mesquita's framework, the current chapter constitutes a plausibility probe, "an intermediate step between hypothesis generation and hypothesis testing and comparable to a pilot study" (Levy 2008).

I hypothesize that specific factors largely peculiar to democracies (prisoner discourse, COIN praxis, and domestic constraints) make them more likely to execute APRI. But first there must be some basis for further testing of the hypothesis; as Eckstein states, "A stage of inquiry preliminary to testing sometimes intervenes and ought to do so far more often than it actually does in political study (or in other social sciences)" (Eckstein in Hammersley, 2000 140-143). This chapter constitutes that preliminary stage of inquiry. The comparative analysis of APRI within 50 conflicts, wherein democracies are more likely to execute APRI as a conflict management technique than autocracies (see Meierhenrich 2008, 295), provides a plausibility probe for my theoretical model.

As Spiro (1994) indicates, it is difficult to find statistical significance for rare events. The conditions which allow for APRI are seldom present at the same time in the same location: large numbers of insurgent prisoners or detainees; active conflict with no ceasefire agreement involved; and a non-state actor in possession of the state's personnel. In addition is the problem of definitions, the classic "one man's freedom fighter, etc." Lustick (2009) claims that practical definitions are the beginning of any plausibility probe and that such definitions cannot be so narrow as to exclude anything but the searched-for variable, but not so broad as to include all possible events. I have operationalized APRI (see page 10) as *an extrajudicial/extra-procedural release of prisoners, military or civilian, primarily "criminalized" offenders in a situation which does not legally require such an action from the leader*. Further, I state that *this procedure is usually a trade of uneven proportions*. Such a definition takes APRI out of standard ceasefire or treaty obligations, gives responsibility to the leader (where it usually rests) and allows for not only asymmetries of combatant forces but of political power.

It is a commonplace observation that varying regime types differ from each other in how they treat *their own* personnel who have been captured by the enemy. Autocratic and colonial regimes have historically appeared to place less value on their own personnel than have democratic regimes. There has admittedly been little research done on the topic. But numerous democratic

commentators have remarked on the disregard shown to prisoners (either their own friendly personnel or enemy soldiers) by autocratic regimes. Whether the Egyptian army shooting its own troops as they tried to reenter friendly lines during the 1967 war (Churchill 1967), or Stalin's near-total incarceration (or outright execution) of Soviet soldiers captured by the Germans after WW2 (Edele 2008, 10), autocratic regimes are suspicious of returning captives. Dictators appear loath to let citizens who have seen the enemy's homeland "pollute" other citizens' minds. Further, as events in 1980s Lebanon show, when autocratic governments do show concern about their personnel (whether out of a desire to make a statement or keep valuable intelligence assets out of enemy hands) they show no real restraint or inclination to negotiate.

Democracies are qualitatively different in their prosecution of war, especially COIN (Lyll 2010). Merom (2003) claims that modern democracies are largely unsuccessful in COIN because they face a conflict between the state and society (primarily elite opinion). This conflict is manifest in three factors: casualty sensitivity; societal repugnance at the brutality necessary to prosecute insurgency; and a commitment to the orderly norms of democratic life, which are threatened by the first two factors. Patterson (2016) devotes his book to debunking Merom's claims; but still admits that democracies face constraints that dictatorships do not. Lyll & Wilson (2009) make the point that modern (post-1925) counterinsurgency is qualitatively different in that prior to WW 1, larger nations won their COIN campaigns more than they lost. The authors attribute this pattern of defeat not to democracy *per se*, but attribute such losses to: mechanization which inhibits intelligence gathering, external support for insurgents, and the counterinsurgents' status as occupier. They find no meaningful connection between regime type and defeat. Lyll (2010) further found no relationship between regime type and war outcomes or duration. Thus, a mystery remains: if all kinds of regimes fight unsuccessful COIN, why do democracies seem more willing to execute APRI during conflict, especially prolonged COIN?

Lyll & Wilson's (2009) factors (common to democratic COIN praxis and associated with defeat) also seem to be associated with protracted conflict. In the cases of the US, UK, and Israel these factors do appear in their turn to have created the conditions for protracted war, which helps create the dynamic which favors APRI as an insurgent strategy. Protracted conflict is not merely a matter of duration: it effects the way that regimes treat prisoners of war, and also differs between democratic regimes and autocratic regimes.

G. P. Wallace (2012) explores the abuse of prisoners during wartime, and attributes prisoner abuse in part to public opinion. Protracted conflict (and public support for testing the enemies' resolve); annexation as the war aim (and the resultant categorization of insurgents as a fifth column), and regime type (with autocracies more likely to abuse POW) all effect how prisoners are treated.

Wallace's analysis ties into the prisoner discourse (international law, belligerent category, prisoner type) in several ways. First, he shows that with regard to prisoner treatment, and not just combat, democracies diverge from autocracies: democracies are less likely to abuse prisoners overall. I believe that this may make democratic polities more sensitive to how insurgents treat their own state's prisoners.

Conflict type (protracted/war of attrition/war of annexation) makes abuse 2-3 times more likely. Treaty ratification is a significant factor only when both sides ratify a treaty. Democratic COIN operations are almost always against nonstate actors; and nonstate actors are seldom involved in a dyad of mutual ratification. Thus, "belligerent category" (state/nonstate) may not be of robust importance for the state when deciding conventional POW policy; as I mentioned above it is of importance in public perception of captors and public pressure upon governments to free a state's personnel. It becomes of greater import when deciding negotiation strategy.

Further, while it is a truism that international norms may be, and increasingly have been, internalized by the international system (Risse, Ropp, and Sikkink, eds. 1999), Wallace detects an interesting anomaly: post-1949 Geneva Convention prisoner of war treatment is markedly worse than pre-1949 Geneva Convention treatment. Wallace attributes this to the fact that "international norms are shaped by war, they do not shape war". This may be seen in the democratic response to insurgency, whether Israel or the UK, which follows a common pattern that I shall discuss in greater detail below: first, declare a state of exception; second, derogate responsibilities under international law; third, criminalize political activity under domestic statutes; and finally, detain large numbers of insurgents under these statutes.

This process, which I call COIN through capture creates a space whereby democratic (domestic) norms become more powerful than international norms, and domestic constraints (public pressures) such as electoral concerns may push leaders to a decision more readily than international law. Further, this COIN through capture creates an imbalance of power (mass detention of insurgents versus few state soldiers captured) which makes APRI a viable weapon

of war for insurgents. Wallace also shows that when both sides hold prisoners, democracies are much less likely to abuse POWs because of a fear of retaliation. This same fear on the political level (which is created in the public by a combination of belligerent category and prisoner type) is what creates domestic pressures on democratic regimes to execute APRI as a conflict management technique.

A further explanation for the characteristic ways in which democracies conduct COIN and therefore prisoner release comes from the theory of shared “democratic” norms, in this case an adherence to international law.

Risse, Ropp, & Sikkink (1999, 117) argue that norm socialization only takes place in a milieu of recognized states, such as the post-war UN system; analysis has also shown that democratic governance is a necessity for International Human Rights Law to have a positive impact on domestic law and practice (Besson 2018). Asymmetric Prisoner Release as conflict management is thus a contingent result of the post-war model: the privileging of de jure states (Jackson and Rosberg 1982); the evolution of regional legal entities which strengthened the UN declarations and established separate human rights law courts (Moeckli, et al. 2018, 251); and widespread support for IHRL as a political language, together created conditions whereby APRI became a viable conflict management tool.

By 1977 the Additional Protocols to the Geneva Conventions decisively privileged human rights law over the laws of war, and created not only new standards for international recognition but new norms for international conduct. “National liberation” struggles took precedence over state interests; insurgencies were granted the same status as conventional interstate war.

My data shows that there is both a quantitative and qualitative difference between regimes in their treatment of the POW question, and in their use of APRI. Because of this divergence and the necessity of limiting the study parameters, my research focuses on the use of asymmetric, extrajudicial prisoner release as a conflict management tool by democratic regimes embroiled in conflict, largely counterinsurgency, from 1978-2011. In this chapter I justify my focus by examining the comparative use of APRI by autocratic, democratic and colonial regimes, and pointing out a quantitative difference.

In order to establish whether regime type and conflict type effect prisoner release as a general rule, I conducted a medium-n (n=50) study of conflicts randomly selected from the database provided by Gantzel and Schwinghammer (2000) in *Warfare Since the Second World War*.

Gantzel & Schwinghammer define war by three characteristics without delving into casualty counts, *à la* Small & Singer (1982). War is not divided into interstate or intrastate conflict, nor is all collective violence examined. For the authors, war is characterized by:

- 1) Two or more armed forces with at least one side composed of regular government troops;
- 2) A minimum of centrally directed organization of both warring parties;
- 3) A conflict exhibiting continuity.

As I discuss in further detail below, I utilize Gantzel & Schwinghammer's *Warfare Since the Second World War* (hereafter "G&S 2000") as my source document for both conflict type coding and conflict analysis. I then used Polity IV data to code regime types.

My timeframe, between 1945 and 2000, for such analysis is not entirely arbitrary; Farber & Gowa (1995) for example, argue that global conditions have changed so much since the Second World War that 1945 is "the first year in which the democratic peace has a measurable effect on international relations." Further, the Third Geneva Convention of 1949 marked the first international diplomatic discussion of rules governing non-state actors (both collective and individual) involved in conflicts other than war. This reflected not only a new, international "counter-colonialism", but also the attempt by ICRC to regain its own moral and institutional power after its failures in halting the Holocaust (Junod 1996). These factors created a gradual break between pre-war and post-war norms regarding prisoner treatment and conditions. Thus, 1945 seems a reasonable place to begin any measure APRI under "modern" conflict conditions. Because an argument could be made that such conflicts as that within Yemen or the rise of ISIS skew numbers with a bias toward kidnapping for ransom or outright slaughter of POWs, I elected to stay with the year 2000 as an end point for my data analysis (though not functional analysis) of APRI within conflict.

There are some events of interest in the period covered by Jorgenson's 2017 study, which discusses the capture of western troops in the Global War on Terror. Jorgenson shows that state entities who capture personnel are much more likely to release these prisoners than are non-state entities, which does little to change the dynamic of democratic states using APRI to free their personnel. This phenomenon may give substance to my discussion of belligerent type within the prisoner discourse but has no place in the present discussion.

As mentioned, the dissertation roughly follows Mesquita's logic of analysis. First is large numbers of cases and examination of specific variables; second is a mathematical logic, which suggests causation; and finally, in-depth studies of specific mechanisms to explain causation for APRI within democratic polities.

Analysis of Conflicts

My analysis is based on a selection of 50 conflicts, randomized using the program at www.random.org and extracted from the 209 events listed in Gantzel & Schwinghammer (2000). I examined each of the 50 conflicts, using techniques drawn largely from Qualitative Comparative Analysis (see Rihoux & Lobe 2015; Wagemann in Della Porta, ed. 2014; Ahram, et. al., eds. 2018), which allows for simple Boolean analysis of specific traits within and across cases. Linking 50 cases to Gantzel & Schwinghammer's numbering, pagination & coding for conflict dates, belligerents, and typology, I then consulted the database contained in *Polity IV Individual Country Regime Trends, 1946-2013* (Marshall & Gurr, 2014).

The Polity IV data was used to code state belligerents for regime type. I code each regime in the years that it is embroiled in conflict, for either dictatorship, democracy or colonial regimes.

Polity IV uses a numerical system to code regime types under the term "Authority Trends". A nation at level 10 (such as the US) is a full democracy, 6-9 is an open democracy and 1-5 is considered an open anocracy. The same trend also applies for dictatorships under Polity IV: closed anocracies are rated from -1 to -5; autocracies from -6 to -10; and failed states less than -10. I simplified Polity IV's graph for this analysis, rating democracies from 1-10 on the Polity IV scale, and autocracies from -1 to -10. In the case of colonial wars, I first coded a government as colonial based on its status as a colonial power during the dates of the conflict; afterwards I put them back into the pool of nondemocratic states for the purposes of the conflict and for counting numbers of APRI. I then developed truth tables for each conflict (see Appendix A for truth tables). These truth tables reflected basic questions with single yes/no answers regarding the parties to each conflict: 1) Was there an APRI? 2) Was this initiative mooted as conflict resolution? 3) What was the Regime Type of the stronger party? 4) Of the weaker party? 5) What was the conflict type?

Once I placed the factors of conflict type and regime type into a truth table (See Appendix A), I searched separate secondary sources for the presence or absence of asymmetric prisoner release

initiatives. I developed both raw numbers and percentages for APRI execution based on conflict type and regime type. I attempted to use at least three secondary sources when exploring each conflict, though this was not always possible. There is a possibility that I may have missed an APRI event within a specific conflict, though I made every attempt to use electronic versions of my sources as a backup in order to utilize word search functions. The numbers are below.

Table 1 APRI by Regime Type

REGIME TYPE	Democratic N=17		Autocratic N=28		Colonial N=5		Autocratic/Colonial N=33	
APRI Yes	10	59%	10	36%	1	20%	11	33%
APRI No	7	41%	18	64%	4	80%	22	66%
Amnesty Yes	7	41%	9	32%	1	20%	10	30%
Amnesty No	10	59%	19	68%	4	80%	23	70%

Figure 1 Regime Type and APRI percentage

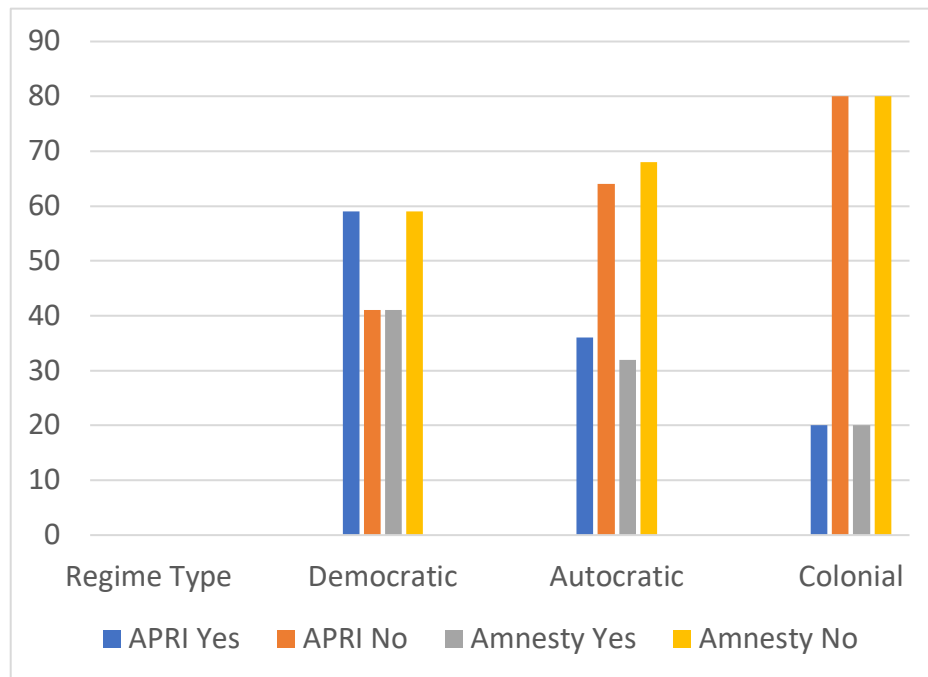


Table 2 APRI by Conflict Type

CONFLICT TYPE	A-Anti-regime War N=23	B-Internal War N=13	C-Interstate War N=9	D-Colonial War N=5	Mixed (Next Table) N=14
APRI Yes	9	7	4	1	
APRI No	14	6	5	4	
Amnesty Yes	8	6	2	1	
Amnesty No	15	7	7	4	

Figure 2 Conflict Type and APRI

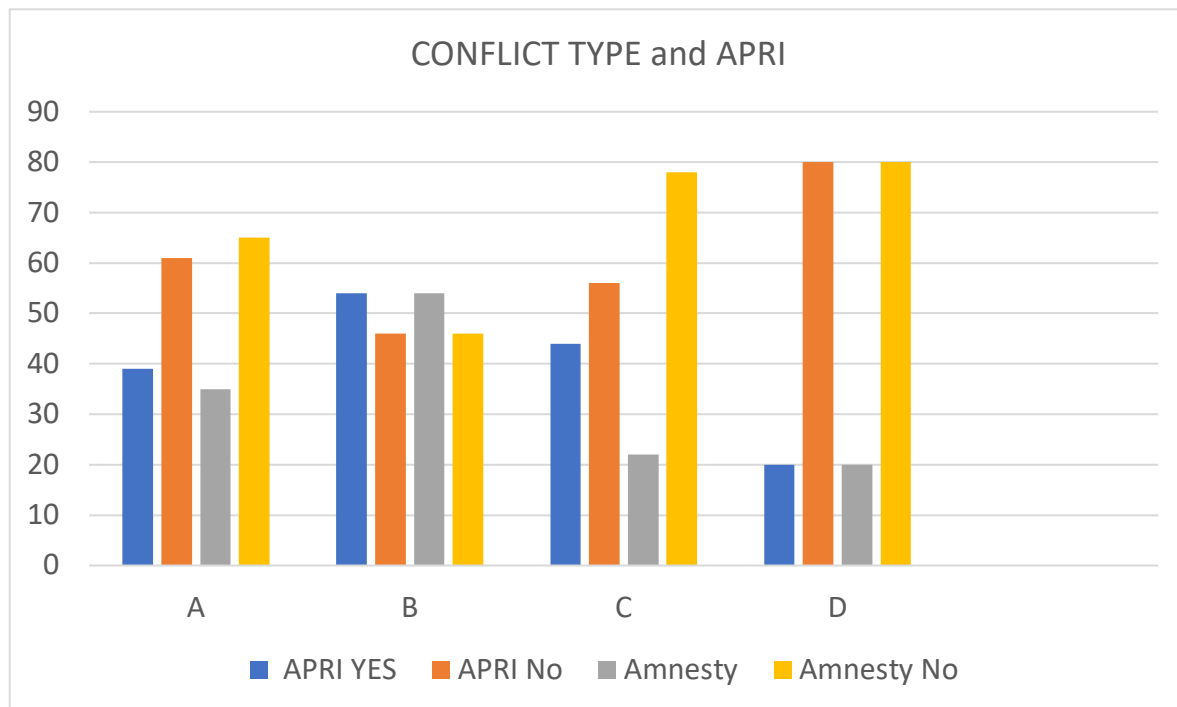


Table 3 APRI in Mixed Conflict Types

Mixed	DA	AB	DA	AB	AB	ABC	AC	AB	BC	AB	AB	AB	AB	BC
Analysis Number	09	12	14	17	19	29	31	33	34	35	41	42	43	48
Primary	D	A	D	A	A	A	A	A	C	A	A	A	B	B
APRI Yes				1	1	1				1			1	
APRI No	1	1	1				1	1	1		1	1		1
Amnesty Yes				1	1	1				1			1	
Amnesty No	1	1	1				1	1	1		1	1		1

Table 4 APRI Totals Conflict Type and Regime Type

CONFLICT TYPE (No Mixed)	A-Anti-regime War N=23		B-Internal War not antiregime N=13		C-Interstate War N=9		D-Colonial War N=5	
APRI Yes	9	39%	7	54%	4	44%	1	20%
APRI No	14	61	6	46	5	56%	4	80%
Amnesty Y	8	35	7	54	2	22	1	20%
Amnesty No	15	65%	6	46%	7	78%	4	80%
Regime Type	17 Autocrat APRI=5 29%		9 Autocrat APRI=5 56%		4 Autocrat APRI=0 0%		5 Autocrat APRI=4 80%	
	6 Democracy APRI=4 66%		4 Democracy APRI=2 50%		5 Democracy APRI=4 80%			

Based on these numbers, some trends are apparent despite small sample sizes. First, colonial wars were much harsher in terms of government concessions regarding prisoner release. This lends support to the idea that modern democracies fighting COIN (where the doctrine is often based on tactics developed during wars of decolonization) may find themselves in situations where APRI appears to be the only recourse. Israel especially fights COIN through capture (and did so much more instrumentally when capture of prisoners to be used for bargaining chips was allowed under Israeli law), a favored tactic of Britain's post-1945 colonial wars. Second, it is apparent that democracies are much more likely than either autocracies or colonial regimes to use APRI as a conflict management technique; democracies are nearly twice as likely to do so. Third, amnesties are seldom used by any regime type in the conflicts studied; this lends support to the idea that amnesties, especially mass amnesties are either a function of ceasefires & transitional justice, or used by transitional governments as part of their initial liberalization period (see Huntington 1991). Louise Mallinder, in her masterful 2008 study of amnesties worldwide, does posit differences in the utilization of amnesties between democracies and dictatorships, as well as a fall in numbers of regimes which use unconditional amnesties.

I expected that there would be no statistical significance to regime use of APRI: war is rare, APRI situations even rarer. This said, the percentage differences between democratic and autocratic use of APRI are suggestive enough to make further investigation worthwhile.

However, I performed a chi-square analysis to see whether there was statistical significance to APRI use based on my numbers and percentages. In the first calculation I use totals for autocracy without the colonial belligerents included. Those results are below:

Table 5 CHI-Square Analysis Democratic vs Autocratic APRI (No colonial)

REGIME TYPE	APRI YES	APRI NO	Marginal Row Total
DEMOCRATIC	10 7.56 (0.79)	7 9.44 (0.63)	17
AUTOCRATIC	10 12.44. (0.48)	18 15.56. (0.38)	28
Marginal Column Total	20	25	45 (Grand Total)

The chi-square statistic is 2.2878. The p-value is .130393. This result is not significant at $p < .05$.

The chi-square statistic with Yates correction is 1.4476. The p-value is .228912. Not significant at $p < .05$.

In the second chi square equation, I used the figures for autocracies which include the colonial regimes within their numbers. The figures are below:

Table 6 CHI-Square Analysis Democratic vs Autocratic (colonial included)

	APRI YES	APRI NO	Marginal Row Total
DEMOCRATIC REGIME	10 (7.14) [1.15]	7 (9.86) [0.83]	17
AUTOCRATIC REGIME	11 (13.86) [0.59]	22 (19.14) [0.43]	33
Marginal Column Total	21	29	50 (Grand Total)

The chi-square statistic is 2.9927. The p-value is .083641. This result is significant at $p < .10$.

The chi-square statistic with Yates correction is 2.0378. The p-value is .153435. Not significant at $p < .10$.

In conventional terms, this is still not statistically significant. This simplistic interpretation of the data, however, is contested. Regina Nuzzo, an associate professor of statistics at Gallaudet University, describes Ronald Fisher’s development of the p-value: “ He intended it simply as an informal way to judge whether evidence was significant in the old-fashioned sense: worthy of a second look” (Nuzzo 2014, 150-152). Indeed, the American Statistical Association has issued an official statement (by a committee which Nuzzo chaired) regarding p-value (Wasserstein and Lazar 2016). Of the six points that the ASA committee made regarding this research approach, two are especially germane to my plausibility probe:

3. Scientific conclusions and business or policy decisions should not be based only on whether a p-value passes a specific threshold.

6. By itself, a p-value does not provide a good measure of evidence regarding a model or hypothesis.

Despite the small numbers involved, the data is suggestive and gives weak evidence that democracies may indeed use APRI more than autocracies. In terms of the most powerful belligerent, democracies were involved in 15 of the 50 conflicts analyzed while autocracies figured in 35 of the 50. Democracies mooted some form of APRI in 60% of the conflicts which they fought; autocracies did so 36% of the time, and colonial governments 20% of the time. When colonial governments were categorized as autocratic, the percentages changed to democratic use of APRI 60% of the time; and autocracies 33% of the time. This indicates a strong bias among democratic regimes to attempt APRI within conflict management praxis.

Even more indicative is the percentage of APRI based on conflict type. Gantzel & Schwinghammer categorize conflicts as anti-regime (A); Internal, not anti-regime (B); interstate (C); and colonial (D). In the case of anti-regime wars (Category A), democracies comprised only 6 of 23 such conflicts, about 26%. However, democracies mooted APRI 66% of the time in such cases, while autocracies executed APRI only 29% of the time. Further, of the five instances wherein autocracies executed APRI within anti-regime war, four of these initiatives were forced upon the regime by regional or global powers, sometimes long after the war had actually ended. The APRI were not executed on the regime's initiative. In combination with the known political and behavioral differences between democratic and dictatorial regimes, as well as anecdotal evidence that shows democracies using APRI more than autocracies, this data indicates that the hypothesis is plausible, and worthy of further exploration.

The next three chapters will discuss the factors which will go far in explaining democratic use of APRI as conflict management. Chapter Three will interrogate the prisoner discourse and its effects on both government and the population; Chapter Four will discuss democratic counterinsurgency praxis, the democratic COIN complex wherein the state attempts to circumvent international law as a method of suppressing insurgency; and Chapters Five and Six will explore the domestic constraints which influence and focus a democratic regime's decision processes.

CHAPTER 3: Structural Foundations of Asymmetric Prisoner Release Initiatives: The Prisoner Discourse and the Democratic Counterinsurgency Complex

In chapter one, I discussed the phenomenon of asymmetric prisoner release initiatives, whereby democratic regimes resort to uneven prisoner exchanges in order to manage conflict during counterinsurgency operations. My dissertation explores the factors which lead *democratic* governments to execute asymmetric prisoner release initiatives as a conflict management technique.

In chapter two, I showed through a plausibility probe and statistical analysis that democracies not only tend to fight counterinsurgency differently than autocracies, but that one peculiarity of democracies is a willingness to execute APRI as a method of conflict management. This is the result of a change in the way democracies have been forced to fight COIN after the 1960s, especially with regard to detention policy. With evidence that democracies do fight differently than autocracies, and are prone to the use of APRI, the question remains: Why are APRI executed in some cases but not others?

In this chapter I continue to support my argument that a democratic state's decision to execute APRI is influenced by two main structural factors, the prisoner discourse and the democratic counterinsurgency complex. These in turn shape government and social responses to the captivity of their citizens. Over the course of time, through positive electoral and social feedback, what had been considered breaks in state prisoner policy become Standard Operating Procedures (SOPs); this standardization produces future government responses, (path dependence), which in turn stabilizes the "new" policy.

I argue that both discursive and tactical structures are foundational in understanding a democratic regime's recourse to APRI. Democratic COIN praxis is based upon avoiding international oversight of military and penal operations; while much of the domestic and international pressure imposed upon regimes facing an APRI situation are a direct result of the prisoner discourse.

The prisoner discourse consists of three components. The first is *international law/norms* governing state conduct during conflict, especially in regard to prisoner treatment. Legal scholars postulate that democratic governance is a prerequisite for international human rights covenants to have an observable influence on domestic laws (Moeckli, et al. 2018).

The second is *belligerent categorization*, largely influenced by government pronouncements, and often the determinant of how a public perceives potential treatment of its own soldiers at the hands of the enemy. Finally, *prisoner type* as promulgated by the government, but more importantly as perceived by the public, dictates the level of effort made to rescue or release state personnel held by a hostile force. There is a hierarchy of “worthy” and “unworthy” hostages which is evident in both government planning and public opinion when it comes to prisoner release.

Democratic prisoner rescue and negotiation strategies are developed and executed largely through the emotive and political filter of the Prisoner Discourse. The effects of international law/norms, belligerent category, and prisoner type provide a necessary but not sufficient explanation for asymmetric prisoner releases. Thus, while the price of an Israeli soldier rose precipitously between 1978 and 2011 because prisoner type took on an increasingly greater import in Israeli politics, there were similarities but not exact parallels in the cases of the UK and US. Indeed, the US government went out of its way in the 1980s to paint US hostages as unworthy, because they had been warned to depart Lebanon but refused; while competing narratives in regard to US Army Sergeant Bowe Bergdahl’s “worthiness” provided more political heat than light 30 years later. This dynamic supports the idea that Prisoner Discourse is more than mere discourse: it has a material effect on prisoner policies.

Further, the Prisoner Discourse supports the tenets of Historical Institutionalism, in regard to specific breaks, resets, and stabilities in government APRI policy. A change in government policy toward certain belligerents for example, may explain what eventually becomes a permanent break in government prisoner policy. For example, the gradual conflation of Sinn Fein and the Provisional IRA made it possible for the UK government to commence negotiations with the “political” party alone, despite a suspicious overlap in membership between Sinn Fein and the IRA.

A change in societal views of specific hostages may also explain a sharp break in government prisoner policy. For example, both social mobilization and bureaucratic support made it nearly impossible for Israeli leaders to ignore the plight of “worthy” hostage Gilad Shalit in 2006; but this pressure did not exist in 1978 when Avraham Amram was captured. Menachem Begin was forced to lie to the public about his conditions for freeing Amram; Netanyahu was forced to explain his *inaction* on Gilad Shalit 30 years later. The Prisoner Discourse thus explains positive

public feedback which results from a policy break, the “lock-in” which results, and then the path dependency seen in current Israeli prisoner policy.

It is clear that the Prisoner Discourse creates political forces which push democracies into specific COIN and conflict management practices, to include APRI. Whether engaged against Israel, the UK, or the US, insurgents found themselves on a battlefield where human rights obligations had been derogated; where the insurgents could not openly negotiate in good faith with legitimate government officials; and where the opposing government’s strategy for release of their captured citizen was based on the standing of the prisoner within society and not a standard operating procedure. In Chapter 4, a short comparison of Israel, Spain, the UK and the US will explore the similarity of the Prisoner Discourse on state response to capture of its citizens by insurgent forces.

International law and its attendant norms have long influenced military and diplomatic praxis especially with regard to prisoners of war; these codes of war are commonly called International Humanitarian Law (IHL). International Humanitarian Law in its 19th century western version was initially developed, and largely remains today, as a method to govern state conduct in declared wars. While the result of a long evolution in European statecraft, IHL as jurisprudence was the product of only a few decades of practice by World War 1; and in the main IHL proved incapable of governing belligerent conduct during total war, whether in 1914-1918 or 1939-1945.

By 1945, the Nuremburg and Tokyo tribunals, which were explicitly designed to reduce sovereignty claims in favor of international norm enforcement, criminalized certain individual behaviors within state practice and, more importantly, enforced international law through severe penalties. The criminalization of *raison d’etat*, and codification of individual rights & responsibilities, became known as International Human Rights Law. The ascendance of IHRL (*compelling and universal law*) over IHL (*customary and specific law*) was nearly instantaneous after 1945, and arguably hegemonic in its reach.

This change in legal norms has facilitated a change in political norms and has also changed counterinsurgency doctrine & practice, leading democratic states to utilize a tactic far removed from “hearts and minds”: COIN through capture.

Counterinsurgency through capture exhibits similarities across democratic regimes, whether in Northern Ireland or Israel. In modern diplomatic praxis, COIN through capture follows a

predictable sequence: first, the state declares a state of exception (Agamben 2005). Second, the state derogates its human rights obligations, based on the declared state of exception (an action which is legal under international law). Next, the state criminalizes political behavior under emergency statutes (in order to keep the insurgency from being recognized as a national liberation struggle); and finally, it utilizes mass detention as a population control technique under those same emergency orders. I shall cover this in greater detail in Chapter 4.

The development of modern COIN through capture is the result of two separate but concurrent innovations. First was the realization by insurgent forces (both the IRA and Palestinian organizations) that they were losing skilled technicians faster than they could replace them. In response, the Popular Front for the Liberation of Palestine-General Command's (PFLP-GC) increased its use of hostage-snatching in the mid 1970's. Moshe Dayan (1976) himself called this an unprecedented method for combatting the state; his premise became clear especially after an IDF soldier was kidnapped in 1978. Dayan described the Israeli government's surprise at this method, and debates over how to meet the new tactic. There has never been a real tactical response by the IDF, as evidenced by constant insurgent recourse to APRI since 1979, and especially the disproportionate use of force exhibited in 2009 during Operation Cast Lead.

Immediate rescue remains the IDF's only real option, but any hint at negotiation signals that Israel is unable to execute such a rescue. This gave organizations which captured even a single Israeli soldier a huge bargaining chip once any talks began. Further, the power imbalance between states and insurgents virtually guarantees that more insurgents than soldiers will be imprisoned. Therefore, any exchange for a state's soldier will reflect that power imbalance.

Second was the gradual merging of IHL and IHRL. International Law has historically focused on interstate behavior, but after Nuremburg human rights law privileged the individual over *raison d'etat*. This was codified in the 1977 Additional Protocols to the 1949 Geneva Conventions.

First, national liberation organizations were recognized as quasi-states; Article 1, Paragraph 4 states: "*The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination*". This leads to an even more important legal innovation: the primacy of the right to self-determination. The ICRC legal commentary (Commentary 43) on the Additional Protocols explicitly gave precedence to IHRL over state

sovereignty and IHL: “*in fact, the right to self-determination is a precondition for the enjoyment of all fundamental human rights*” (ICRC 1987). It is evident that any state facing an insurgency would find it in their interest to deny that a “liberation movement” exists. This prevents both international recognition of a *de facto* state in its midst, and the accusation of being a human rights violator.

The normative power of international human rights law has created conditions whereby democracies find it prudent to deny the existence of an insurgency by criminalizing political behavior; and by using emergency detention of such “criminals” in order to skirt the prevailing norms of both IHL and IHRL. Thus, large-scale *criminal* detention of insurgents shields democratic states from scrutiny under the laws of war (which govern armed conflict between parties and not domestic legal actions); as long as minimum juridical standards are observed, states can claim adherence to IHRL. Mass detention by democracies has proven successful in stemming domestic unrest. However, mass detention also gives a potent weapon to insurgent forces: insurgents who kidnap one government soldier can force the state into a position where it is forced to trade many detained insurgents for a single soldier’s return.

Prisoner discourse gives a reasonable initial explanation for domestic recourse to asymmetric prisoner release initiatives. First, current *international law and attendant norms* underlie mass detention as a COIN practice by state regimes, and kidnapping/capture as a profitable insurgent tactic; this practice of criminalization is common whether in Israel or Northern Ireland, or the US in Afghanistan. Second, *belligerent category* creates governmental and societal expectations for how a state’s personnel will be treated. The belligerent discourse shapes not only government policy but more importantly social attitudes toward hostile forces and attendant pressures to either rescue the state’s hostage or negotiate for his release. Finally, *prisoner type* determines whether the public will demand or even support government efforts to rescue or release a hostage. For example, military prisoners may be the object of complex rescue efforts while journalists held by the same belligerent may not receive any government assistance, because the soldier is considered to be in the line of duty while the journalist willingly, and despite government cautions, put himself in danger.

The Prisoner Discourse Part One: International Law

“*All human beings are born free and equal in dignity and rights.*”

Article 1 of the Universal Declaration of Human Rights 1948

As mentioned above, European *jus in bello* was centuries in the making. Legal scholars such as Vittoria had weakened Papal and Imperial power through their appeal to Natural Law, whereby even Muslims in the Holy Land or pagans in the New World had rights which European rulers were bound to respect.

Westphalian norms were strengthened by jurists such as Hugo Grotius, who first codified such concepts as international waters (open to all peaceful commerce and subject to no authority) and the extraterritorial nature of embassies; and Emer de Vattel, whose ruminations on “Military Europe” (*The Law of Nations*, 1758) led to the first western codification of the laws of war.

While military necessity remained paramount, and reprisals were an accepted form of belligerent practice, Vattel stated that noncombatants were a protected class of people; that indiscriminate killing of prisoners was considered murder; and *only* military necessity (whether reprisal, or response to uncivilized warfare) allowed for killing POWs.

Vattell was a visionary in regard to the prisoner discourse. In a foreshadowing of Soviet practice during WW2, he condemned the punishment of soldiers who had been captured by the enemy. Anticipating what became Israeli procedure during its conventional wars from the 1940s to the 1970s, Vattell debated the morality and strategic advantage of refusing to maintain enemy POWs and forcing them back to friendly lines to be tended by their own country.

However, those conflict parties not considered as members of military Europe (such as the American colonists during the Revolutionary War) were not considered protected peoples and could be killed out of hand if captured. Clearly as new types of nonstate warfare confronted western governments in both Europe and colonized lands, new legal codes were necessary to govern belligerent behavior.

Non-state conflict and the laws of war

Arguably the most important document regarding the modern prisoner discourse and changes in its application was Francis Lieber’s treatise on the laws governing treatment of Confederate

belligerents in the American Civil War (US War Dept 1863/2005). He took the view that *the Confederacy was to be treated as a sovereign nation on the battlefield* (a clear case of belligerent category dictating praxis, thus treating POWs as combatants and not criminals) *while refusing to recognize the Confederacy as a sovereign state with a diplomatic or political claim.*

The “Lieber Code” (1863) was promulgated in the Union Army as General Order No. 100. Reprisal, and killing of captured enemy for self-preservation, were explicitly allowed therein. What made Lieber’s premise so groundbreaking was the fact that he changed the rules regarding civil war (which until then was governed by municipal criminal codes) by taking Vattel’s theory to its logical conclusion: large-scale civil war and international conflict were best governed by similar laws (La Haye 2008). And like Vattel, not only did Lieber instruct officers that military necessity did not admit of cruelty (explicitly forbidding torture), but that especially in civil wars, the two sides would one day have to live together again. For instance, he demanded that works of art, libraries, scientific institutions, etc. be preserved from harm even if located in a fortified location (Lieber 1863, Section II, Art 35).

While he advocated extending the Laws of (Interstate) War to civil war, Lieber still recognized a difference in the way war was to be conducted depending on conflict category and belligerent classification. In Lieber’s view, Confederate leaders were non-state actors (essentially traitors to the Union) and were subject to greater penalties than say, British leaders would have been in a declared war. Lieber said the same thing of any Confederate civilian who tried to hamper the movement of Union troops through southern territory. In civil wars, only uniformed combatants belonged to a protected category when captured. All others rebelled at their own risk.

Paradoxically, the Lieber Code had a greater impact on global prisoner discourse (within the larger international peace regime) than it did on contemporary US praxis. The Lieber Code “formed the origin of the project of an international convention on the laws of war presented to the Brussels Conference in 1874 and stimulated the adoption of the Hague Conventions on land warfare of 1899 and 1907” (ICRC n.d.).

The 1907 convention adopted Chapter II, Article 4 (“*Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them. They must be humanely treated...*”); but it also stated that POWs were subject to the same regulations as soldiers of the states that captured them. If a state allowed flogging, for instance, recalcitrant POWs could be flogged if held by that state. So, while touted as “international law”, the 1907

convention recognized sovereignty claims as superior to the norms of civilized war. It is worth noting that Israel still claims that the 1907 Convention governs its activities in the West Bank.

The underlying tension between sovereignty claims and IHL became apparent during WW1, and the emergent norm of international humanitarian law was nearly strangled in the cradle. While IHL ultimately failed to become globally accepted, a revolutionary change in norms was affected after WW2, with international human rights law becoming a hegemonic force in a short time span. This revolution had a seismic effect on both IR and the prisoner discourse.

Prisoner regimes, the end of IHL, and global norm diffusion: World War One and after

The Great War had two major effects on the prisoner discourse: IHL seemed unable to govern belligerent conduct in total war, and the war hastened an international POW regime under the auspices of ICRC, which was codified in the 1929 Geneva Conventions. These two developments led directly to the decline of International Humanitarian Law and the near-hegemony of International Human Rights Law after WW2.

The 1907 Hague Conventions had outlawed such tactics as aerial bombing and use of poisonous gas on the battlefield, both utilized to great effect between 1914 and 1918. As one commentator observed, “Experience in the Great War has, it is true, afforded little encouragement for attempts to regulate the conduct of war... Memories of Ypres and of Hartlepool do not conduce to optimism as to the value of such attempts to regulate warfare” (Mullins, 1922, 222-223).

Further, Articles 228-230 in the Treaty of Versailles stipulated that war criminals be judged for their misdeeds. But the resulting trial was problematic.

The 1921 Leipzig Trials provide a window into the difficulties of translating norms into practice. Three of the five trials at Leipzig were of camp security personnel (Rikhof 2014). The one commissioned officer convicted of POW camp violations was awarded only a six-month sentence. Such lenient sentences infuriated Allied populations; to many, they pointed out a need for international laws which would govern and enforce individual conduct during war (Mullins 1922). The insufficiency of IHL when applied to specific individual actions, but more important, when prosecuting state policy, would be a lesson for the victors in 1945.

The second outcome of WW1 with regard to the prisoner discourse was the establishment of an international POW regime. During the war, prisoner treatment was dictated through over 40 bilateral treaties between powers: many with the active involvement of the International Committee of the Red Cross.

The POW regime

The International Committee of the Red Cross was extremely active in its work with prisoners across the Great War's various fronts. Over the course of the conflict, ICRC visited 524 POW camps, and indexed 2 million prisoner names just on the Western and Balkan fronts. The ubiquity of the ICRC gave rise to a POW *regime* (Krasner 1983).

First, at its simplest a regime manages convergent expectations based on principles and norms. For example, a principle which had become a norm by the Great War was "naming the dead". As Faust (2007) illustrates, efforts on both sides of the US Civil War created the expectation that a family would learn the fate of its loved one. From 1914-1918, only the ICRC could fill this niche and it did so with alacrity.

Second, the ICRC was able to leverage its network of national chapters, a history of adhering to international law, as well as its reputation as a neutral to become indispensable in management of the norms, principles, and specific rules regarding POWs in World War 1. Because the ICRC volunteered to investigate *any* claim made to it regarding abuse of prisoners (an effort which delighted the Germans but enraged the Allies) it became an organization favored by many marginalized states. This equality of nations would become a foundation of human rights law and UN praxis by the 1940s.

The international POW Regime was codified in the *1929 Geneva Convention Relative to the Treatment of Prisoners of War* (1929 Geneva Convention-[POW]). The 1929 Geneva Convention-(POW) was the first conference devoted entirely to POWs and not to International Humanitarian Law as a whole. In keeping with its expanded role, ICRC wrote and provided the first draft for the 1929 Convention, insisting against US and UK officials that the tighter the regulation, the easier the enforcement (Wylie in Scheipers 2010).

The dispute was solved in favor of the US/UK, and left most decisions in the hands of the respective states which held POWs. The 1929 convention did not create an international adjudicating body *per se*: sovereignty claims were still privileged over international law. But the

ICRC's humanitarian work was codified within the Convention on a basis of noninterference, and the good offices of the ICRC were a part of most Articles dealing with negotiation between belligerent powers.

Despite these differences of opinion, the 1929 Convention had a singular success: *it completely outlawed reprisals*. This was the first time that any international convention had done so; while obeyed more in the breach, this provision took prisoners out of the realm of IHL where military necessity could still excuse reprisals, and into IHRL whereby no prisoner could be used as a political bargaining chip or killed in cold blood by appealing to military necessity. The 1929 Geneva Convention-(POW) was a first step toward using international law to rein in the power of both battlefield commanders and governments, and its effect would resonate and solidify the power of IHRL during the Nuremburg tribunals.

Nuremburg and penal law: The captor as criminal, the prisoner as subject object

Despite its successes, the 1929 Convention allowed for expansion of humanitarian law only within the closed club of Military Europe, ignoring humanitarian claims (and by extension, humanity) for those outside its limits.

Wallace (2009) lends support to this theory when discussing the change in Japanese treatment of enemy POWs between the World Wars. Japan refused to ratify the 1929 Geneva Convention-(POW) because it believed that despite decades of adherence to "European" norms of warfare, it was still considered non-Western and could not join Military Europe regardless of its best efforts. This despite the fact that the Japanese had been considered an exemplar regarding their treatment of POWs in both the Sino-Japanese War of 1894-5 (Paine 2003, 175-176) as well as the Russo-Japanese War of 1904-5 (US Government Printing Office, 1914).

In fact, there was wholesale repudiation of the 1929 Convention once the Second World War began, because so many combatants fell outside of its purview. The widespread atrocities and systematic outrages committed by belligerents during the Second World War hardened a perception that existing institutions had failed to halt egregious violations of the Laws of War.

The Nuremburg Trials were an early attempt to create a global norm which would have the force of international law. Risse & Sikkink (1999) recognize that instrumental motives are often the first step of transforming an international norm into domestic practice. At Nuremburg the instrumentality was evident. Allied politicians surmised that militaristic & authoritarian systems

of thought along with their associated practices had to be eliminated and replaced with a liberal democratic worldview. The prisoner discourse would change dramatically.

One method among several used to achieve widespread change in norms and practices was through the use of military tribunals to sit in judgement of malefactors. In Europe, the International Military Tribunal (IMT) was chartered on 8 August 1945, signed by the US, USSR, UK and France. The Tribunal was given jurisdiction over three categories of international law, two of them (numbers 1 & 3) entirely new: 1) *crimes against peace*; 2) *war crimes*; and 3) *crimes against humanity*.

The International Military Tribunal for the Far East was established to judge Japanese generals and politicians under the same three categories of international law (Schwelb 1946). Unlike the Nuremburg Tribunal, where the German government had been abolished, the Far East tribunal was required to consider Japanese sovereignty claims. This was avoided by trying Japanese officials only for actions outside of Japan and against non-Japanese citizens.

It should be clear that in the three centuries separating Grotius and Nuremburg, military necessity and lawful command authority were the supreme value governing treatment of POWs. This had not changed even with Hague or Geneva. That military necessity is a two-edged sword seems evident. That military decisions can be manipulated for political gain is clear from history. The doctrine of obedience to all orders given by superiors was an accepted part of military and political praxis worldwide, and not limited to authoritarian or fascistic states.

At least one copy of the 1940 US Army FM 27-10 (Law of War) exists, where a pen change softening the absolute force of a superior's lawful order was directed to be made in the manual. In a second copy, the printed amendment is dated November 1944. This change was almost certainly made in preparation to prosecute Axis officials who fell under similar regulations regarding superior orders. Such a change in US policy suggests that the prisoner discourse is a *contingent political decision* rather than an ahistorical norm of humanity.

There is no question that the IMTs were created in part to weaken the state system and strengthen international law. Indeed, this is its major contribution to the prisoner discourse. As early as 1941, Robert Jackson, a US Supreme Court Justice who acted as Chief Prosecutor in Nuremburg, recognized that international norms were shifting from sovereign claims to global governance of sorts. He discussed the tendency *even of dictators* to claim adherence to

international humanitarian norms in an attempt to appease “law-conscious public opinion” (Jackson in Mettraux 2008, 6).

Stefan Glaser, a law professor at the University of Liege, stated in 1947 that “The Charter has pierced through the principle, or even the idea, of state sovereignty...first of all, the Charter recognized *individuals as subjects of international law*...second the Charter broke with the doctrine of *immunity for what is called an ‘act of State’*” (Glaser 1947 in Mettraux 2008, 55). The use of entirely new categories of crime to cover acts which had heretofore been permissible as well as acts which had heretofore been unimaginable required new legal norms.

Glaser recognized that these new norms would also hasten new forms of organization in the political world, and foretold the rise of NGOs and international organizations. These were necessary because the state system was in his words, “archaic” (56). He went even farther, stating that the old dictum of “*Nulla poena sine lege*” (*No statute, no crime*) could not last in such a fast-changing world, where the equilibrium was not state independence but global “interdependence” (59). The near-universal acceptance of the military tribunals, and the privileging of collective security under the new United Nations Organization, gave birth to a hegemonic idea of international human rights law.

International Human Rights Law, both as legislated in the UN Charter and promulgated in the 1948 Universal Declaration of Human Rights (UDHR), created revolutionary change in both international law *and* international relations. First, IHRL largely superseded IHL, even as new Geneva Conventions were being drafted; reduced the effectiveness of sovereignty claims especially in regard to *raison d’etat*; and created a state “duty to investigate” allegations of human rights abuse, whether in combat or within the state’s domestic practices. Thus, the principle of noninterference in domestic affairs was nearly rendered moot.

Second, and most important to the prisoner discourse, was a change in the way that democratic regimes conducted COIN operations. This is because after the success of most post-war independence movements by 1962, current *international human rights law and attendant norms* underlie mass detention as a COIN practice by state regimes, and kidnapping/capture as a profitable insurgent tactic.

Insurgency has classically involved three (and sometimes four) protagonists: the rebels, the government, the local population, and sometimes a supporting outside power. The advent of IHRL ensured that in many cases, the UN and international NGOs took the place of an outside

power, investigating allegations of abuse by the government, and conferring recognition (*de facto* statehood, see Clapham 1998) on insurgent forces.

In the era between 1918 (when WW1 ended) and 1962 (when the French departed Algeria), COIN doctrine was fairly consistent across different regime types (Miroiu 2016). Counterinsurgency, whether executed by despots or democrats, was based on three main tactics. The first was “Population Control”, a term that today is so all-encompassing as to be nearly meaningless. But earlier it had a specific connotation: in the 1940s and 1950s, both autocratic governments (such as the USSR), and democratic regimes (such as the UK and France), practiced mass deportation as their primary method of population control.

Second was the development and strengthening of intelligence services to infiltrate and inform on insurgent movements; here the regimes diverged. Autocratic regimes specialized in assassinating the leaders of insurgent movements, while democratic regimes arguably hurt their own cause by primarily imprisoning insurgent leaders (though targeted assassination was not unknown), thus creating a nexus for both democratic and international opposition. Third was the use of military operations to eliminate insurgent forces, in which both types of regime excelled.

During the postwar period, most insurgencies were independence movements, and as both world and domestic opinion turned against western colonial practices, democratic COIN strategies evolved from maintaining the colony, to establishing an independent government which was palatable to London or Paris or Lisbon. Such autocratic states as the USSR or Romania continued to use deportation and assassination in their COIN operations well into the 1970s (Miroiu 2016).

The international support for, and success of, independence movements, and the privileging of *de jure* sovereignty by the UN, also changed the dynamic of insurgency. By the late 1960s, democratic regimes faced insurgent movements from their own populace, focused less on independence *per se* and more on human and civil rights. These movements, most prominent among them in Northern Ireland, Palestine, and Spain, forced democratic regimes to fight COIN differently than they had previously.

In the case of “failed states”, the Nuremburg model remains extant: International Criminal Tribunals were the favored conduit for justice in both the former Yugoslavia and Rwanda. In keeping with common practice, these tribunals charged and punished the accused for violations of both IHRL and IHL within the same procedure. But in democracies, the model of IHRL

influencing domestic law is increasingly prevalent. This will be made apparent when I discuss the Democratic COIN Complex below, which depends largely on democratic states of exception based on Emergency Orders. These emergency orders allow for such tactics as indeterminate detention, with vague rules for judicial review. Mass detention has replaced deportation as a method of social control; indeed, I argue that “COIN through capture” is the new doctrine for democratic regimes fighting insurgents.

The use of Emergency Orders allows democratic governments to resist the jurisdiction of international law by criminalizing domestic political activity, and they draw heavily upon belligerent category (“criminals” or “bandits” or “terrorists”) for public support of the counterinsurgency and acceptance of such codes.

The Prisoner Discourse Part Two: Belligerent Category

*“When you're wounded and left on Afghanistan's plains,
And the women come out to cut up what remains,
Jest roll to your rifle and blow out your brains
An' go to your Gawd like a soldier...”*

Rudyard Kipling, “The Young British Soldier” (1890).

[Cody] was killed during the retreat from the valley. Newell saw him go down and heard him say “Good-bye, boys!” His horse got away and later was caught by a soldier from another company. In a saddlebag was his prayerbook, The Key of Heaven, which Newell mailed to his sister. She wrote back wanting to know if her brother had been disfigured. Newell lied, assuring her that he was not. “I would have given most anything if I could have recovered his diary,” Newell remarked in 1930, “but I suppose the squaws got that when they stripped his body. Poor boy.”

Evan S. Connell, *Son of the Morning Star: Custer & the Little Bighorn* (1984).

*“The enemy-colored skin of families
Determines to hold its color
In sleep, as my hand turns whiter
Than ever, clutching the toggle-*

*The ship shakes bucks,
Fire hangs, not yet fire
In the air above Beppu
For I am fulfilling
An “anti-morale” raid upon it....”*

James Dickey “The Firebombing” (1964).

"To have guilt you've got to earn guilt, but sometimes when you earn it, you don't feel the guilt you ought to have. And that's what The Firebombing is about."

James Dickey.

As I have shown, the norms created by international law have an outsized effect on state policies, even if the laws cannot always be enforced. In each of the extracts above, a norm of “civilized war” is being breached. The Afghan and Sioux women emerge after the battle to kill and mutilate the wounded; indeed, suicide is preferable to falling under their knives. It is easy to see why these nonstate actors, who were not a part of “military Europe” might be considered “savages”. Bloody reprisals were the response to such savagery, and not just to specific malefactors; genocide was not uncommon in 18th and 19th-century military campaigns.

But James Dickey’s view is not so easily reconciled with even pre-1929 reprisal culture: Japan *was* a state actor, had defeated Russia in conventional battle only forty years before WW2, and was considered an exemplar of civilized POW treatment in the Russo-Japanese War (MacKenzie 1994). Dickey was a US Army Air Corps pilot, subject to the Laws of War. What could justify the napalming of women and children (the “anti-morale raid” of the poem), and Dickey’s subsequent ambivalence over his actions? Much of this can be attributed to the US government’s categorization of the Japanese people as vermin to be exterminated: Dower (1986) convincingly shows that the US-Japan conflict in the Pacific was at its foundation a racial war by 1944. It is evident that “belligerent category” is largely created by state discourse and effects both counterinsurgency policies as well as social attitudes toward the insurgents themselves.

In Uri Avnery’s memoir of his years-long peacekeeping dialogue with the PLO, he says that Israeli government and media categorization of the Palestinians as “murderers” killed more people than did Israeli guns (Avnery 1986, 57). Indeed, he attributes the 1982 Lebanon War to

the discourse of belligerent category: it was not a political war but a war of annihilation with the IDF targeting Palestinian “murderers”. Belligerent category is a foundational aspect of the prisoner discourse and is an integral part of democratic decision-making when facing APRI situations.

It is tempting to lump “belligerent category” into a simple process of “Othering” whereby categorization of the foe is an integral part of *realpolitik*, and the conduct of foreign policy, especially war (see Campbell 1998; Tuathail 1994). But to be effective the government’s coding must be internalized by the populace: limiting belligerent category to international relations minimizes the importance that belligerent category plays in building an affective community within society, and thus support for specific government actions (Hutchison 2016). While Hutchison sees trauma as constitutive of social groups (which is an important component of popular movements on behalf of prisoners), Ido Oren (1995) makes a bolder claim: *belligerent category is an outcome and not a predictor of government behavior*.

His study on the subjectivity of the democratic peace shows that until WW1, scholars and politicians (to include Woodrow Wilson) routinely used Kaiserine Germany as an example of enlightened government, while often placing Great Britain into a second category denoting less individual freedom. It was not until war was declared in 1914 (and not always then), that Imperial Germany was lumped in with autocratic states such as Czarist Russia. Thus, Oren argues, democracies may not actually be so peaceful; rather, we label those with whom we are at peace democracies.

This is evident from the way the Allies categorized the enemy in WW2: a racial argument was used against the Japanese, while the racially similar Germans were categorized as barbarians who violated accepted norms. Even the protocols of the respective Nuremburg and Tokyo military tribunals were different based on US interests. But the carpet bombing of purely civilian targets was justified in both cases.

While belligerent category shapes the affective perception of a wartime enemy, two other aspects of belligerent categorization have a greater effect when democracies prosecute counterinsurgency. First, is the common practice of “no negotiation with terrorists”. The second is “criminalization” of insurgents, and by extension, criminalization of political activity.

Arguably, the great divide amongst democracies facing hostage-takers is the difference between those states who treat with irregular forces and often pay ransom for the release of their citizens,

and those states which refuse to negotiate with “terrorists”. This is not merely a theoretical disagreement: a state’s categorization of the belligerent influences military options; shapes negotiating structures; and is often a fundamental aspect of a leader’s and party’s public character.

In the regimes which I compare, the political stance of “no negotiation with terrorists” constrained government actions in several ways. First, this meant that a military response was favored over a diplomatic one, and was usually the first option. Any discussion of prisoner exchange was delayed until a determination of the military option was considered. The 1970s Rabin Doctrine was explicit that armed response would precede any talks with hostage-takers. Indeed, on several occasions (in 1979 and 1985, for example) Ariel Sharon asked for a clarification of military options, sometimes years after the captives had been taken and at least twice on the eve of an agreed hostage exchange. It is evident that he hoped some change in the tactical situation had made a hostage exchange unnecessary.

This “no negotiation” stance also hindered Israeli negotiation strategies: because no direct talks were permissible between Israel and Palestinian groups, an ad hoc diplomatic structure was created. A third-party interlocutor would carry messages between the two groups. In at least one case, where the Austrian government was involved, the Austrians were also forbidden to talk to the PFLP-GC; and thus either the ICRC, the PLO, or Hafez al-Assad would act as the interlocutor’s interlocutor.

In the case of 1980s Lebanon, President Ronald Reagan saw political peril in the presence of US hostages there. But his refusal to openly speak with either Iran or its proxies created the scandal which became Iran-Contra, and left numerous US captives to spend long periods under harrowing conditions until the 1990s.

The UK government in Ulster also found itself constrained by belligerent category. While not placed in the position of having to bargain directly for a captive’s freedom due to other factors (discussed below), the UK was also forced into an awkward negotiating structure; using outside interlocutors as well as the families of hardcore IRA members to try and influence such events as the hunger strikes and ceasefires.

It is noteworthy that while these governments all claimed a “no negotiation” stance, all of them also attempted secret talks with proscribed groups.

Only Spain seemed to learn from its experience. After executing a military rescue of two kidnapped cabinet members in 1977, and then conducting one APRI (26 Basque prisoners for a kidnapped politician) in 1979, the Government of Spain changed its public position. Afterwards, Spain openly called for, and conducted, several decades worth of direct negotiations with the Basque separatist group ETA. This change hastened a shift in Spain's war against ETA, creating societal support for the counterinsurgency, which among other conditions largely ended the conflict by 1998.

The categorization of belligerents has a profound effect on how states deal with capture of their personnel. The no negotiation stance is largely for domestic consumption; though it may be argued that such a stance is a way to signal steadfastness to allies in the face of attack. Another aspect of belligerent category, criminalization, straddles both the domestic and international realms: it is an attempt to bypass international law in order to prosecute a counterinsurgency under internal, domestic criminal codes. Criminalization is a basic response of democracies when faced with internal insurgencies; the Reconstruction era in the US was marked by government refusal to declare recalcitrant southerners as rebels (Grimsley 2012) and criminalization has been a cornerstone of both British and Spanish COIN policy. It is perhaps the most characteristic feature of democratic counterinsurgency.

The widespread practice of criminalizing insurgency presents one barrier to international or even state recognition of rebels as "combatants". Insurgents who are nationals of, and who have "the duty of allegiance" to a state, are captured by state forces, but are usually denied the status of POW because of their nationality (see Rubinstein in Dolgopol & Gardam, eds., 2006, 95). Deprivation of liberty in these cases is called *detention* or *internment*, and is recognized as a legitimate state technique by the Geneva Conventions (Aughey 2015).

While POW treatment has a recognizable set of standards under IHL, modern "global" prisoner discourse often attempts to mitigate the lack of specific national protocols for the process of evaluating an individual detainee's offense. Pejic (2005) argues that while the Laws of War may be scrupulously obeyed by the state in regard to *treatment* of non-state belligerents, international human rights law, which covers *procedural standards* such, must also apply.

The use of detention on large numbers of insurgents, whether sanctioned under IHL, or allowed under IHRL, creates an unbalanced prisoner marketplace which makes kidnapping a

state's soldier a viable tactic, and internal detention statutes a difficult topic for the international community to confront or police.

Guenaël Mettraux (2005, 3-23) illustrates the friction within current prisoner discourse when the international community attempts to intervene legally in either non-state conflicts or civil wars. A little-discussed fact within the prisoner discourse is that despite the concept of prisoner mistreatment as a punishable crime, international treaties are not penal or punitive legal documents. There is no legal standing to hold an individual accountable for violating the Geneva Conventions, for example.

The *ad hoc* UN tribunals in former Yugoslavia and Rwanda were the work-around used by the international community to enforce individual criminal claims. This mechanism of international penal law and its claims of sovereignty over state actors' citizens is contested by numerous states. For example, in 2019 the US announced a policy of refusing visas to prosecutors with the International Criminal Court (ICC) who are currently investigating the actions of US personnel in Afghanistan (BBC 4/5/2019).

Therefore, the common practice of "criminalization" serves several purposes for democratic regimes contending with belligerent category. First, it domesticates a situation which otherwise might be subject to International Law. This ensures that sovereignty claims are privileged in any discussion of prisoner/detainee treatment by international actors. Second, it attempts to categorize detainees as outside the prisoner discourse, neither state nor nonstate belligerents, but merely non-law-abiding citizens. Finally, criminalization creates a prisoner type, that of the "criminal" and thus unworthy of public concern. This third structure of the prisoner discourse, "prisoner type", also creates a landscape which effects government recourse to APRI.

The Prisoner Discourse Part Three: Prisoner Type

Prisoner type, whereby a friendly hostage is portrayed in the domestic mind as either a military member, an innocent (worthy), or a non-innocent victim (unworthy), carries a great deal of affective power. Each prisoner type elicits a different response from the populace which in turn effects the regime's decision-making.

For example, Major General John Deane was the senior US military officer in Moscow during WW2, where his duties included accounting for the US POWs who were escaping German control eastward through Soviet lines as the Red Army moved toward Berlin. Regarding this

mission he states, “Of all the casualties of war, none elicit more sympathy from the American people than those known to be in the hands of the enemy” (Deane in Dennett & Johnson, eds. 1951).

This is not true of “non-innocent” victims, nearly always civilians. For instance, in 1939 and 1940, nine passenger ships were sent to Europe in order to repatriate US citizens; each returned to the US with berths unfilled (Bard 1994, 8-9). By 1941, the US government placed restrictions on US citizens of Jewish extraction trying to escape Europe. This is because these stranded citizens were no longer considered worthy hostages, but non-innocents (like the westerners who remained in Beirut during the 1980s; see Coughlin 1993), who had “asked for it” by remaining in a dangerous area. Even in Israel, IDF soldiers who are deemed non-innocent become controversial. The Israeli public was ambivalent about prisoner exchanges made to free both Private Avraham Amram (captured by the PFLP in April 1978 while on an unauthorized trip into Lebanon) and Colonel Elhanan Tannenbaum (kidnapped by Hezbollah during a shady drug scheme). Compare this to the public support for freeing Corporal Gilad Shalit, who had been deemed a worthy victim by the public.

There is evidence that prisoner type is not wholly objective. For instance, latent antisemitism may account for the events surrounding the Berga concentration camp in February 1945. That month, the Germans segregated a group of US prisoners who either were, or “looked Jewish” and sent them to Berga in Thuringia as slave labor. They were to dig and reinforce an underground factory which would support Germany’s effort to produce synthetic jet fuel.

At the end of 50 days, 75 men were dead, a 20% fatality rate and 6% of the total US POW deaths in the war (Bard 1994, 90). Some of the POWs were required to sign “security certificates” (essentially an NDA) agreeing not to discuss their captivity before receiving discharge papers from the US Army (Whitlock 2005, 196-197). It was not until 1997 that these men were recognized as slave laborers and compensated by the German government (Cohen 2005, 263-264). It is possible (though not proven) that their ethnicity may have moved such prisoners into a different category of prisoner type, from military POW to non-innocent victim in the US government’s eyes.

The discursive structure of prisoner type guides both government action and public support. For example, the idea of prisoner suffering was successfully manipulated by the West German government to assuage its population’s guilt after WW2, and the trope of German suffering

appears to have actually supplanted the idea of Jewish suffering within the surviving German population (See Biess in Biess, Roseman & Schissler, eds., 2007; Arendt 1950). Indeed, German premier Konrad Adenauer seems to have used the prisoner discourse to good measure, gaining stature by keeping the POW issue front and center when dealing with the USSR. Adenauer gained great political capital by retrieving the last 10,000 German POWs from the USSR in 1955, thus assuring that his (successful) reelection campaign in 1957 would be free of the MIA issue.

Gallagher (2018) expands on the personal use of the prisoner discourse by democratic leaders, especially regarding prisoner type. He compares the MIA myth in German and US cases, and demonstrates that leaders can nudge their constituency in specific directions by affective use of the prisoner discourse. He shows that both Adenauer and Nixon used the discursive structure of military prisoners to their advantage: Adenauer cemented the prominence of his political party within a NATO-led German defense establishment by first perpetuating and then debunking a post-WW2 MIA trope (the “hidden camps” myth, whereby up to a million German soldiers and civilians were still being held on Soviet territory). Nixon, by perpetuating a post-Vietnam MIA myth in order to energize his conservative base, also used the affective angle to peel off support from the antiwar wing of the Democratic party. It is worth noting that the MIA discourse is nearly always a bromide within governments which have lost a war.

This exploitation of the POW/MIA trope was not unique to Nixon. The “Fighting Homefolks for Fighting Men” was created in 1954 (by a father whose son, a US Marine, had been killed in Korea) to protest Eisenhower’s “appeasement” of Communist belligerents and perceived inaction regarding US POWs after the Korean Armistice. Ten years later Captain Guild was still claiming that “389 GIs are rotting in red prisons today!” (Guild 1964). As James Rosenthal stated during the Reagan Administration, “Far from forgetting these sons and brothers, the government has put them to undisguised political use” (Rosenthal 1985). As early as 1966 Lyndon Johnson was holding secret talks with North Vietnam and hiding US POW numbers in order to maintain public support for the war. By 1984 Ronald Reagan had created a branch within the Defense Intelligence Agency (DIA) dedicated to POW/MIA issues, and signed a proclamation designating the third Friday in July as POW/MIA Remembrance Day (Rosenthal 1985).

At the same time, several dozen Americans were languishing in Lebanese captivity. These “non-innocent” US victims were not of the same political importance. Reagan reportedly became

aware of a US prisoner discourse regarding the Lebanon hostages only after hearing about a rash of yellow ribbons tied to trees, reminiscent of the 1980 Iran Hostage Crisis. He famously vowed not to let that same embarrassing trend taint his administration. This difference in regime actions shows that a government can influence public opinion by manipulating the prisoner discourse, but the converse is true as well.

Prisoner type has an outsized effect in creating affective communities (Hutchison 2016, O'Malley 1990) and social movements, especially when large numbers of civilians are detained, as they often are in democratic COIN doctrine. But as discussed above, the literature on social movements and interest groups shows that particular types of prisoners and causes are more likely to resonate with both government and the public. Without the support of both, there is little possibility that these movements will affect asymmetric prisoner release (Uba 2009); Uba finds that lobbying is more likely to effect government decisions than protest, even in democracies.

This data may help explain why there appears to be a causative link between familial access to decision-makers and asymmetric prisoner release decisions. It thus stands to reason that in situations where both the hostage's family has direct access to leaders, AND the public has mobilized in favor of a prisoner, a prisoner may be exchanged in what appears to be an irrational trade.

As this section has shown, the Prisoner Discourse is a ground upon which sovereignty claims, international law, military necessity and captivity narratives battle for supremacy. Within democratic COIN operations, recourse to APRI is not a given; "unworthy" hostages have historically been left to their fate, no matter the strictures of law or the public's view of the belligerent.

The structures comprising the prisoner discourse also shape democratic COIN practice, which is rooted largely in attempts to circumvent international law while controlling the recalcitrant population; belligerent category is predominately shaped by government discourse promulgated by the media in an attempt to criminalize political actions; while prisoner type creates a double-edged sword, whereby the public may ignore a hostage's plight or make demands that he be freed no matter what the price.

I next examine how the democratic counterinsurgency complex, a set of practices largely peculiar to democracies, leads to protracted conflict and then the resultant phenomenon called COIN through capture. The democratic counterinsurgency complex builds an uneven prisoner

terrain which makes APRI a viable, and perhaps inescapable element of conflict management in democratic COIN operations.

The Democratic Counterinsurgency Complex

The prisoner discourse largely dictates a regime's negotiation strategy and the polity's response to insurgent abduction of its citizenry, through the effect of international law, belligerent category, and prisoner type. However, the prisoner discourse still does not explain why a counterinsurgency gets to the point that asymmetric prisoner release becomes tactically viable for insurgents, and politically expedient for the incumbent.

The "Democratic Counterinsurgency Complex" (DCC) is the product of democratic COIN praxis and provides a necessary but not sufficient explanation for regime recourse to APRI. It is an institutionalized structure of norms and practices which ultimately constrain regime behavior when the state conducts military operations against its own citizens

The primary objective of democratic COIN praxis is control of the insurgent population. Failing quick suppression of an uprising, this control is ordinarily achieved through mass internment of insurgents, who are detained under domestic criminal codes. Mass detention, "COIN through capture", is a characteristic feature of the democratic counterinsurgency complex and the key structure which underpins APRI incidents: "successful" democratic counterinsurgency praxis produces a large prisoner imbalance between the state and the insurgents. Without this dynamic the tactic of insurgent hostage-taking could not force democratic governments into APRI scenarios. Asymmetric prisoner release is a product of the democratic counterinsurgency complex, filtered through the prisoner discourse. A peculiarity of democratic COIN praxis is its evolution over the course of conflict from self-interested government behavior (quick suppression and derogation of human rights obligations) to a set of constraints on regime actions (when the prisoner marketplace has been established).

The democratic counterinsurgency complex consists of two related practices conducted in a predictable sequence. First, the state attempts to deny that an insurgency exists, while concurrently conducting operations geared to rapid suppression of the rebellion by military force. This practice has become increasingly unsuccessful in modern COIN operations, and it is almost invariably followed by a second series of diplomatic, institutional and military moves, the "counterinsurgency through capture" sequence. These two interlinked pathways lead to an

asymmetric detainee situation on the “battlefield” which results in an uneven prisoner marketplace.

The evidence is clear that APRI is linked to certain specific features associated with counterinsurgency praxis: the democratic counterinsurgency complex is fundamental to asymmetric prisoner release first, by creating the conditions which produce protracted conflict, then as a result of COIN through capture which creates a “prisoner marketplace”.

In this section I explore the democratic COIN complex (DCC). I discuss the historical foundation for western COIN praxis, which is largely based on decolonization conflicts conducted between 1945-1960. I then situate the modern incarnation of western counterinsurgency. As discussed above, the influence of IHRL on democratic regimes is near-hegemonic, whether as a mold of domestic law or in the state’s effort to avoid it when engaged in COIN campaigns. The Democratic COIN Complex is a direct response to international law: it depends largely on states of exception, created by promulgation of Emergency Orders. The state of exception is a direct product of IHRL, which allows derogation of human rights obligations when a state formally declares an emergency to a regional human rights body.

Under IHRL, Emergency Orders allow for detention without trial; indeterminate sentencing; proscription of political groups and gatherings; and sometimes even mass punishment. Mass detention has replaced deportation as a method of social control, largely because of IHRL: Spain is arguably the last democracy to practice mass dispersion of ethnic groups in prison. In 2017, prisoner families rioted to protest the continued practice of keeping Basque prisoners far from home (EuroNews 2017). In 2020 the issue still plagued the Spanish government, but from a different angle: as Spain halts and reverses its policy of “dispersion”, families of *victims* have begun to protest (AFP 2020).

It is apparent that “COIN through capture” is a widespread doctrine for democratic regimes fighting insurgents. This tactic is so common within western military praxis that the DCC has become an institution which routinely limits freedom of maneuver for democratic governments fighting domestic insurgents.

Democratic Counterinsurgency Praxis: Past as prologue

Democracies have been increasingly unsuccessful in COIN operations since WW2 (Lyll and Wilson 2009). The weakness in western counterinsurgency praxis stems from the fact that

democracies continue to favor a COIN doctrine derived largely from British post-war decolonization methods which do not fit modern conditions. Current doctrine (declare, derogate, criminalize, detain) is based on colonial practices of population transfer and concentration, tactics which were conducted largely outside the purview of international law. In fact, the COIN through capture sequence shares numerous similarities with post-war decolonization practices, especially those which kept international law from intruding on COIN praxis.

In the face of increasingly powerful independence movements and global support for decolonization after WW2, European COIN operations between 1945-1960 gradually evolved from bitter-end fights to reality-based campaigns; often such COIN campaigns concluded by supporting an independent former colony if ruled by a suitable, hand-picked alternative party (Newsinger 2002; Galula 1964;2006 95-99).

But the ethos of population control has remained, even when the goals of democratic COIN have changed. Douglas Porch points out that over time, the *tactic* of mass detention has become the *strategy* of government counterinsurgency forces. Colonial population control remains the practice even when the population to be controlled falls under domestic laws.

The British decolonization model exhibited several characteristic practices, some still executed today while others have been largely discarded. Ironically, the most effective COIN practices under the old model have been dropped because they do not support the quick suppression of insurgency.

First, both the decolonization practice and democratic model criminalize political behavior, which keeps the insurgency a domestic affair outside the purview of international law. This criminalization is a process first of declaring a national emergency (or an unorthodox occupation as in the case of Israel in the OPT), then of publicly abrogating the IHL or IHRL agreements which the country has signed (or denying the coverage of IHL as Israeli politicians claim). This process almost invariably brings the nation into conflict with both IHL (because wars of liberation are recognized by the Geneva Convention and thus the laws of war) and IHRL, which increasingly takes a dim view of extrajudicial detention.

Second, the decolonization model calls for strengthening of police forces and policing activity. This is necessitated by the first condition, criminalization of political activity, and only succeeds with military “aid to the civil” and not military preeminence within the COIN force structure (Gwynn 1934; Simson 1937). In the modern cases of the UK and Israel, this step was minimized.

Both governments actively degraded their policing capacity within the area of operations. In the Israeli case, there were several ways that civil police were weakened to the point of ineffectiveness: for instance, in the Occupied Territories prior to Oslo, Israeli citizens were completely outside the purview of Mandate laws governing Palestinians. This was enforced to the point that Palestinian policemen could not even write a traffic ticket on an Israeli citizen (Gazit 2003, 282), because there were different legal codes for occupied populations than there were for occupiers. Israeli civilians fell under codes governing the IDF, whereas Palestinians did not. After Oslo, the Palestinian Authority was stymied in its nascent attempts to police violent acts committed by its own “citizenry”, a trend strengthened by Sharon’s disengagement from Gaza.

There was a similar dynamic of weakening the civilian police in Northern Ireland. There, the Royal Ulster Constabulary was disarmed and subsequently forced to conduct joint patrols with the British Army for its own protection.

Third, the decolonization model requires the formation of robust intelligence capabilities (usually joint civil-military units) to support the capture, segregation and concentration of insurgents. In Ulster, despite pleas from military commanders, the UK government commenced operations before the Army had developed and prepared an intel capability; the Israeli efforts to locate Gilad Shalit were hampered by a lack of HUMINT networks in both Gaza and Lebanon (Meidan 2020).

Finally, under both current and post-war doctrine, the aforementioned practices led to large-scale detention of insurgents, conducted under domestic criminal codes. The lopsided success of this COIN through capture doctrine creates a battlefield with large numbers of insurgent detainees and which makes APRI a reasonable technique for insurgents to force upon a democratic government.

The Democratic Counterinsurgency Complex:

The Lyall-Wilson Factors and COIN through capture

There are three common strategic/tactical aspects to democratic suppression of insurgency which are strongly linked to defeat and protracted conflict: the preponderance of mechanized COIN forces and consequent weak HUMINT collection; the presence of an external supporter which provides safe haven to the insurgents; and perception of the incumbent government as an

occupier. I call these the *Lyall-Wilson factors*, after the authors who first brought this phenomenon to light.

The inability to suppress insurrection leads to a second structure in the democratic COIN complex, COIN through capture. In modern diplomatic praxis, COIN through capture follows a predictable sequence of state actions once the insurgency is acknowledged: first, the country declares an Emergency, or state of exception.

Second, the state derogates its human rights obligations (which is allowed under international law) as a result of the Emergency; third, the state criminalizes political behavior to include membership in proscribed organizations (in order to keep the insurgency from being internationally recognized as a national liberation struggle); and, finally, the state utilizes mass detention as a population control technique under the Emergency orders.

This COIN through capture sequence is largely a democratic regime practice: of the four pre-2020 derogations to the European Court of Human Rights (ECtHR) citing insurgencies as the cause for derogation, three were from democracies, and one from a dictatorship. The one dictatorship (Greece) was refused the right to derogate its human rights obligations (European Court of Human Rights 2020).

It is a perverse fact that democratic COIN praxis actually creates the conditions which make it both profitable for insurgents to kidnap a soldier (in order to force an APRI); and politically unavoidable for incumbent leaders to then bargain for (or at least appear to bargain for) that soldier's life.

There is empirical proof for this claim. In "Rage Against the Machines: Explaining Outcomes in Counterinsurgency Wars" (2009), Jason Lyall and Isaiah Wilson III explore the phenomenon of democratic defeat in modern counterinsurgency operations. This trend is a reverse of 19th-century COIN, when democracies won most of their counterinsurgency campaigns. Lyall & Wilson make the argument that 20th-century democratic COIN praxis "fuels, rather than deters, insurgency"(pp 76).

There are three specific factors associated with protracted conflict and defeat within democratic counterinsurgency praxis: *high levels of mechanization in COIN forces; external support for insurgents; and perception of the incumbent as an occupier.*

High levels of mechanization in a state's counterinsurgency forces result in weak HUMINT collection capability. Modern democracies since the Cold War have privileged technology, in

order to increase mobility and survivability on the battlefield (see Jewish Telegraphic Agency 4/26/1960), at the expense of learning the “human terrain” of the enemy.

Second among the Lyall-Wilson factors is *external support for insurgent forces*. There are two types of external assistance - safe havens in neighboring states and the provision of military or economic aid, both deemed crucial for insurgent success (pp 82). In this work I focus on safe havens, and show that despite military or economic aid, safe haven is a more important condition than material aid for insurgents to force an APRI situation upon a government.

The last of the three factors is *perception of the democratic state as an occupier*. Lyall & Wilson find that when a state is considered an occupying force during a COIN campaign, the chance of victory decreases by nearly 60%, all things being equal (pp 91). Nationalist sentiment is a factor in the COIN campaigns fought by Israel and the UK; the US, by association with Israel, was considered an occupying force by Shia factions in 1980s Lebanon.

In the cases of the US, UK, and Israel these Lyall-Wilson criteria factors have created the conditions for protracted war. This intractable conflict forces the dynamic (COIN through capture) which favors APRI as an insurgent strategy.

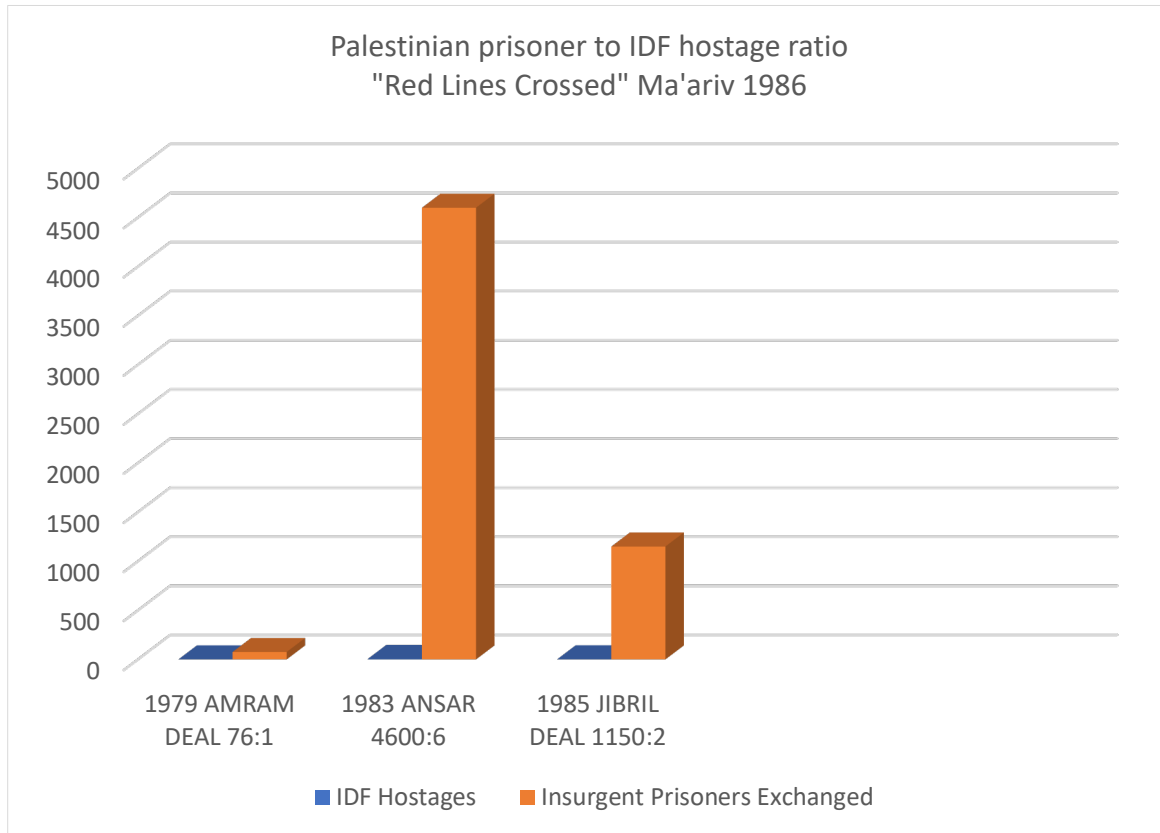
Democratic COIN practices allow for large-scale detention of insurgents, conducted under domestic criminal codes even if the struggle is actually a military conflict (ICRC 2015). Because state forces almost always detain more insurgents than the insurgents can capture from the state, the COIN through capture model creates an asymmetric battlefield with large numbers of insurgent detainees. This makes APRI a reasonable technique for insurgents to force upon a democratic government.

Political opponents of asymmetric prisoner releases contend that the releases themselves create a “marketplace” whereby every kidnapped hostage must be exchanged for increasing numbers of insurgent prisoners. For example, within a day of the Avraham Amram exchange, there were protests against the asymmetry of the trade (Davar Newspaper 1979).

In 1986, shortly after the infamous “Jibril deal”, the Israeli newspaper Ma’ariv attempted to quantify the Israeli government’s “crossed red lines”, which it defined in terms of the number of Palestinian prisoners released for each IDF soldier (Ma'ariv 1986). Amram’s trade was explicitly credited with creating the marketplace, through the “distortion of the quantitative ratio” (translation mine) which had heretofore been accepted as one-for-one trades of combatants. It is

clear that by the mid-1980s Israeli APRI was seen as a response to something like market pressures from Palestinian insurgent groups.

Figure 3 *Palestinian prisoner to IDF hostage ratio*



But the idea that each trade creates an impetus for the next one has only limited explanatory power, according to some. It is not the trades *per se* that create the marketplace. Rather, as Gershon Baskin, a major figure in the Gilad Shalit negotiations, points out, ***COIN through capture creates the marketplace***, and activates the mechanism whereby hostage-taking by insurgents is a profitable tactic. When territory is placed in a state of exception; an occupying force derogates its human rights obligations; political activity in the territory is criminalized through Emergency statutes; and when masses of people are detained under those statutes, an asymmetric carceral structure is erected.

For example, the 1983 Ansar Camp prisoner exchange was a result of the mass incarceration of Shia civilians in several sites after the 1982 Lebanon invasion. This explains the large number of

prisoners released in 1983 as opposed to either 1979 or 1985, as 4600 Lebanese civilians were being held without trial in the camp. In fact, Israel considered these personnel to be POWs, and planned to release them upon the IDF's withdrawal from Lebanon. Thus, the Israelis considered the 1983 APRI a combatant exchange. This perception was not shared by the Palestinians, who considered it a lopsided trade; the demand for return of 4700 security prisoners would reappear shortly thereafter in the early stages of the Jibril Deal (Hennerbichler 2011).

Outrage over Israeli policy in Lebanon almost certainly played a part in operations aimed at capturing IDF soldiers. The PFLP-GC hoped to clear the Ansar camp as well as gain the release of many Palestinian prisoners. Israel's refusal to release more than 100 Palestinian prisoners in the Ansar Camp exchange (which is why 4700 was the final total) gave Ahmed Jibril impetus to kidnap more IDF soldiers to force the 1985 deal (United Press International 09 July 1984).

The same pattern is evident today. There are over 6000 Palestinian prisoners currently held by Israel, 600 of them minors and 200 of them women. At the time Gilad Shalit was captured the count stood at over 9000 (B'Tselem 2006).

It is evident that without large numbers of detained insurgents, there is little impetus toward APRI. For instance, the Spanish counterinsurgency against Basque separatists was largely free of APRI situations after Franco's death because of a near-total release of ETA prisoners by Juan Carlos in late 1976. Afterwards, ETA kidnappings to force prisoner release decreased and became a negligible, indeed universally condemned, tactic by 1980. This is because the remaining Basque prisoners were known to be violent felons, and ETA's targets were considered worthy prisoners by the general public, whether Basque or "Spanish" (von Tangen Page 1998, 135-137).

The core European states (France, Spain, Italy, Germany) currently present a case where there is no prisoner marketplace, even if their militaries are engaged in conflict areas. Ransom is the primary position of most European governments in hostage situations, whether military or civilian (Theroux interview 2020). This is not a recent development (Jewish Telegraphic Agency August 30, 1973): European airlines had made this standard procedure since the early 1970s, with the tacit approval of governments. However, by the late 1990s, there was a turn away from European states paying ransom (T. Anderson 1998), a trend which did not last for long.

Most western European nations favor ransom for a variety of reasons. First, the prisoner discourse regarding belligerent category is different than it is in Israel or the US. There is no

government policy in these countries which categorizes belligerents as beyond the pale; these governments *do* negotiate with terrorists. Second, the Europeans have very limited rescue capability, especially offshore (A. O’Murchu, personal communication, July 12, 2020); third, the US is increasingly unlikely to launch rescues for European personnel, especially non-military (Theroux interview 2020).

Further, insurgents specifically target nationals from countries willing to pay, so more of their citizens are taken as the ransom policy becomes known (Theroux). Social science research has proven that insurgents are more likely to target democratic regimes than dictatorial ones for kidnappings of their personnel (Lee 2013), a function of democratic regime willingness to pay a high price for its citizens.

However, these hostage situations are not always what they seem. Since European publics expect ransom to be paid by their governments, oftentimes the “victim” of a kidnapping is in cahoots with his or her captors. These victims have been found with serialized bills given to the captors after their “release”. This fact has also made governments, especially the US, less apt to risk any lives on rescue (Theroux interview 2020).

Nor do the European states hold many “insurgent” prisoners, negating any marketplace; thus, unlike the US, UK or Israel, there is only one option to free a European hostage: negotiation on price. There is not an APRI option.

Table 7 shows the effect of democratic counterinsurgency praxis on execution of asymmetric prisoner release initiatives across several western examples. *The Lyall Wilson factors which are linked to defeat and protracted conflict, and the COIN through capture sequence are both followed completely in those cases where APRI are executed.*

Table 7 Democratic COIN Praxis

Conflict/ COIN praxis	Israel- Palestine	UK- N Ireland	US- Lebanon	US- Afghanistan	Europe- Ransom
COIN through Capture?	X	X	N	X	N
<i>State of exception</i>	X	X	Invitation from Govt	X- Guantanamo Bay	N
<i>Derogation</i>	X	X	N	X	N
<i>Criminalization</i>	X	X	N	X	N
<i>Detention</i>	X	X	N	X	N
LYALL- WILSON FACTORS					
<i>Mechanization with reduced HUMINT</i>	X	X	X	X	N
<i>External Support</i>	X	NO	X	X	N
<i>Occupier</i>	X	X	X	X	N
<i>Protracted</i>	X	X	X	X	N
APRI EXECUTED?	YES	NO	NO	YES	NO

The table shows that among my examples, *democracies which execute APRI are in the minority*, and that APRI is an option only in specific situations. First, the practice of COIN

through capture is strongly associated with APRI; it creates the structure which makes kidnapping of soldiers an attractive insurgent option.

Second, the linkage of APRI with Lyall-Wilson criteria is clear as well. I will show that modern democracies nearly always begin their COIN operations with regular mechanized forces, a decision which creates reduced intelligence collection for years to come. The status of state COIN forces as an occupier is nearly a truism of insurgency. And external support for insurgents (which creates a safe haven for kidnapers) is one of the Lyall-Wilson criteria most strongly associated with protracted COIN, and with APRI.

For instance, in the Israeli cases (those of Avraham Amram and Gilad Shalit) external support for the insurgents made kidnapping a viable insurgent tactic but made state rescue attempts less likely to succeed. The same held true in 1980s Lebanon, where the Bekaa Valley was essentially a separate political entity from Beirut (von Wald 2020); while US soldier Bowe Bergdahl was spirited out of Afghanistan and kept in Pakistan, which made rescue problematic (Farwell and Ames 2019, especially Chapter 11).

In Ulster, the Provisional IRA did not have an external supporter to provide it safe haven while at the same time, it received arms, materiel, and training from many different sources. The differing political and tactical concerns surrounding the border region ensured that while IRA infiltration *from* the Republic might have been difficult to police, violations of Irish state sovereignty (IRA incursions *into* the Republic) were an Irish government concern, and would be dealt with severely (Freytag 2016). The absence of a similar external safe haven to IRA kidnapers goes far toward explaining the lack of APRI executed during “The Troubles”.

Table 7 showed a strong linkage between the Democratic COIN complex (The Lyall-Wilson factors and COIN through capture) and APRI decisions from democracies in the midst of counter-insurgency. The democratic COIN complex is thus a necessary if not sufficient factor in creating the conditions which necessitate APRI. Combined with the Prisoner Discourse, it provides a reasonable explanation for the negotiation and decision-making process surrounding asymmetric prisoner exchanges. In the next chapter I compare several examples of how democratic regimes responded to APRI scenarios.

Chapter 4: The Democratic Counterinsurgency Complex and the Prisoner Marketplace: A cross-case comparison

My data show that democracies are more likely than dictatorships to execute APRI as a conflict management tool. This is because of context-sensitive discursive and tactical structures which create social/electoral pressures on governments; as well as a prisoner imbalance which makes kidnapping a viable insurgent technique.

In this chapter I use a historical institutionalist framework to compare the effects of the Prisoner Discourse and Democratic Counterinsurgency Complex on state prisoner policies in four cases: Spain and ETA; Israel in the Levant and the OPT; the UK in Northern Ireland, and finally the US in Lebanon. The general period for all four is the late 1970s and 1980s (though ETA's actions in 1997 reshaped Spain's prisoner discourse for good).

Both the Prisoner Discourse and the DCC proved fundamental in driving government prisoner policy, but not because these structures are permanent features of democracy, or of war. Rather, there is a temporal explanation: international norms had changed, and state responses evolved in the face of domestic expectations and electoral pressures.

Democratic states found themselves in a dilemma. Their military mechanization meant that they prosecuted COIN campaigns with force structures ill-suited to a hearts and minds strategy. Sophisticated Cold War militaries were fighting domestic, lesser-armed insurgents on the insurgents' terms. This situation in itself was path dependent: a truism of history is that heavy combined-arms forces fight the war they have trained and equipped for, not the war they encounter.

Further, international recognition of liberation movements created a new dynamic for intrastate conflict. The 1977 Additional Protocols gave governments an incentive to execute the "COIN through capture" sequence, which avoided the strictures of international law, but ensured that an imbalanced prisoner marketplace would develop.

Sequence mattered in these cases: the states studied here formed institutions which shaped and constrained government action within COIN praxis. But while institutions constrain and refract politics, they are not the only causative factor (Thelen and Steinmo 1992, 13). I do not claim that western COIN praxis *per se* hastens a predetermined outcome: in addition to illustrating how

such praxis encourages APRI, I will also show why APRI was not always executed, even during COIN operations when a prisoner imbalance was present.

All four democracies were confronted with an asymmetric prisoner marketplace where their citizens could be captured and traded for insurgents; all were engaged with an irregular, nonstate, armed adversary; but not all executed APRI to free their citizens. This chapter will show why some hostage situations trigger an APRI response, and some do not.

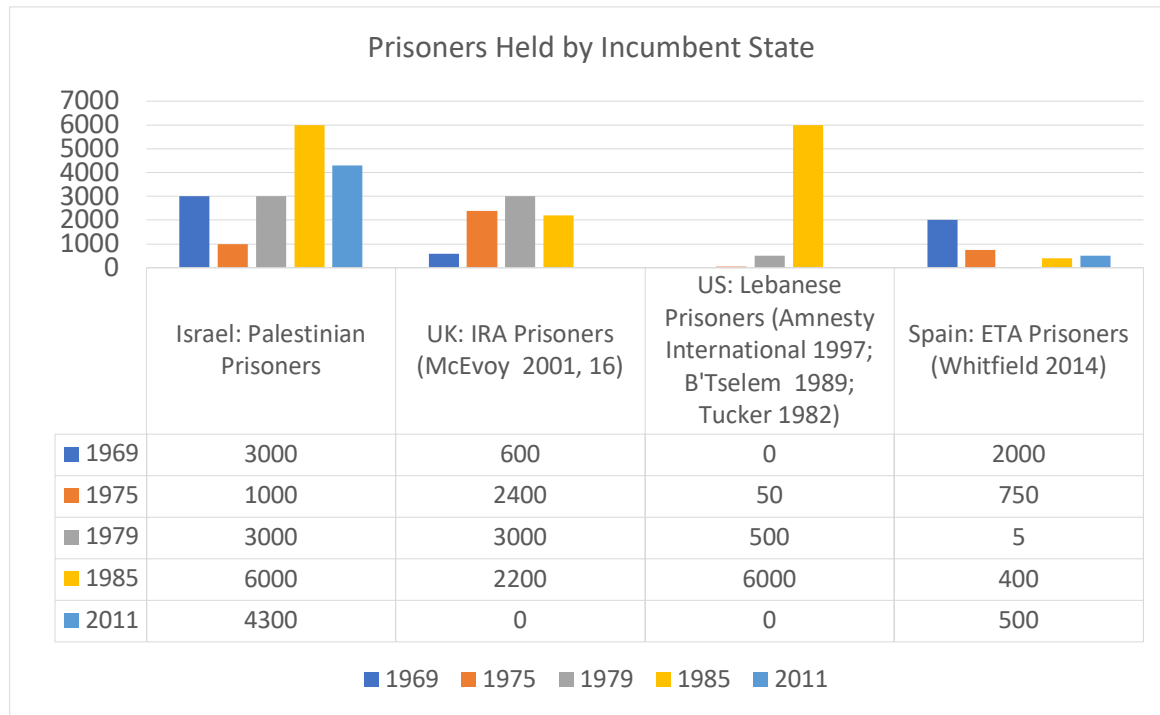
General Similarities

COIN through capture:

The first structural similarity across cases is the COIN through capture sequence. “Declare, derogate, criminalize, and detain” was the common sequence in Spain, the UK, and Israel with regard to insurgents. None of the states involved wished to acknowledge a domestic crisis in their midst, nor did they want international involvement in their handling of the insurgency.

Teresa Whitfield (2014, 125-126) is explicit that “resistance to international attention” was foundational in Spanish politics and policy towards ETA from the beginning of the Juan Carlos regime. Spain, the UK, and Israel all found ways within their own governmental channels to declare emergency situations; derogate human rights obligations; criminalize political activity of insurgent groups; and use these criminal codes to intern insurgents. This process created a prisoner imbalance which had a profound effect on state COIN praxis. All four democracies experienced an asymmetric “prisoner marketplace” as a feature of their insurgency (see Figure 4).

Figure 4 The Prisoner Marketplace



The Lyall-Wilson Factors:

The Lyall-Wilson factors create another set of similarities for comparison. It is clear that these played a part in that the conflicts lasted for decades.

First, each state had mechanized its force structure to some extent, and had suffered a concurrent lessening of its HUMINT capability as a consequence. The US suffered a near-total loss of its intelligence network in Lebanon between 1982 and late 1983; the Government of Spain (GOS) suffered from linguistic and geographic disadvantages in its struggle with ETA; the IDF found it difficult to field enough non-mechanized forces to adequately patrol Lebanese or OPT areas; and the UK was reduced to helicopter resupply and patrolling in Ulster, thus cutting off contact with the local population.

Second, the US, Israel, UK and Spain were all considered occupiers in their respective insurgent zones, though the intensity of this perception varied. Each (aside from perhaps the US in Lebanon) had allies in the region: Israel had the South Lebanon Army, while the Ulster population was half Loyalist. Even in the Basque Country there was a large divide between ETA

and other Basque as well as “Castilian” groups. Over the course of time, each state tried to temper this perception: Spain almost immediately created an autonomous region with an ethnic police force in Basque Country; the UK reestablished the primacy of the RUC as the Ulster’s law enforcement arm; and Israel created the Palestinian Authority (PA). These all proved to be too little, too late.

With regard to the third Lyall-Wilson factor, safe haven for insurgents, this is where similarities diverge; but also, where the data show a specific correlation between APRI and structural context. In all four cases, state forces faced an enemy which had access to a safe haven just beyond the area of operations. For the US it was largely the Bekaa Valley, and by extension Iran and Syria; for the IDF both Lebanon and the warrens of Gaza; for the UK it was the Republic of Ireland; and for the GOS, it was the Basque region of France. But as I shall illustrate, there is a vast disparity in APRI outcomes based on the presence or absence of a true “safe haven”.

The Prisoner Discourse:

Institutions are norms and practices which constrain or restrict governments’ behavior. Just as the DCC exhibits such institutional constraints as force structure, military doctrine, and intelligence functions, in time becoming its own institution, the Prisoner Discourse also exhibits specific institutional characteristics common to nearly all democracies. State action based on this discourse has largely become path dependent, in that few regimes can resist the pressures of international law; or deviate from a popular policy of “no negotiation with terrorists” (NNWT); only Prisoner Type seems malleable enough to be unpredictable. But even then, popular support for a specific hostage will overcome most other political variables.

In all four cases, International Law shaped state praxis. As predicted in 1941, “law-conscious public opinion” (Jackson in Mettraux 2008, 6) has become a constraint for governments, even dictatorships to a slighter extent. The COIN through capture sequence seen in Spain, Israel and the UK is evidence of this.

As for belligerent category, each state was initially hamstrung in its negotiation strategy by categorization of the belligerent as a “terrorist”. This stance is *per se* a path dependent institution, reinforced by popular support though not entirely efficacious in practice.

Proof of this is clear. Each state save Spain was forced to circumvent its own policy: the UK by opening secret talks with the IRA; the US through the “Iran-Contra” channel; the IDF through a

variety of methods, to include ICRC intervention, third-nation interlocutors, and two-track talks. Only Spain openly negotiated with insurgents as a matter of course, but only after years of adhering to the NNWT line.

Finally, with regard to prisoner type, only the US made a concerted effort to brand its citizens as unworthy hostages. Mass peace movements in Israel and Spain created a condition whereby nearly every prisoner became “worthy”; while IRA tactics and Republic of Ireland policy made kidnapping for ransom or exchange a nearly impossible operation in Ulster.

Table 8 The Democratic COIN Complex and APRI

Conflict/ COIN praxis	Israel- Palestine	UK- N Ireland	US- Lebanon	Spain- ETA One	Spain- ETA Two
COIN through Capture?	X	X	N	X	X
<i>State of exception</i>	X	X	Invitation of Government	X- Constitution	X- Constitution
<i>Derogation</i>	X	X	N	X-	X
<i>Criminalization</i>	X	X	N	X	X
<i>Detention</i>	X	X	N	X	X
LYALL- WILSON FACTORS					
<i>Mechanization with reduced HUMINT</i>	X	X	X	X	NO
<i>External Support</i>	X	NO	X	X	NO
<i>Occupier</i>	X	X	X	X	NO
<i>Protracted</i>	X	X	X	X	X
APRI EXECUTED?	YES	NO	NO	YES	NO

THE CASES:

Israel:

The Lyall-Wilson criteria

In the case of Israel in Lebanon/OPT, all three Lyall-Wilson factors were considerations. First, by 1978, the Israel Defense Force was a conventional army. It had successfully fought two full-scale wars against regular Arab forces. And while it possessed a robust Special Operations (SPECOPS) capability, Rabin's explicit policy since at least 1960 was to create an army which could fight and defeat Soviet-style motorized and mechanized units as fielded by Egypt and Syria (Jewish Telegraphic Agency 4/26/1960). This meant that pursuing insurgents into urban areas or even rough rural zones became difficult and that blending into the human landscape in order to collect human intelligence was nearly impossible.

The inflexibility of IDF response became apparent as PFLP-GC infiltration tactics changed to prioritize escape of its bombers rather than Israeli casualties. As with the IRA in Ulster, by the mid-1970s PFLP missions were focused on the safety of its hard-to-replace "technicians" rather than successful detonations (Iron 2008). The PFLP-GC escape routes were mined and booby-trapped, and IDF doctrine was to pursue in force until the enemy had been neutralized (once the route had been made safe), or the infiltrators had made it across an international border (Dayan 1976). Either way, it was hard going for both forces as the insurgents made their escape out of Israel.

At Ma'alot in 1974, however, the infiltrators took hostages, and found that they did not have to execute a fighting retreat; they could bog the IDF down in negotiations. The resultant IDF rescue attempt resulted in the death over 20 hostages after talks broke down (Dayan 1976, 585-587). This made Israel hesitant to attempt such rescues after more than 24 hours had passed. In later incidents the pattern emerged that insurgents stayed put, made demands, and then were guaranteed safe passage to a friendly country, thus fulfilling their main priority of escape. Moshe Dayan admits that the tactic surprised him, and that the IDF never found a response.

This lack of tactical response to kidnapping was apparent in 1978 when Private Avraham Amram was abducted in Lebanon. And it has remained so to this day, although the deterrent effect of campaigns like Operation Cast Lead has raised the price for insurgent hostage-taking, especially in places like Gaza where massed populations and smart weapons combine to take a deadly toll (Baskin interview 2020; Y. Levy, personal communication, July 11, 2020).

Second, the existence of a safe haven for insurgents made Israeli response difficult. Not only had the PFLP-GC prioritized escape in order to preserve the life of its scarce bomb technicians, it had discovered that hostage taking made escape easier. The support of Lebanon and Syria in harboring Palestinian fighters and their hostages meant that unless rescue was immediate, an IDF captive could be held indefinitely and moved on a daily basis without revealing his location. In the effort to rescue its soldiers, the IDF was forced to violate sovereign borders. Creation of “security zones” within other states became a standard Israeli practice.

This of course, led to the third factor in Lyall & Wilson’s criteria, the idea of the COIN force as an occupier. In light of such actions as cross-border raids and establishment of security zones (never mind the 1967 war and its aftermath), by definition Israel would become an occupying force, whether in the West Bank, Gaza, or Lebanon. Thus, all three indicators for protracted democratic COIN were present in 1978 when an IDF soldier was captured by the PFLP in southern Lebanon, precipitating Israel’s first APRI.

The COIN through capture sequence

The tactical structure underpinning Israeli APRI is largely a function of COIN through capture. As Table 8 shows, the COIN through capture sequence is strongly linked to APRI decisions. Israel illustrates the classic sequence in its West Bank and Gaza policies.

The first step is a state’s declaration of Emergency; this is a legally recognized procedure under both international humanitarian law (article 78, 1949 Geneva Convention) and international human rights law (for instance, Article 15 ECHR). Ariel Merari (1993) claims that this step is a near-universal response for states faced with armed insurgents. Israel declared a state of emergency in May 1948 (Israel Ministry of Foreign Affairs 2000), and has been under Emergency law ever since (Beilin 2018). More germane to our purposes, Israel has placed the OPT in a state of exception since its occupation of the territories in 1967. It does so by claiming that because the status of these territories was not settled between 1948 and 1967 (despite Jordanian annexation in 1950 and subsequent imposition of Jordanian law; see Robinson 1997), therefore Israel must govern under 1945 British Mandatory law which predates and thus nullifies the 1949 Geneva Conventions.

Second, Israel’s derogation of its obligations under international law is inherent in the state of exception. Since IHL as codified by the Geneva Conventions is not applicable, Israel depends on

the 1907 Hague Conventions to govern its IHL activities. One major difference between the Hague and Geneva conventions is Geneva's explicit prohibition against settlement activity, whereby "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies" (Article 49). Another is the prohibition against hostage-taking found in Common Article 3, the first such prohibition on hostage-taking in war (Darcy 2014, 170-171). Thus, Israel has a specific policy interest in defining Hague as the applicable law, since Hague does not outlaw those practices which are at the heart of its COIN operations in the OPT.

The Hague Conventions of 1907, Section III, Article 43, state that: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, *the laws in force in the country.*" This allows Israel (so the argument goes) to derogate any obligations under Geneva: but this derogation policy violates Israel's own 1961 IDF Handbook "Military Authorities in an Occupied Territory", which explicitly stated that the 1949 Geneva Conventions applied to any Israeli forces conducting occupation operations (Gazit 2003, 18).

Third, criminalization of political actions is covered by Section VII, Articles 84 & 85 of the Defense (Emergency) Regulations 1945, enacted while the UK was fighting its own COIN in Mandatory Palestine. These regulations explicitly criminalize "Unlawful Association", i.e., membership in proscribed groups that remain unnamed in the code; any political group may be proscribed by the authorities (UK Government 1945). This is reinforced by Israel's own domestic codes: Ordinance Number 33 to the Basic Law proscribed membership in "terrorist" groups as designated by the government. So even if Israeli law applied in the OPT, criminalization of political activity would still be enforced under its own civil code.

Fourth, in addition to the Emergency Regulations, there are at least three other Israeli laws allowing detention without trial: Article 285 of Military Order 1651, which applies to the West Bank; the Unlawful Combatants Law, which governs the residents of Gaza since disengagement in 2005; and the Emergency Powers (Detentions) Law, which applies to Israeli citizens (Addameer n.d.). In the West Bank, individuals may be detained for renewable periods of up to six months if military commanders have "reasonable grounds to presume that the security of the area or public security require the detention" (Addameer n.d.). This allows Israel to bypass the

Geneva Conventions on both POW and civilian victims of armed conflict. But more importantly, detention and internment build a system of asymmetric incarceration which supports the profitable use of kidnapping as an insurgent technique.

It is clear that the democratic counterinsurgency complex is the structure which underpins Israeli APRI situations. This is even clearer in the case of the UK in Ulster.

Northern Ireland:

The UK government faced similar counterinsurgency challenges in Ulster. Counterinsurgency forces were not acting under IHL, but rather under UK law, and against their own citizens; a status which the IRA contested (Walker 1984).

The Prisoner Discourse with regard to Ulster shared similarities with the other cases when it came to international law, and the pressures which the UK felt to try and avoid the recognition of the IRA as an enemy combatant. Disagreement over this point drove the most famous aspect of the conflict, the struggle of IRA prisoners to be accorded special category status as POW. And as with the other cases, belligerent categorization of the IRA as terrorists hampered negotiations between the UK government and the IRA, even after the advent of Sinn Fein. What was unusual in the case of Ulster was the influence of prisoner type and family pressures. Family pressure was not so much a factor in changing UK policies; but it was the families which exerted great pressure upon the IRA to change its positions, most famously during the hunger strikes (P. Pennington, personal communication, March 7, 2020; O'Malley 1990). But it was not the Prisoner Discourse which had the greatest impact on APRI decisions in Ulster: rather, the democratic COIN complex drove UK policy.

As shown in Table 8, the UK practiced COIN through capture. The sequence is apparent. First, on 09 August 1971, the UK declared a State of Emergency based on IRA activities in Ulster (European Court of Human Rights 1978).

Second, Article 15 of the European Convention on Human Rights (ECHR) explicitly allows for a state to declare an Emergency, and then to notify the European Court of Human Rights (ECtHR) that it will not comply with certain basic human rights found in the Convention. Although the number of derogations under Article 15 ECHR is low, both the Republic of Ireland and the United Kingdom have in their turn derogated sections of the ECHR in response to military actions by the Irish Republican Army (de Moree 2016, 26-27).

The UK was one of the most active “derogators” in Europe: six notices of derogation found their way to the ECtHR between 1957 and 1975 (European Court of Human Rights 1978). Its derogation notice on 21 August 1971 paved the way for “legalization” of Operation Demetrius, the use of internment without trial in Ulster (McCleery 2015).

The third COIN through capture step, criminalization of political activity, was an integral part of Operation Demetrius. Internment was imposed for mere membership in proscribed organizations and used disproportionately against the IRA. Between 1971 and 1975, 2060 Irish Republicans were interned without trial compared to 109 Loyalists (McEvoy 2004, 212). The complete realization of criminalization occurred after 1 March 1976, when those convicted under Emergency Law lost their “Special Category Status”, i.e., were no longer to be treated as POWs but rather violators of the criminal code.

Fourth, this criminalization created a system whereby violators could first be interned under Emergency codes, then after streamlined trials detained for long periods under UK criminal law. Counterinsurgency through capture became the most maligned part of UK policy. But despite development of an asymmetric prisoner structure, the UK policy never resulted in an asymmetric prisoner release for the life of a UK soldier.

Therefore, COIN through capture seems a necessary, but not sufficient condition to explain APRI by democratic regimes fighting an insurgency. I have shown this with the Ukraine case as well, as discussed in Chapter One.

The Lyall-Wilson conditions, (mechanization/poor HUMINT, status as occupier, external support) which are closely associated with democratic defeat and protracted conflict in COIN, provide further explanatory power.

The UK forces in Ulster, much like the IDF, were originally structured for conventional Cold War missions. These conventional forces surged into Ulster: in 1969 there were 2700 British troops in Northern Ireland; by 1972 there were 30,000 (Keefe 2018, 184-185). They were inadequate information collectors, and later specialized HUMINT units such as the infamous Military Reaction Force (MRF) were created to close this gap (S. Becket, personal communication, July 31, 2020).

Several military officers and politicians (to include BGen Frank Kitson, commanding the 39 Air Portable Brigade in Northern Ireland) cautioned the Ulster authorities that a sweep meant to intern suspects without trial would have to be near-perfect in execution (Keefe 2018, 192-194).

Instead, it was a fairly blunt weapon. The catholic psyche was wounded, and never really healed as a result of the British Army's poor HUMINT capability and performance during the opening of Operation Demetrius (S. Becket, personal communication, July 31, 2020)).

The original list of Republican sympathizers slated for detention contained 520 names. Of these, 178 evaded arrest. Of the 342 arrested, 116 were released within 48 hours, and another 100 were found to have no paramilitary links (McCleery 2015, 18-19). It is apparent that the first of the Lyall-Wilson criteria for defeat/protracted conflict, *mechanization leading to poor HUMINT collection*, was present.

Secondly, the surge in troop numbers, accompanied by discriminatory enforcement tactics, ensured that the British Army, and the UK government, was considered an occupying power by the Catholic populace in Ulster. The disarming of the Royal Ulster Constabulary (RUC) meant that armed British troops had to accompany RUC patrols, and for all intents appeared to be an occupying force performing what had formerly been civil police functions. Indeed this "occupation" mindset lay at the root of IRA arguments for "Special Category" (POW) status, and became perhaps the most well-known aspect of the Troubles. Thus, a second of the Lyall-Wilson criteria, *occupation*, was met as well.

The last Lyall-Wilson condition for defeat or protracted conflict is external support (safe havens) for insurgents. ***This condition was not met.*** While arms and money were indeed moved to the Provisional IRA, there was never support from the Irish Republic for cross-border incursions of any kind (Freytag 2016) . In fact, Brigadier General Adrian O'Murchu, currently assistant Chief of Defense for the Irish Armed Forces, states that Irish Republic forces would actively attack Provisional IRA units which attempted to retreat across the border with an abductee during the 1970s and 1980s. Despite a protracted campaign, and the UK practice of COIN through capture, the Provisional IRA had nowhere to safely hide, and concurrently negotiate for the release of, a kidnapped UK soldier (A. O'Murchu, personal communication, July 12, 2020).

The US in Lebanon:

The case of US hostages in Lebanon does not fit snugly within the democratic counterinsurgency paradigm, in that the US was only peripherally involved in combatting the widespread Shia insurgency of the 1980s.

It is fair to say that in the 1980s, the Lebanese Shia felt besieged on all fronts: the Gulf States feared Shia political power whether at home or abroad, and worked to undermine it; Syria supported the Sunni element in Lebanon; Israel armed the Christians in the south after they had destroyed most Shia villages in the region; and the secular PLO was becoming a power unto itself (Sunayama 2007). Thus, the US presence in Lebanon seemed of a familiar type within the Shia persecution discourse.

Nevertheless, the democratic COIN complex existed in Lebanon, and was a political and military reality for American interests whether the US created it or not. This actually strengthens my structural and institutional argument: the democratic COIN complex is ultimately an institution that constrains all state participants, whether they helped create the complex or not. The asymmetric prisoner structure between the Shia and the non-Shia forces was a result of various government COIN through capture/anti-terror policies: in Lebanon, Israel, and the Gulf, and targeted primarily at Iranian/Shia insurgents. The “battlefield” showed an imbalance between insurgent and state hostages in all of these regions.

The US hostage situation as it developed in Lebanon was the result of an insurgent tactic which challenged the current prisoner imbalance by targeting US and European civilians for kidnapping and subsequent trade. The first US hostage, David Dodge, interim president of the American University in Beirut, was taken in 1982. By 1990 there were still at least 15 Western hostages in Lebanon (from a peak of about 25 or 30), and the price of a Western hostage was measured in millions of dollars (United Press International 1990) or in an asymmetric trade for the 17 “al-Da’awa” prisoners convicted in Kuwait after a 1983 bombing attempt there (Washington Post 1988; Washington Post 1981). It is worth noting that CNN reportedly offered \$5 million for its bureau chief, Jerry Levin, kidnapped in 1984; no group accepted (Levin 1989, 84-85). There were between six and nine US hostages at any one time during the 1980s, with 17 US captives total (Coughlin 1993).

Whether Shia insurgents in Lebanon perceived the US as a principal actor (Rubin 1983), or merely as an agent, (a perceived proxy for Israel; see PBS Frontline 2002), the US could not overcome its hostage dilemma there and forcibly free its captives because it conducted both political and military operations under the constraints of the Lyall-Wilson factors. An argument can be made that the prisoner discourse, especially dealing with belligerent category (the Shia as terrorists) and prisoner type (the hostages as unworthy because they stayed in a dangerous

location after fair warning) played a large part in US strategy. There is some truth to this: but the Lyall-Wilson factors created a structure which made either military or diplomatic options in Lebanon difficult for the Reagan and Bush administrations.

First, the US suffered a catastrophic reduction in its formerly robust HUMINT capability within Lebanon between 1982 and 1984 (PBS Frontline 2001). A little-known element of the US intelligence effort there had revolved around a complicated network of PLO informants. But the evacuation of the PLO from Beirut in August 1982 resulted in a “a major intelligence loss” for the US (Taubman 1983). In early 1982, for example, the CIA counted among its *paid* sources not only Ali Hassan Salameh, the leader of Black September and “the architect of the Munich Olympics Massacre” but Bashir Gemayel, the President of Lebanon (Burton and Katz 2018, 58-59). Gemayel was assassinated in September 1982, and with him died CIA hopes for near-total visibility across all facets of Lebanese political life.

Then, on 18 APR 1983, a car bomb ripped through the US Embassy in Beirut. The blast was powerful enough to rattle the *USS Guadalcanal*, anchored five miles offshore. Among the 17 American dead were eight CIA employees, including the Chief of Station, Kenneth Haas; and the CIA’s chief Middle East analyst, Richard Ames, who was visiting Beirut and had been involved with Salameh for over a decade (Burton and Katz 2018, 148). Finally, on 16 March 1984, Hezbollah abducted William F Buckley, Haas’ replacement as CIA station chief.

Though some attributed Buckley’s abduction to Soviet machinations (CIA 1984), Buckley was almost certainly taken as a bargaining chip for the al-Da’awa bombers whose Kuwait trial ended with convictions shortly afterward on 27 March 1984 (Ranstorp 1997, 92). Buckley was later spirited to Iran and killed by his captors. Thus, by 1984 the US had little, if any, HUMINT capability remaining in Lebanon.

Tactical blindness was reinforced by the prisoner discourse, which disallowed US negotiations with belligerents whom the government labelled terrorists, and that branded most US hostages as “unworthy”. The combination of these factors stymied US attempts at freeing its captured citizens. Three retired US Marine Corps officers, who all served in Lebanon amidst the hostage crisis, maintain that there were no actionable plans to rescue hostages, due in large part to inadequate intelligence regarding target location (W. McHenry, personal communication, June 20, 2020; PBS Frontline 2001; von Wald interview 2020).

This sense of helplessness in the face of a protracted low-intensity war (the effect of the Lyall-Wilson factors) posed a grave political danger to the Reagan administration, according to contemporaneous accounts of a 10 DEC 1985 White House meeting (Tower Commission, 1987, B-47). The Iran-Contra operation was, from the political standpoint, an administration attempt to extricate itself from political difficulties, by presenting the illusion of action in regard to the US hostages in Lebanon. I will show that this explanation was a falsehood. And a cover for geopolitical maneuvering in the Middle East.

In regard to the second Lyall-Wilson factor, safe havens for insurgents, it was evident that there were many denied areas where US hostages could be taken. The first US hostage, David Dodge, was abducted in Beirut. He was subsequently transported to and imprisoned in Iran; he was later freed with Syrian assistance. In addition to Iran, Syria and the Bekaa Valley all were denied areas to US and Israeli forces. In fact, Beirut itself was a patchwork of passable and impassable zones to US operatives. These safe havens ensured that US citizens could be taken and held without much danger to the insurgents.

The final Lyall-Wilson factor is perception of the government as an occupier. I have shown that Shia discourse in Lebanon largely appealed to the idea of regional and societal encirclement; the US effort was difficult to separate from the Saudi, Israeli, or European role in Lebanon's civil strife. Further, the arrival of US Marines in 1982 (to evacuate the PLO to Tunis) and again in 1983 (as part of the Multinational Force); especially their use of naval gunfire and artillery around Beirut, as well as high-level, but unauthorized, statements of US support for the Lebanese government (Halloran 1984), created the impression of the US as an occupier. In fact, the official US Marine Corps history of its involvement in Lebanon from 1982-1984 explicitly states that the first use of naval gunfire in September of 1983 changed the Marines' mission from one of peacekeeping to one of "direct involvement" (Frank 1987, 86).

The Lyall-Wilson factors ensured that US options were limited when attempting to change the state of play in Lebanon. Tactical/strategic blindness; numerous safe havens for hostage-takers; and perception of the US an occupying force in Lebanon placed it in a similar position to Israel which was actively fighting a counterinsurgency in the south.

US Policy Missteps and Iran-Contra

The US “no negotiation” policy with organizations labelled as terrorist groups was, ironically, made explicit in the “Public Report of the Vice President's Task Force on Combatting Terrorism” (1986) at the height of the Iran-Contra operation. More importantly, the US had enunciated a similar policy with Iran by late 1979. In addition to its own political activities, Iran was sponsoring many of the Shia movements worldwide, meaning that Iran felt surrounded and beleaguered by political enemies.

The categorization of nearly all political Shia groups, in Lebanon and the Gulf, as terrorists meant that the US could conduct only secret talks with any of them, state or non-state. Nor were other Middle Eastern organizations exempt. The PLO for example, was a proscribed group. That said, there were many secret negotiations between such groups and the US government, starting with the Nixon Administration (FRUS v08). Both CIA and Department of State had direct negotiations with the PLO (FRUS v08 document 46; New York Times 1976; New York Times 1982). Indeed, the day after Jimmy Carter’s inauguration, Zbigniew Brzezinski promulgated *Presidential Review Memorandum/NSC 3*, which explicitly asked whether there should be direct US-PLO talks (FRUS 77-80 v08, doc 1; 1-2).

Belligerent categorization proved a political trap for the Reagan Administration, whose re-election was based in part on a reputation for its tough negotiating stances. The administration had not created, nor could it readily shape, the battlefield in Lebanon: but its unwillingness to hold direct talks with nonstate Shia groups, much less Iran, made it impossible to gather useful intelligence, or to influence hostage releases when public pressure built on Reagan to do just that.

The Iran-Contra scandal was intimately connected to the Reagan administration’s prisoner discourse. Categorization of Iran (and by extension Shia Islam) as a terrorist state, ensured that no open negotiations were held with Khomeini’s regime. Further, the presence of US hostages became a justification for the weapons deals which constituted the Iran-Contra scandal. While Reagan’s justification was opportunistic, it was also untrue. In fact, the administration spent most of the decade trying to portray the US hostages as unworthy; people who had asked for trouble by remaining in Lebanon against government advice.

Although later linked to hostage negotiations, Iran-Contra had its origins in Operation Tipped Kettle, a weapons sale scheme enacted in 1982. The first US hostage, David Dodge, was

kidnapped in July 1982, and taken to Iran via Syria (United Press International 1983; Christian Science Monitor 1982). There were no further abductions that year. It is apparent that there was no connection between Tipped Kettle and any US hostages in Lebanon or elsewhere.

It is also worth noting that Tipped Kettle never made it into the Tower Commission report, despite the involvement of Major General Richard Secord (known by the code name “Copp” in the Tower Commission Report) in both operations. In fact, Secord is given direct credit for Tipped Kettle, by conducting personal negotiations with IDF Major General Meron for the ordnance (TK 08, 1984). These negotiations and the subsequent operations regarding Israeli and Iranian weapons movement were conceptualized and executed in the absence of any serious hostage discussions. Indeed, it was common knowledge that Israel and Iran had direct diplomatic contacts: in 1980, shortly after the US imposed an embargo on Iran, the Israeli Defense Attache’ in Paris agreed to assist in weapons shipments if Iran made the request through official channels and on government stationery (Pean 1987, 21-23).

The declassified documents regarding Tipped Kettle are listed in a Memorandum from the Assistant Secretary of Defense for International Security Affairs (ASD/ISA) to the Office of the Secretary of Defense (OSD) General Counsel dated 17 April 1987. There are 14 documents listed in the memo, plus the original listing memorandum itself. They will be referenced as TK Memo, and TK Documents 1-14 in the text and as above.

In 1982, the US was supporting a low-level insurgency in Nicaragua. There was no Congressional proscription on arming the Nicaraguan Contras at that time (Grimmett 2001), and the CIA had developed a plan to use Lebanese/PLO weapons captured by the IDF for this purpose. This plan was not a secret. Israel had held a display of PLO arms captured in Lebanon in October 1982; news reports even discussed Israeli plans to sell these weapons on to other customers. It may be that CIA personnel were at the weapons display, because the initiation of Tipped Kettle occurred a month later. Further, it is suggestive that great quantities of German arms and specialized Austrian equipment was found in PLO ammunition dumps (Feron 1982). This may be one reason for the German and Austrian involvement in hostage negotiations across the middle east in the period covered.

The first iteration of Tipped Kettle, initiated in late 1982, was successful. At CIA director William Casey’s direct request (TK 09, 1984), DoD (Secord) negotiated for, and the US Navy loaded & transported, 400 tons of ordnance from Ashdod to the US. There the CIA took control

of the cargo, and by summer 1983 put it in the hands of US-supported Contra guerillas. Total cost to the US for 20,000 rifles; 1000 machine guns; 90 recoilless rifles; and large quantities of ammunition was \$100,000. This covered the packaging and handling costs only. This led to a request by the CIA for more weapons, at the same terms.

But Tipped Kettle II became problematic. First, the Boland Amendment had been passed in December 1982, and further modifications to Boland had cut off funding for the Contras. Second, instead of a \$100,000 handling fee, the Israelis demanded \$77 million for the second tranche of arms. But while the US balked, it also suggested that Foreign Military Sales (FMS) credits and other DoD funding could be provided instead.

This impasse was largely, though not entirely, tied to the obsolescence of Israeli weapons stores. Both US and Israeli negotiators (to include some general officers) attempted to manipulate Tipped Kettle II for their own ends. In the Israeli scenario, Israel would sell their old weapons to Iran, and use the US FMS credits to restock their armories with the next generation of such weapons as the TOW 2, which had longer range and greater armor penetration than the older version (J. Hamm, personal communication December 31, 2020). Not only did this scheme violate the US embargo on Iran, it was a US government breach of contract with Hughes Aircraft; the US was not supposed to resell the older, less expensive TOW, which Hughes was still producing and attempting to market in the Third World (Tower Commission 1987, B-57).

The TOW anti-tank missile became the central weapons system featured in the Iran-Contra scandal. It figured largely in both Israeli and Iranian military calculations: the Israelis successfully used the TOW against Syrian armor during the 1982 Lebanon War, while Iran's largest army weapons program had been the AH-1J TOW-capable Cobra helicopter (US Senate 1976). Iran made extensive use of the TOW in its war with Iraq (which Israel wanted Iran to win, while the US was politically ambivalent), so it is clear that both Tipped Kettle and Iran-Contra served the immediate interests of Israel and Iran. Perhaps more so than the US interest, until hostages became a political consideration. This focus on Israel, Iran, and weapons sales may also be inferred by the fact that Israel sold TOWs to Iran without US permission, and without repercussions once the US discovered this. It is apparent that Iran-Contra dealt more with weapons and support of US foreign policy than with freeing US hostages.

Despite the American losses in Lebanon, the plight of the hostages did not exert enough societal pressure on the US government to force an APRI. Indeed, one author claims that

electoral pressures caused Reagan to purposely keep Lebanon out of the news in 1983-84, in terms of both hostages (as Levin 1989 recounts) and the climbing casualty count of US Marines in Beirut (Sloyan 2019); another, Theodore Draper (1991, 238) says explicitly that public reaction to the hostage situation was considered a threat to the Reagan presidency.

By 1987 it was evident that the hostages could not be released without Iranian intervention, as unclassified documents reveal (US Senate Select Committee on Intelligence 1988); but this realization did not change negotiating strategy in the Reagan or Bush administrations. In fact, opinion polls show that hostage release did not resonate with the US public during the Iran-Contra hearings (Busby 1999, 81-83), largely due to the administration's characterization of US captives as unworthy. Consequently, the Reagan administration stopped using hostage release as a rationale for Iran-Contra (Busby 1999, 81-83).

The Lebanon example indicates that with regard to APRI, the strategic situation created an uneven prisoner balance; but this was peripheral to the US political landscape and not sufficient to force electoral pressures or government action. The US position in Lebanon was for the most part an indirect one and did not entail real COIN praxis. While weak HUMINT did make rescue of US hostages nearly impossible, it was the Prisoner Discourse in tandem with electoral pressures which prevented any prisoner exchange.

Spain and the Basque Country (ETA):

Spain's domestic counterinsurgency had two distinct periods and two distinct outcomes, a fact which reinforces the explanatory power of the Prisoner Discourse and DCC. First was a liberal break in political and antiterror policy in the Basque Country (Euskadi), followed by a "reset" which reinstated harsh security laws and changed the terms of Spain's prisoner discourse and counterinsurgency complex.

The first period, (1975-1981) was characterized by liberalism, democratization, and political concessions. ETA responded with increasing lethality, culminating with ETA's deadliest year and a spectacular kidnapping in 1980. This resulted in the release of several dozen ETA prisoners for one official. In the second period (1982-1997), the reapplication of Franco-era antiterror laws, along with the transformed international landscape, saw a reduction in ETA fatalities and no successful APRI attempts for the next three decades.

Francisco Franco died in November 1975. Three days after his coronation King Juan Carlos declared a special amnesty for most of Spain's political prisoners; he widened it to all political prisoners (save outright murderers) by August 1976. This would include those who killed the Prime Minister in 1973, as well as those who bombed a Madrid café in 1974, killing 9 and wounding 50 (New York Times 1978).

Juan Carlos also abrogated Franco's harsh antiterror laws that same year. By January 1978 not only had Spain held its first elections and adopted a Constitution; the number of Basque prisoners had dropped from 750 to only five. And in 1979, Spain passed Autonomy Statutes for several regions to include Euskadi.

Nonetheless, the Government of Spain (GOS) found that its liberal transition policies were ineffective in combatting ETA's separatist insurgency. Ideologues within armed movements often see the acceptance of concessions as a form of surrender, and thus increase their efforts to derail such government moves (E. Bueno de Mesquita 2005; Stedman 1997; Irvin 1999, 24-26).

Within two years Spain had created, seemingly from whole cloth, its own democratic counterinsurgency complex. Despite its desire to gain and maintain good standing in the Atlantic military/economic sphere (which was only possible by disavowing Francoism), the GOS found itself first declaring a state of exception; derogating its IHRL obligations; criminalizing political behavior; and detaining large numbers of insurgents.

These policies were largely path-dependent. The twin demands of Atlantic membership and public order created a feedback loop which channeled both left and right-wing governments into reinstating "Francoism without Franco" in both its international relations and its domestic COIN praxis.

Background

Euskadi comprises seven provinces straddling the Pyrenees Mountains in both northeastern Spain and southwestern France; the Basque language and other nationalist expression had been outlawed in Spain after the 1936-39 Civil War.

The group at the forefront of Basque separatism was *Euskadi Ta Askatasuna*, ("Basque Homeland and Liberty") known as ETA. Founded in 1959, ETA called for the union and independence of the entire Basque region and was most famous for its assassination of the Spanish Prime Minister in 1973.

Franco's industrial policy had given Euskadi the highest concentration of factories in Spain. By 1970, more than 30% of the region was non-Basque, lured by industrial jobs. This internal migration would have an effect on ETA's ability to conduct secret operations and maintain control of the population.

Franco's death hastened transitional democracy in Spain. But concurrent with GOS democratization initiatives, insurgent groups took advantage of institutional weakness to move against the government. In December 1976/January 1977, two prominent government figures were kidnapped by the Maoist group GRAPO: Lt General Villaescusa, President of Spain's Military Tribunal; and Antonio Urquijo, a former Justice Minister and adviser to Juan Carlos. GRAPO's demand was an exchange of 200 prisoners held for crimes including murder; only eight of the 200 were Basque.

The GOS acted quickly: new antiterror laws were passed immediately through decree, and Spanish security forces rescued both hostages on 11 FEB 1977 (Markham 1977). The decree laws were quickly annulled, but a precedent had been set for Spain's democratic COIN praxis: a *de facto* state of emergency became the norm.

Period 1: 1975-1981

The Democratic Counterinsurgency Complex:

The Lyall-Wilson factors

The Lyall-Wilson factors of reduced HUMINT capability; perception of state forces as occupiers, and safe haven for insurgents were all present under Juan Carlos, and are strongly linked to protracted conflict.

HUMINT collection by security forces in the region was poor. Language, terrain, and anti-government animus allowed ETA to shape the battlespace both in and out of Spain. Acting in the role of spoiler to derail the autonomy statute, ETA increased its violence. It claimed 20 victims in 1975, but nearly 100 in 1980 (Funes 1998).

With regard to the second Lyall-Wilson factor, the Spanish security forces in Euskadi were seen explicitly as occupiers (CIA 1978), although GOS seldom deployed the military into the Basque regions. Indeed, ETA strategy called for violence lethal enough to force military deployments in response (CIA 1978), a bait that the Juan Carlos government avoided.

Nevertheless, as late as the summer of 1978, civil police response to Basque demonstrations was so disproportionate that a provincial governor was sacked by GOS (CIA 1978).

Finally, ETA enjoyed a safe haven. France had granted political asylum to anti-Franco Basques since the 1940s, and was known as a center for ETA planning and operations. As recently as 1987, France still considered “historical grievances” grounds for refusing extradition (even to the US) for terrorism-related crimes (CIA 1987). Between 1977 and 1981, France refused 17 requests for extradition of ETA suspects, while holding at least a dozen more cases in abeyance (Markham 1981).

Combined, these factors created the conditions for unsuccessful COIN and protracted conflict.

The COIN through capture sequence:

Over time, democratization in Spain proved deleterious to ETA’s goals. The GOS began a program of “reinsertion” whereby Spain pardoned imprisoned ETA members after a public renunciation of both separatism and violence. This allowed ETA members to reenter society; it remains the goal of Spanish penal policy today (Sunderland 2005). One faction, ETA p-m, (political-military) took this program to heart and began to take on the trappings of a political organization, allying itself to *Herri Batasuna*, a Basque nationalist party and embracing reinsertion. ETA p-m’s counterpart, ETA-m, (military) continued its armed struggle.

ETA conducted three main activities to generate cash: bank robberies, kidnap for ransom, and “revolutionary” taxes on business owners (R. P. Clark 1984). These activities financed armed struggle, but did nothing to win popular support. As fatalities increased, and ETA became less selective in its targeting (CIA 1982, 55), even Basque popular opinion wavered.

From 1975-1981, Spain was forced to execute the COIN through capture sequence despite its liberal inclinations. Spain’s democracy was brittle; disorder was a threat that had to be addressed, lest conservative revisionists attempt to retake power. The 1981 military coup attempt proved that that this was no idle fear (B. C. Jones 1981).

First, declaration of an emergency was a sensitive subject in democratic Spain. Under Franco the “state of exception” was a legal term, just short of martial law, allowing detainees to be held *indefinitely* without appeal (Amnesty International 1975). Franco had imposed the state of exception 12 times from 1956-1975 (Irvin 1999, 191). Post-Franco, GOS has only declared a

state of emergency twice: once for an air traffic control strike in 2010 and in 2020 for the COVID pandemic (Minder and Peltier 2020).

Second, because Spain's priority was membership across the Atlantic Alliance (NATO and the EC), it declared to the European Court that it would not follow ECHR derogation procedures in regard to ETA because "Article 15 (of the ECHR) permitted the adoption of measures contemplated in Articles 55 and 116 of the Spanish Constitution" (Schabas 2015, 604). Articles 55 and 116 discuss states of emergency and derogation of specific constitutional rights, a condition not supposed to last more than 15 days (Government of Spain 2020). This allowed Spain to fight its domestic COIN without undue international attention.

Ironically, the third step of the sequence, criminalization, was the consequence of steadily increasing concessions to the Basque Country. In early 1978 Spain still had no standing antiterror legislation; criminalization was the law of the land, and membership in ETA was a criminal act.

My data predict that the COIN through capture sequence will end with mass detention of insurgents. In the case of Spain, this is borne out. In January 1978 there were fewer than ten Basque prisoners in Spanish jails; by January 1981 there were nearly 300 (R. P. Clark 1990, 43).

The Prisoner Discourse

The peculiarities of Spanish prisoner discourse were evident in the first period of GOS' counterinsurgency operations in Euskadi. Spain's attention to European integration meant that it made constant attempts to evade the attention of International Law organs. Its interpretive declaration to the European Court was helpful in this endeavor. Spain holds to this line today (European Parliament 2017).

However, Spanish policy regarding belligerent category was different from many western democracies. While criminalizing ETA membership, GOS tacitly recognized ETA's hold over much of Basque society. In 1978, ETA had between 300-350 armed insurgents; and another 300-350 support personnel in Spain. As early as April 1978, before the Constitution had even come into force, ETA requested direct negotiations with the governments of both Euskadi and Spain (CIA 1982, 67-70). The GOS never took the position of "no negotiation with terrorists". As events would show, ETA intransigence (especially as negotiations became more serious in the late 1980s) created popular support for increasingly harsh GOS antiterror legislation.

Societal views of Prisoner Type also evolved between 1975 and 1982. This was for a variety of reasons. First, ETA kidnappings were seldom executed for prisoner release. Most of the initial victims were wealthy Basque-country industrialists kidnapped for ransom or to influence strike negotiations. This process did not meet general disapproval between 1975 and 1979.

But the ETA assassination of a well-known trade-unionist in October 1979 resulted in a general strike against what the Spanish Socialist Party (PSOE) called the “New terrorist fascism” (CIA 1982, 118). Further, ETA killings were inextricably tied to other actions: in 1973 ETA had killed only six people. In 1977 there were 19 fatalities; but 66 in 1978, 76 in 1979, and 92 by 1980 (Whitfield 2014, 47). This indiscriminate targeting created a powerful “worthy prisoner” discourse in that majority of citizens who did not favor violence.

Second, it became apparent that ETA wished to derail the democratic transition. A stark example of a “worthy prisoner” was the kidnapping of Javier Ruperez on 11 November 1979. Ruperez was a career diplomat (and later Spanish Ambassador to the US); secretary of the center-right UCD party; and despite this, a vocal foe of NATO membership for Spain (New York Times 1979). Further, he was a member of the Parliament committee drafting the Autonomy Statute. International condemnation of ETA was immediate; the European Parliament condemned the kidnapping on both legal and “European” grounds (European Parliament 1979).

ETA made demands for prisoner exchange as a condition for Ruperez’ freedom. Declassified CIA reporting states that the original request was for release of five ill prisoners (CIA 1982, 125). This was later increased to a demand for 26 prisoners, which GOS ultimately granted.

But this was apparently the last APRI incident between GOS and ETA. Afterward, as a result in changes to the DCC and Prisoner Discourse between 1982 and 1997, ETA lost its ability to influence prisoner policy.

Period 2: 1982-1997

This period marked the political rise of the Spanish left: the Socialist party, PSOE, won the 1982 election and remained in power until 1996. The Socialist platform was based on a disavowal of the enhanced 1980 antiterror legislation, and withdrawal from NATO, which Spain had joined the year before (New York Times 1981). PSOE’s victory was resounding: it took 201 of 350 lower-house seats, with 80% voter participation. Much of this sentiment was a societal response to the attempted Army coup in 1981 (Martinez-Soler 1982).

But oddly, PSOE's effect on COIN policy was minimal. While political campaigns were vociferous, Spanish policy in the transitional period was almost always based on consensus, and the policy that went before: a form of path dependency which privileged democratic transition and its trappings (free elections; NATO and EC membership; national sovereignty) over party platforms. Thus, PSOE's electoral focus on East (USSR)-West relations was almost totally subsumed by the consensus for membership in the "Atlantic Alliance". Further, its "soft" antiterror platform also changed (Irvin 1999, 196): negative societal feedback on its deviation from the current harsh antiterror regime assured this.

The Democratic Counterinsurgency Complex:

The Lyall-Wilson factors

The Socialist government began its tenure with certain advantages as it pursued Spain's COIN praxis. First, popular attitudes against ETA had noticeably hardened. In 1981, only 23% of respondents to opinion polling totally rejected ETA violence; 48% refused to reply. By 1983, 41% rejected ETA violence with "No reply" down to 38%. Consequently, HUMINT collection was more robust. By 1995, total rejection of ETA had risen to 53%. It was becoming difficult for ETA to maintain operational security (Funes 1998).

Second, as its violence put ETA beyond the pale, the Socialist government was gradually perceived less as an occupier, and more as a protector of the laws.

PSOE's reputation in Euskadi was burnished, ironically, in the controversy over "Plan ZEN". Plan ZEN (Zona Especial Norte) made Euskadi a special antiterrorist region with stringent population control measures; but Basque political outrage caused the Gonzalez government to shelve it. This worked in Gonzalez' favor, by showing that Madrid was attentive to Basque *political* concerns (Guittet 2008).

But most important for resetting the Lyall-Wilson factors, and by extension the tenor of GOS counterinsurgency, was the Gonzalez regime's relationship with France. The two countries first held talks at a 1982 meeting of the Socialist International, and Mitterrand seemed open to a change in French support for ETA. While at first disappointed with Mitterrand's attitude (New York Times 1982), GOS soon made inroads with France (Schumacher 1984).

France began to extradite ETA suspects to Spain, as well as arrest and deport ETA members to Africa. This policy came at a cost for France. Declassified CIA reporting states that there was

only a single ETA attack on French targets in 1983; in the first nine months of 1984, France endured 38 violent ETA attacks (CIA/2 1984).

French policy was at least partly attributable to the pursuit of a “dirty war” in the French region of Euskadi (CIA/3 1984). A special unit, GAL, operated from inside the Socialist Ministry of Interior, though at the time it was wrongly reported to be a right-wing death squad (Echikson 1984). GAL committed at least 23 extralegal murders of ETA personnel in France; and injured another 30. This group was explicitly credited with weakening ETA-m in both France and Spain (El Pais 1988).

These actions combined to remove ETA’s safe haven; ETA’s combat strength waned from over 700 to less than 200 by late 1984; violent incidents attributed to ETA fell from 225 in 1983 to fewer than 50 in the first half of 1984 (CIA/3 1984).

The COIN through capture sequence

The GOS continued to pursue COIN through capture in conjunction with attempts at negotiating with ETA (CIA/2 1984). The Socialist government hardened antiterror laws in 1984, regulating the right to legal assistance and the use of habeas corpus in legal proceedings. An even more draconian law was passed later that year which muzzled press reporting on ETA activities, and criminalized any support for the organization.

Spain also began to modify penal policy as a part of its COIN through capture strategy. First it concentrated Basque prisoners into three maximum-security prisons inside Euskadi. It also increased incarcerations; the number of prisoners rose from 300 to 400 in 1984 (R. P. Clark 1990, 53-56).

The Prisoner Discourse

The GOS continued to avoid international visibility of its COIN praxis. When the law governing freedom of the press was mooted, opposition lawmakers wanted to declare a state of exception, an option which Gonzalez was unwilling to execute (Martinez-Soler 1983).

At the same time, GOS continued to treat ETA as a negotiating partner while ETA concurrently made itself appear unreasonable to the general public: creating a “belligerent category” discourse which it never shook. The October 1983 kidnap and murder of Captain Martin Barrios, an Army

pharmacist of Basque origin, outraged Spain and especially Euskadi; over 250,000 people just in Bilbao marched against ETA (Reuters 1983).

Prisoner type took on a formulaic role: by the mid 1980s, nearly every ETA hostage was considered worthy. In 1985, the first of several peace movements, *Gesto por la Paz*, was formed to protest violence, pro-or-anti-ETA in the region. It held vigils for every person killed or kidnapped; and it was joined by many others. Its activities, which highlighted the level of ETA violence, went far toward changing the prisoner discourse in Euskadi (Funes 1998).

Penal Policy and the slow destruction of ETA

As discussed, the GOS made public its willingness to negotiate with ETA; it stated that it would exchange “Peace for prisoners” (Mees 2003). Unlike other democracies, Spain did not let categorization of ETA dictate negotiation strategy. Some Basque politicians were justifiably angered by GOS recognition of ETA as a Basque spokesman, rather than the duly elected regional parties (CIA/3 1984; Lecours 2007).

Andre Lecours (2007) states that eight separate agreements between GOS and ETA were signed during an important series of talks held in Algeria from 1986-1989. Nevertheless, despite French pressure on ETA, negotiations fell apart in 1989, and as a response to ETA intransigence, the Socialist government enacted a new penal policy: *dispersal*.

In a move explicitly intended to prevent an IRA-like prisoner movement (Whitfield 2014), the GOS moved its 500 Basque prisoners out of Euskadi, some as far as the Canary Islands 4000 kilometers away. The policy was (and is) considered a violation of IHRL: the European Parliament “Condemns the prison dispersal policy applied by some Member States...[the policy] may constitute a breach of Article 8 ECHR (the right to respect for private and family life)” (European Parliament 2017).

ETA’s outrage manifested in more bombings and kidnappings. But the common goal for ETA kidnappings changed: ETA sought an end to dispersion, and not release of prisoners. This may have been because operational planning was actually easier in prison than out of it, given GOS antiterror statutes and lack of popular support for ETA-m in Euskadi.

Over the next decade GOS policies continued to be path-dependent, still focused on political consensus and social order. In April 1997 the newly-elected conservative government (*Partido Popular*, PP) maintained Spain’s decades-old policy of negotiating with terrorists despite its

election rhetoric to the contrary. PP opened talks with GRAPO, meeting in a Sevilla prison where all GRAPO prisoners were concentrated. This may have been a way to show ETA that the new government was open to negotiations with them as well.

ETA's focus on, and violent attempts to end, dispersion have ended badly for the organization. 1997 is universally considered the nadir of ETA support (Lazaro 2017), based on two related events. First, in January 1996 ETA kidnapped Jose Antonio Ortega Lara, a prison officer. ETA's demand for Lara's release was a complete end to dispersion (Amnesty International 1996). ETA held him for 532 days without light, and on a starvation diet before he was rescued by Spanish security forces. Lara's condition was so appalling that "much of the moral authority of the prison campaign was damaged" (von Tangen Page 1998, 143-144).

Ten days later, in response to Lara's rescue, ETA kidnapped a young town councilman named Miguel Angel Blanco. ETA demanded a complete end to dispersion, and transfer of all 500 ETA prisoners to Euskadi within 48 hours.

Blanco was kidnapped on a Thursday; on Saturday 500,000 people marched in the streets of Bilbao to protest the crime. Blanco was executed that afternoon; on Sunday, 250,000 people again took to the streets in Bilbao, joined by up to 6 million marchers across Spain (L. Lazaroff 1997; BBC World News 1998). ETA would never regain its moral standing in either Spanish or Basque culture: the Prisoner Discourse had turned solidly against it.

When ETA mooted a new ceasefire that same year, GOS refused. Instead PP conferred with all of the parties in parliament, and as a collective, GOS agreed to transfer 15 ETA prisoners back to Euskadi. This would be done on a case-by-case basis, on the understanding that negotiations would be forthcoming (von Tangen Page 1998). This announcement made the GOS appear both powerful and merciful; in conjunction with GOS' prosecution of political party *Herri Batasuna* for supporting terrorism, and France's arrest of 140 Spanish ETA operatives, sealed ETA's fate (US Department of State 1998).

Conclusion

The evidence is clear that APRI is linked to certain specific structures: the prisoner discourse influences such factors as belligerent categorization of insurgents with the label "terrorists", and social movements in support of a "worthy" prisoner. The democratic counterinsurgency complex is linked to APRI in such cases as COIN through capture praxis and the Lyall-Wilson factors. In

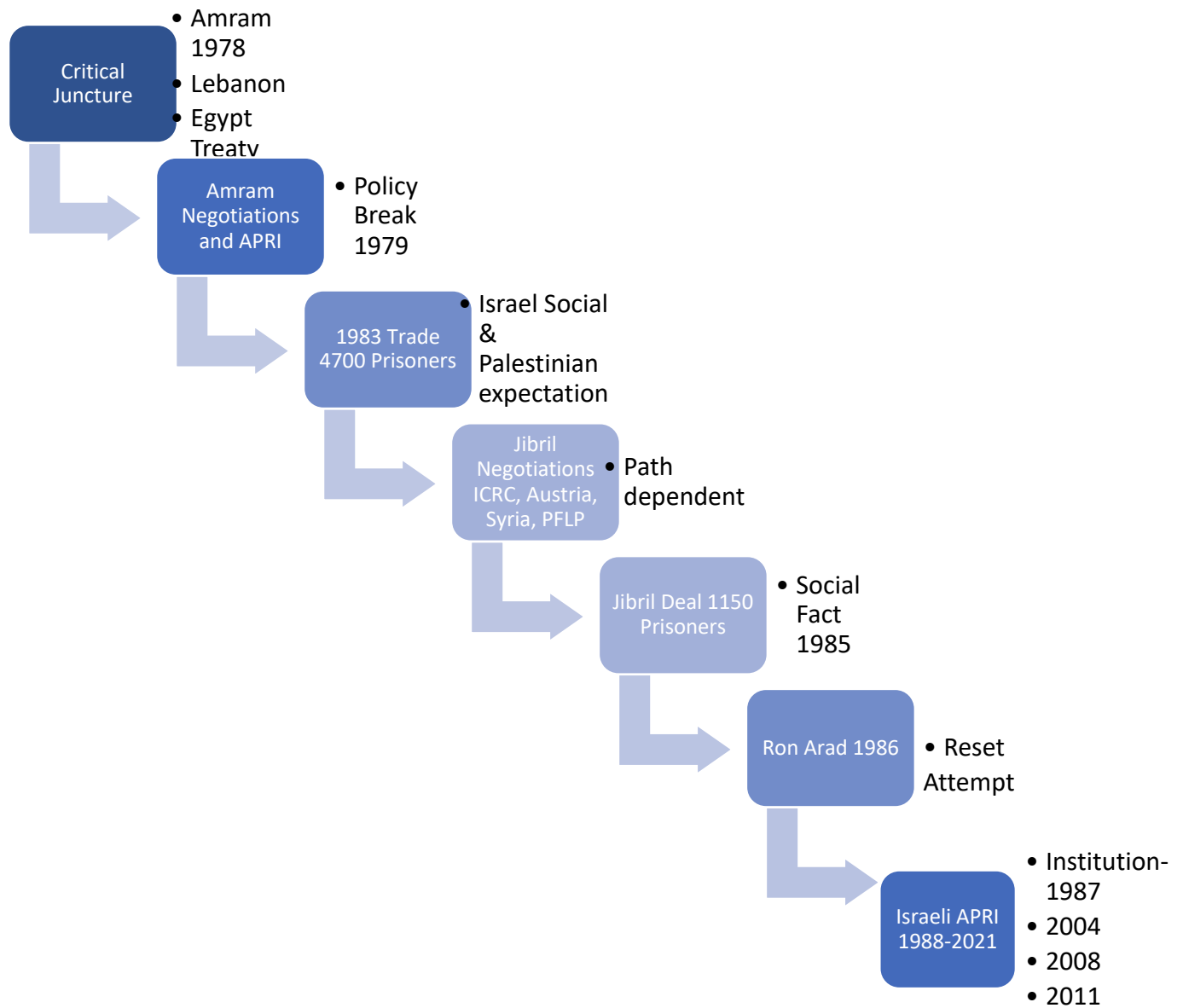
addition, I have touched briefly on such things as parental access to elected leaders and vested interests of outside negotiators.

In this chapter I have shown that prisoner discourse and the democratic COIN complex are major factors across different examples. In Chapters 5 and 6 I will isolate those factors which weigh most heavily in a leader's decision to execute APRI, using the Israeli example, which shows the most consistent use of APRI as a conflict management policy. I show that Israeli recourse to asymmetric prisoner release can be explained in part by political lock-in of the practice, and the positive political feedback (reinforced over time) that executing regimes received. Between 1979 and 2011, Israeli prisoner praxis followed a sequence predicted by Historical Institutional theory.

First, the capture of Private Amram in 1978 provided a critical juncture in domestic politics. Second, the unique negotiations and subsequent asymmetric trade for Amram were a definite policy break with previous practice. Third, the subsequent capture of IDF soldiers in 1982 resulted in social expectations for exchange, and another uneven trade. Fourth, by 1984, when negotiations for the Jibril Deal began, there was no doubt from either Jibril or the Israeli public that the Israeli government would execute an APRI; this is best explained by path dependency, where leaders on both sides felt constrained by circumstances to behave in particular ways. Fifth, the actual exchange of 1150 prisoners for three IDF soldiers solidified the social fact that APRI was accepted (and expected) praxis. Sixth, mixed response to the Jibril deal caused the Israeli government to attempt a reset of its institutional practice which entailed a rejection of terms for Ron Arad's return. Arad's death caused societal and bureaucratic outrage; this outrage hardened into, seventh, the institutionalization of Israeli APRI from 1988 to the present.

Figure 5 presents this sequence in graphic form:

Figure 5 The Institutionalization of Israeli APRI 1978-2021



It is evident that Israeli politicians use APRI to influence their electorate, and that Israeli APRI influenced and constrained politicians as well as helped their electoral chances as time went on. In the following chapters I examine the evolution of Israeli prisoner praxis from the 1970s into

the 21st century. I discuss two case studies, which illustrate not only instrumental use of APRI by politicians, but the domestic pressures placed upon Israeli leaders to execute prisoner negotiations. These case studies serve to illustrate critical junctures, policy breaks, and path dependency as structural factors in Israeli APRI policy. The case studies give specific instances of leader decision-making through archival research, declassified documents, and personal interviews with pivotal characters.

Chapter 5 is devoted to my first in-depth case study, that of IDF Private Avraham Amram, who was abducted by PFLP-GC as he crossed into Lebanon in 1978. Menachem Begin was forced to confront Amram's case while balancing a myriad of domestic and international complications. Amram's was arguably the first Israeli APRI.

Chapter 6 provides an explanatory and historical bridge between the two most important Israeli APRI, the first (Amram) examined in Chapter 5, and the second (Shalit) discussed in Chapter 7. Chapter 6 explores the institutionalization of Israeli APRI in light of the Amran exchange, and then the events surrounding the 1982 Operation Peace for Galilee. First, there were a series of disastrous Israeli losses at such battles as Sultan Yacoub and Bhamdoum where multiple deaths and captures occurred. Second, Israeli activation of the COIN through capture sequence resulted in up to 10,000 prisoners being held by various factions, to include 4500 Shia civilians at the Ansar camp. Third, the asymmetric trades which were executed in 1983 and 1985 hastened the path dependence of future Israeli APRI decisions; finally, the attempted reset of the evolving policy (a refusal to negotiate for Ron Arad) failed dismally, and hardened the attitudes of both the public and the bureaucracy against any more tough negotiations. Future hostage negotiations (such as those conducted in 2003 by Ariel Sharon) were unsurprising based on this path dependence.

Chapter 7 is a second single-case study. This case concerns Corporal Gilad Shalit, abducted by Hamas, taken into Gaza in 2006, and freed in 2011 through an APRI. Shalit's captivity spanned two administrations, and changed the calculus, perhaps permanently, of Israeli negotiations for captured IDF personnel.

Chapter 5: Menachem Begin, Avraham Amram, and the roots of Israeli APRI

In response to increasing insurgent attacks, on 14 March 1978 Israel launched Operation Litani, with the stated objective to clear southern Lebanon of armed Palestinian groups. By 21 March the mass of IDF troops had withdrawn from the “security zone” between the border and the Litani River.

On April 4, 1978, a group of five Israeli soldiers led by a civilian “guide” made an unauthorized trip into southern Lebanon. Shortly after they were waved through an IDF checkpoint which marked the security zone, their vehicle was ambushed by members of the Popular Front for the Liberation of Palestine-General Command (PFLP-GC), a Syria-centered group which had broken away from both Fatah and George Habash’s PFLP.

When the firing was over, four Israeli soldiers lay dead; one other, reserve Private Avraham Amram, was wounded; while the civilian guide, wounded as well, somehow made it back into Israel. Avraham Amram became a hostage of Ahmad Jibril’s PFLP-GC, and was fated to become the subject of the first instance of Israeli APRI: the trading of a soldier, not for other soldiers but for security prisoners under sentence in Israeli jails. Nearly a year later, in March 1979, Amram was freed in exchange for 76 Palestinian prisoners: “Counting life imprisonment as 30 years, the released prisoners owed more than 2,800 years in prison” (Merari 2020/1993).

The events surrounding the capture and exchange of Private Avraham Amram are still classified by the Israeli State Archives (Israeli State Archives, personal communication, 2020). Further, those surviving politicians and staffers who were close to Begin remain strangely reticent to discuss the negotiations and even the thought processes within Begin’s 1978-79 cabinet (A. Naor, personal communication, June 16, 2020).

However, the evidence and timing are suggestive of several likely scenarios: first, Begin was negotiating the most important peace agreement in his nation’s history with Egypt and he needed to maintain stability on both the domestic and international fronts while the agreement was hammered out. The evidence for this is manifold, with the simplest being Begin’s timing: Amram was exchanged and freed on 15 March 1979 (Jewish Telegraphic Agency 15 March 1979), 11 days before the final peace agreement was signed by Begin and Sadat in Washington on 26 March 1979. The secrecy with which the deal was negotiated, and the personnel involved lend credence to this theory.

Second, Begin's peace negotiations hinged upon returning the Sinai oilfields to Egypt. This calculated gamble, trading energy security for peace, was made possible through a secret "arms-for-oil deal" with Iran, called Project Flower. Flower consisted of six arms-for-oil contracts signed in April 1977 between the Shah and Israeli Prime Minister Shimon Peres (New York Times: Sciolino 1986). The Shah then cancelled the deal after Likud's electoral victory that summer, considering Begin a politician inimical to peace in the region.

Two pivotal cabinet members, Moshe Dayan and Ezer Weizman, kept the deal alive through their personal relationships with Iranian officials. They operated under two imperatives: they had to keep the Palestinian situation from interfering with the peace negotiations, and they needed to keep Project Flower a secret from US President Jimmy Carter. Exposure of this project would have resulted in earthshaking repercussions.

Declassified US and Israeli documents show that among Project Flower's milestones was an Israeli plan to render five German-purchased Iranian submarines nuclear-weapons capable (DFUSED Vol 19/72, letter from RADM Barkai to General Toufanian, 1979) as well as the construction and manning of an intermediate-range missile factory, a facility which came close to breaching the 1962 weapons agreement between the Shah and the USSR (DFUSED Vol 19/72; Memorandum Dayan-Toufanian meeting, 1979). These imperatives argued for caution and stability on other fronts, such as negotiations for Avraham Amram.

Third, electoral concerns played a major part in Begin's calculations regarding Amram: Begin's election had been a bombshell, and his party was anxious to remain in power. Begin had to weigh the political costs of going against prisoner type, exchanging a Mizrahi soldier who was considered unworthy by much of the electorate, for Palestinian security prisoners (Jewish Telegraphic Agency 15 March 1979).

Fourth, bureaucratic infighting and Cabinet dysfunction marked much of Begin's first term, and were evident in the negotiations for Amram. Begin's cabinet had several prominent opposition members, and as I shall discuss, resistance to APRI is often a political calculus. This calculus changes when the opposing politician is himself in power and facing an APRI scenario.

Finally, Begin's tenure marked the rise of the first mass peace movement in Israel ("Peace Now"), and incentivized the Israeli government to secretly negotiate with the PLFP-GC while publicly maintaining a "no recognition of Palestine or Palestinian organizations" position as

government policy. All of these played a part in creating the critical juncture between the Rabin doctrine and Begin's response to a hostage situation.

Israeli hostage exchange policy 1967-1978

In Yitzhak Rabin's 1979 memoir, he discusses the post-1967 problem of "bargaining raids" whereby Palestinian groups would take hostages and then try to negotiate for the freedom of their imprisoned comrades. Rabin's "doctrine" was simple: "employ force in order to rescue the hostages as quickly as possible...and only if that option proved unfeasible, to negotiate with the hijackers" (Rabin 1979, 281-282).

This doctrine proved a deterrent to groups executing such bargaining raids. For example, throughout the 1970s the price of an Israeli hostage rapidly decreased in the face of armed IDF response to the raids. Table 9 shows the decline.

Table 9 Number of Security Prisoners Demanded by Fatah 1972-1978

DATE	INCIDENT	JAILED TERRORISTS DEMANDED
May 8, 1972	Hijacking of Sabena Airliner to Tel Aviv airport	317*
Sep. 5, 1972	Takeover of Israeli Athletes at Munich Olympic Games	200*
Dec. 28, 1972	Takeover of Israeli embassy in Bangkok	36*
June 24, 1974	Takeover of an apartment house in Nahariya, Israel	Demands not submitted
March 5, 1975	Takeover of the Savoy Hotel in Tel Aviv	10
March 9, 1978	Hijacking of a bus on Coast Highway in Israel	5

* These operations were carried out by Fatah under the cover name Black September Organization.

(Source: Merari Unpublished Manuscript 2020/1993; used with permission)

The evidence shows a distinct break in hostage policy between Begin's actions and the Rabin doctrine. The break was qualitative more than quantitative: not because a negotiated trade occurred, but rather because the exchange was of an Israeli POW for Palestinian security prisoners.

This break proved to be a critical juncture (see Ertman 2010) and was caused by an accumulation of related events: the unpopularity of the Lebanon invasion; the importance of the Egypt peace process; the perceived unworthiness of Avraham Amram; Bruno Kreisky's internationalization of the Israel-Palestine conflict; and Israel-Iran weapons-for-oil talks.

Ertman (2010) ascribes policy change to three factors: structure, culture, and agency. The Democratic COIN complex created a structure tactically favorable to Palestinian hostage-taking. With regard to culture, not only did Israeli parliamentary law make Begin's Cabinet nearly ungovernable; the close and personal nature of Israeli democracy created a climate whereby captives' families had direct access to decision-makers. And as for agency, Begin himself, as well as Jibril, acted in ways that sought acknowledgement of their superior leadership, Begin as peacemaker, Jibril as hostage-taker and deal-maker.

Israeli public response to this critical juncture and policy break quickly created a bias toward APRI when an IDF hostage was captured. After 1979, there emerged a societal, and eventually bureaucratic, expectation of APRI conducted under similar conditions to those which characterized Amram's negotiations: involvement of Austria and the ICRC; family access to decision-makers; a four-way negotiation involving Syria, the Palestinians, a foreign team, and the Israelis, none of whom had direct contact with the other; and a "balance of trade" which favored the nonstate actor.

The Prisoner Discourse and domestic pressures

Menachem Begin, elected in 1977 in a political event so surprising it is still called the "*Mahapach*" (upheaval), carried a burden of public calumny from his time as a resistance fighter against the British, as well as his association with Jabotinsky's ideation.

Thus, it was of supreme importance personally and professionally for him to be considered a peacemaker, both internationally and domestically. Indeed, Ambassador Zalman Shoval states that Begin's primary political mission was to bring the Revisionist parties into a coalition which "possessed both the spirit and the past of the Labor movement" (Shoval 2019, 59). Begin often

boasted that the Labor party had been unable to achieve the peace treaty that he had negotiated (Katz 1981). In fact, his peace treaty with Egypt was the first item on Likud's list of achievements when Begin's reelection campaign unofficially began in summer 1980 (Jewish Telegraphic Agency 1980). This attention to Begin's re-election explains the restraint which Israel showed prior to launching Operation Litani, and the speed with which Begin ended the incursion. The rise of *Shalom Akhshav* ("Peace Now") which was the largest grassroots organization in Israeli history to that point, made Begin acutely aware of peace pressure from the center and left.

Israeli Grand Strategy and APRI

Aside from his role as a peacemaker, Begin had been elected, and was expected, to confront Israel's strategic vulnerabilities. One of these was its lack of access to oil. A declassified CIA report shows that by 1975, Sinai was producing 70% of Israel's daily consumption at a cost about 75% cheaper than purchase of the same oil from Iran (CIA February, 1975). The CIA report also prophetically mooted the possibility that the Sinai oilfields might be part of a peace negotiation between Israel and Egypt.

Shimon Peres had recognized Israel's energy vulnerability, and the confluence of two interests: Israel's need for an alternative oil source, and the Iranian desire for specific types of armaments forbidden to them by the US government. The Carter administration had made it known that US weapons sales to Iran were going to be reduced. With Moshe Dayan as lead negotiator, and after a series of high-level meetings throughout 1976 (US Department of State 1976), in April 1977 Israel and Iran agreed to execute Project Flower, a series of arms-for-oil contracts.

This was not a unique bargain for Iran. Fearing Carter's policy on weapons sales, within two weeks of the 1976 US presidential election Iran had inked a \$660 million deal wherein the UK was to trade Rapier anti-aircraft missiles for crude oil (New York Times: Pace 1976). Further, Iran had been providing 30% of Israel's oil supply already; another declassified CIA report from 1975 states that oil and weapons sales were the sole commercial link between the two countries (CIA 1975). It was only the US which made Iran pay cash for its weapons purchases, a policy developed to sustain US armaments producers (see Jasper 1997).

When Begin took power in 1977, he kept Dayan in the cabinet and added Weizman as his second negotiator with the Iranians. But Project Flower took a sinister turn. First, the Shah

discontinued the program after Begin's election, unwilling to work with Likud. As shown in classified Israeli diplomatic minutes (captured when Iranian students stormed US Embassy Tehran), it required both the personal intervention of Weizman and Dayan, and initiation of the Sadat-Begin peace talks, to convince the Shah that Project Flower should continue (Parsi 2007, 73-76; DFUSED Vol 19, 1979). The loss of Iranian oil would have crippled Israel. Arab states had even refused to sell oil to the Netherlands, based on fears that the Dutch would in turn sell their own production on to Israel (see Rybczynski, T. M. editor 1976).

Second, because of Carter's unwillingness to provide high-tech missiles to the Shah, Iran asked Israel to transfer some of its own missile technology. An unspoken part of this request was for the missiles to be nuclear-capable (New York Times: Elaine Sciolino 1986). Nuclear-capable technology had been explicitly forbidden to Iran, even under Kissinger and Nixon (Jasper 1997).

The Israeli plan was to transfer forbidden US technology through a Swiss company, and then create a domestic factory in Iran to produce a weapon based on the Gabriel ship-to-ship missile, or the shore-based US Lance missile (Marshall, Scott and Hunter 1987, 169-175).

Third, and most important, Begin had to keep this aspect of Project Flower a secret from the US, while at the same time actively pursuing an Iran deal in order to ensure an alternative oil supply. This would in turn make Israeli withdrawal from the Sinai possible. Iran had a powerful interest in becoming that alternative oil supply: in March 1978 the Shah publicly threatened "that he might be willing to impose an oil embargo on Israel as part of overall international sanctions to persuade the Jewish state to be more flexible in negotiations with Egypt" (Washington Post 1981).

The status of the Sinai oilfields and Israeli access to same was a pivotal facet of the Begin-Sadat treaty. Sadat's original demand was for Israeli withdrawal from Sinai, and surrender of its oilfields. Weizman claims that at Camp David, Sadat told him that in regard to a peace settlement, he really only cared about Sinai; the Palestinian part of the framework was necessary as a sop to the rest of the Arab world (1981, 348-349).

This situation was an incredibly sensitive one: access to Iranian oil was based on pursuit of the peace treaty with Egypt, and the peace treaty with Egypt was reliant upon returning the Sinai oilfields. The circular logic of the situation was thus entirely dependent on stability: peace meant giving up Egyptian oil fields, but only peace would satisfy Iran, who could make up the supply;

Iran needed strategic weapons, which only Israel would supply; a single Palestinian attack could upset the whole structure.

Begin was thus taking a huge risk in order to make the peace agreement work: he risked Israel's energy security, as well as its relationship with the US. He hoped to make Iran a long-term source of oil in the absence of the Sinai fields. Under the peace memorandum, Israel would have to pay market price for Sinai oil (an increase in price of 300 percent) and the US only agreed to make up the shortfall in Sinai oil until 1990. In fact, Begin maintained his secret trade with Iran into the Reagan administration, though supplying much lower-tech weapons to the Islamic Republic than he had during Project Flower. It appears that the Reagan administration was aware of this system and allowed it before either Tipped Kettle or Iran-Contra were executed (Evans and Novak 1982).

It is clear that the question of oil was pivotal in the Israel-Egypt peace agreement, but simultaneously keeping the Palestinian question in the background was instrumental in moving the peace process forward; this was an advantage of Kreisky's involvement, as he had the trust of the PLO. Two of Begin's most important ministers were intimately involved in the Iranian negotiations and the Egyptian peace process. This fact, rather than weakness, may explain both the delegation of Amram's exchange to BGen Vardi, and Begin's immediate willingness to make a deal with Jibril in regard to Amram's release, despite the radical change in terms for the trade. Begin could not afford to appear in any way that he was impeding the peace process.

Israeli Electoral Pressures

In addition to questions of grand strategy, electoral pressures influenced Begin's negotiation posture. While center-left demonstrations might influence some policies, Begin's electoral base was the Mizrahim, Jews who had immigrated from the Arab countries after 1948 and continue to support Likud and right-center politicians to this day (Halbfinger 2020). Many of Likud's listed accomplishments in Begin's re-election literature were directed specifically at improving conditions for the Mizrahim. Among them were "significant progress in solving the housing problems of the poorest segments of society." Likud claimed that the percentage of families living three or more to a room decreased from 36% in 1976 to only 1.5% by 1979. Further social legislation under Likud included such measures as a minimum wage law and a free high school education law (Jewish Telegraphic Agency 1980).

This electoral pressure from both sides also helps explain Begin's actions upon learning that Avraham had been captured. Begin was forced to contend with the Prisoner Discourse, which had an effect on electoral policy, public sentiment, and negotiating strategy. Both *belligerent category* (especially in the case of PFLP-GC but Palestinian insurgents generally) and in the case of Avraham Amram, *prisoner type*, would weigh heavily in the negotiations and the aftermath.

Israeli policy toward captured IDF personnel had heretofore been based on the idea of “one soldier for one soldier”, or “all prisoners-for-all prisoners”, a convention first codified in the Treaties of Westphalia. According to Ariel Merari, the Israeli negotiator involved in the early stages of the Amram exchange, even Ahmed Jibril, notorious head of PFLP-GC, was aware of this policy.

Jibril's first demands were therefore quite modest: Jibril asked for the release of only “several women and several male prisoners” (Merari 2020/1993). Contemporary newspaper reporting supports Merari's recollection. On 14 April 1978, Jibril's spokesman publicly stated to reporters that Jibril was looking to trade Amram for Palestinians “captured during the invasion of southern Lebanon” (Davar Newspaper 14 April 1978), which was essentially an all-for-all *combatant* or battlefield trade. No mention was made of any Palestinian security prisoners, neither to the Israeli government, nor to the public.

However, only two weeks later, Jibril's posture had changed. Merari states that this is because of Begin's immediate approval of a prisoner exchange (Merari 2020/1993). Nevertheless, the Associated Press led a news story on Yasser Arafat with the following:

“The first-ever Israeli prisoner-of-war captured by Palestinian guerrillas, is to be put on trial, guerrilla sources said on Friday (28 April 78). But the guerrillas indicated they may release the prisoner in exchange for a full list of Palestinian prisoners, from the various guerrilla groups, now held in Israeli jails. Avraham Nissim Amram, aged thirty-four, was captured by guerrillas of the Popular Front for the Liberation of Palestine - General Command (PFLP-GC), a faction led by Ahmed Jibril” (AP Archive 1978).

It is important to note here that, with regard to Belligerent Category, Begin faced at least three obstacles to any negotiations for the release of Private Amram. First, his most prominent cabinet member, Moshe Dayan, disagreed with *any* negotiation, especially in the early stages of capture,

arguing that swift recourse to negotiation revealed that there was no military option to release the hostage (Dayan 1976).

Second, Israeli government policy (on the right or the left) was clear: no Palestinian people or state was to be recognized.

And third, there had been a concerted campaign, for over a decade prior to Amram's capture, to demonize insurgents through discursive structures in Israeli news media. At the time, "the importance of the news media in conveying perceptions of legitimacy was particularly central given that Israel had only four major newspapers": Israel's top four newspapers were read daily by nearly 80% of the literate population (Shamir 1990). A discursive campaign could have a great impact on how the public categorized Arab insurgents. Begin's problem was to navigate these obstacles while maintaining electoral viability.

Begin had little choice but to negotiate. The IDF had withdrawn from the Lebanon security zone; Syrian troops were deployed just north of that zone, and Jibril was a former Syrian Army officer. Thus, outside support for PFLP-GC was assured, and a military option was immediately off the table. In addition to the captured soldier, the bodies of Amram's colleagues were held by PFLP-GC in Lebanon.

The desire to recover the bodies of IDF soldiers presents a societal chasm between US and Israeli sensibilities. Shmuel Katz (1981, 98) describes his first conversation with US Secretary of Defense James Schlesinger in 1975. Schlesinger asked Katz "Whatever has happened to the Israelis? How come you are prepared to give up vital territory in return for the corpses that remained in enemy hands? Have you lost your nerve?" And yet recovery of IDF bodies remains an issue to this day (Aderet 2019).

Next, Begin was confronted in 1978 by the same conundrum which would bedevil both Thatcher and Reagan regarding belligerent categorization: "No negotiations with terrorists" (or "no recognition of the Palestinians") created the dynamic whereby only back-channel talks or neutral intermediaries could be used. But even Rabin considered Meir's exchange of Egyptian POW for Israeli remains to be a precedent; he felt that Meir had made it difficult to hold a "non-negotiation" posture for live hostages when Meir had negotiated for dead bodies (Rabin 1979, 282).

Under pressure from Austrian Chancellor Bruno Kreisky, Menachem Begin chose the ICRC as mediator. This had the perverse effect of forcing the Geneva Conventions into Israel-Palestine

relations, with Amram considered a POW under International Humanitarian Law. The PFLP-GC, and by extension “the Palestinians” thus gained *de facto* recognition as a state combatant.

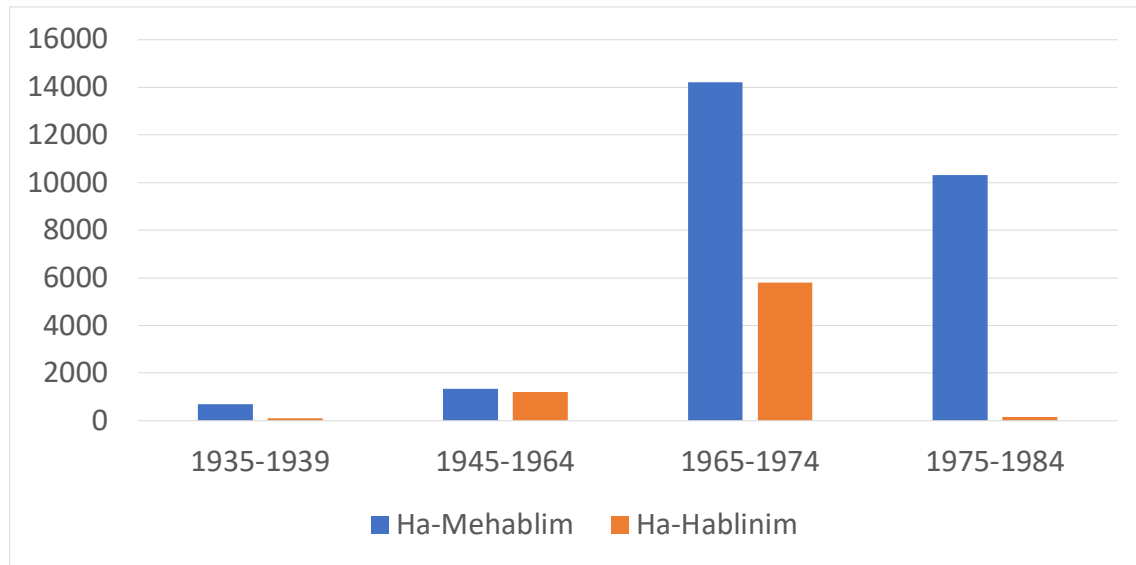
Finally, because of the media discourse and societal perceptions regarding Palestinian insurgents, Begin could appeal to public sentiment regarding Amram’s condition and the prospects that he might suffer in captivity. While forced upon him, Begin used the ICRC as mediator and thus ensured that the Israeli public received periodic updates on Amram’s well-being. This gave the illusion that his government was acting and not merely passive. But due at least in part to the government’s own terrorist discourse, there was little public support for anything besides a symmetric trade, as events would show.

This belligerent categorization was not mere rhetoric. Uri Avnery (1986, 57) describes the “official” change in government discourse regarding insurgents, and Dahlia Scheindlin (personal communication, July 2, 2020) confirms that the usage remains in modern media discourse. The data shows a concerted effort to paint Arab (and especially Palestinian) insurgents as murderous bandits. The plural noun *ha-hablanim* (saboteur: according to Avnery also the term for an Army demolitions expert, hence the move away from usage of the word in terrorist discourse) was used largely in times of relative quiet to describe Arab or Palestinian incursions.

The alternative term, *ha-mehablim*, (terrorist, murderer) rose to prominence during the Arab revolt from 1935-1939, when it was used ten times as often as *ha-hablanim*, but fell into relative disuse thereafter. In the period 1945-1964, *ha-hablanim* was used 1216 times in Israeli media, versus 1341 times for *ha-mehablim*, so there was near-parity in use of both terms.

But between 1965 and 1984, *ha-mehablim* appeared five times more frequently than *ha-hablanim* (24636 vs 5960). It is worth noting that in the period 1975-1984, *ha-hablanim* was used only 159 times, versus 10,325 uses of *ha-mehablim*. In the year 1982, *ha-hablanim* was not found at all in the index. And by the year 2000 use of the term *ha-hablanim* to describe insurgents had practically ceased to exist.

Figure 6 Israeli Terrorist Discourse 1925-1984



(Source: National Library of Israel, Historical Jewish Press. Data analysis by author)

The prisoner discourse: Prisoner Type

Further evidence supports my contention that prisoner type is the most powerful driver of public pressure regarding Israeli APRI. In the case of Avraham Amram, the public debate over prisoner type was a complex one. To most of the Israeli public, and to Labor politicians, Amram was an “unworthy” prisoner. First, he was Mizrahi. As Yagil Levy (2012) and numerous other scholars have shown, there was a different societal value laid upon a Mizrahi soldier as opposed to an Ashkenazi soldier. This was due to several factors, but especially the fact that most middle-class Israelis who fought, or sent their sons to fight, in combat units were Ashkenazim. As a voting bloc the Ashkenazim had been historically the most powerful.

And Amram was, for better or worse, not a special forces operator or member of a combat unit. He had emigrated to Israel from Libya at age 4, and dropped out of school by eighth grade in order to supplement the income of his mother, a maid. Nor was he successful as a soldier; at age 33 he was still a private in the Reserves. Amram’s cause was further weakened by the fact that he had not participated in the invasion, but chose to try and sneak into the combat zone after operations had ceased. In fact, there were dark rumblings from Lebanon that Amram would be charged as a spy by PFLP-GC because he attempted to use his native Arabic language before the ambush (Davar Newspaper 1978).

All this made him a less than sympathetic character to the largely middle-class citizens whose children (or who themselves) traditionally made up the elite combat units. On the other hand, amongst the Mizrahim he was Everyman: educationally, socially, and militarily marginalized, but now a captive of Israel's wars just like any Ashkenazi soldier.

Menachem Begin thus faced competing interests regarding Amram as a worthy versus unworthy hostage. Amram may have been unsuccessful on his own life journey; but his community was Likud's biggest voting bloc, and to condemn Amram to death at the hands of the PFLP-GC would have been political suicide for Likud. Further, Begin had bigger fish to fry: his overriding concern was making the Egypt-Israel peace talks a success.

Negotiation Strategy:

Bureaucratic Function/Dysfunction

To make Likud's reelection viable, Begin had to please his core constituency. This meant keeping the Mizrahim bloc satisfied that negotiations were proceeding, which could be accomplished by a slow drip of reassuring information on Amram provided by ICRC. The real negotiations would have to be held in complete secrecy in order to protect the identity of the negotiators, and especially the fact that Israel was talking to the Palestinians. Finally, Begin had to reassure the Palestinians that he was negotiating in good faith, for any sudden and bloody attack by the Palestinians could completely derail the Egypt peace process, which included not only negotiations with Sadat, but successful implementation of Project Flower.

The structure of Menachem Begin's APRI strategy was dictated by several factors. First was the bureaucratic dysfunction within his own cabinet where "(Begin) had lost almost all control"(Weizman 1981, 332) because much of the Old Guard in Israeli politics did not share his worldview. Neither could Begin change the composition of his cabinet: Israeli law in 1978 forbade the firing of a cabinet minister. If a Prime Minister wished to do so, he would have to dissolve the whole government and run for reelection: Begin was thus stuck with an opposition Cabinet (Gazit 2003, 105).

Second, Amram's capture came at a politically perilous time for Begin: his public approval, which stood at 80% after Sadat's visit to Jerusalem in 1977, had fallen to just 50% by the summer of 1978.

Lastly, the political positioning of Egypt and Sadat, and the progress of the peace talks, had a major impact on Begin's decision-making.

As a matter of protocol Avraham Amram's situation fell under the Minister of Defense, Ezer Weizman. Weizman's colleagues were, by his own admission "mistrustful of me" (Weizman 1981, 332) because of his dovish outlook as well as his personal relationship with Egyptian leaders. Weizman was the primary negotiator with the Egyptians on the peace talks; he met personally with Sadat, one-on-one, many times. In fact, by the summer of 1978, Sadat and Begin had refused to meet personally; they had not done so since December of 1977. So Amram's captivity and release was a second-tier priority for both Weizman and Begin, and Begin could not count on any other cabinet member to effectively take over negotiations for Amram. At the same time, Weizman could accurately gauge Egyptian and Palestinian responses to Israeli overtures regarding Amram, as he was also a close friend to Bruno Kreisky, who would be the lead foreign interlocutor on the Amram talks.

This structure was ideal because most vital for Begin was the connection between Amram's Palestinian captors and the peace process. This had several facets, most important being that Egypt was under great pressure to appear sympathetic to the Palestinian problem, despite Sadat's actual disinterest (Weizman 1981, 295). Both Sadat and Begin refused Jimmy Carter's request that the PLO be represented at Camp David in September 1978 (Steinberg and Rubinovitz 2019, 143). Thus, Sadat could not be seen to pressure the PLO or PFLP on behalf of Israel for Amram's release, nor could Egypt afford to offend the Palestinians given the level of Arab hostility which Sadat was facing over the peace process.

Weizman, because of his cabinet position and his contacts, was placed in charge of the negotiations. The negotiations were conducted in utter secrecy, which is still difficult to penetrate today. As mentioned, the archives concerning the event remain classified and Begin never wrote his memoirs of the period. Weizman does not mention Amram in his 1981 memoir, *The Battle for Peace*. Ziv Rubinowitz, co-author of *Menachem Begin and the Israel-Egypt Peace Process* states that he never saw any indication of Amram's case impacting the negotiations (Z. Rubinovitz, personal communication, May 7, 2020). Neither Quandt (1993) nor Shmuel Katz (1981) mention Amram during their studies of the peace process. Some books which discuss Amram peripherally are less than reliable on the case (see for example S. M. Katz 1993, 76) because of an anti-Jibril slant.

As a consequence of the prisoner discourse, especially the categorization of PFLP-GC as a Palestinian terrorist organization, Weizman was forced to find alternatives to standard diplomatic talks.

First, he created a small negotiating team within the Ministry of Defense to act as Israel's official channel. Much of my information on this phase of the operation comes from Dr. Ariel Merari, who was considered an authority on hostage negotiation, and was brought in by Weizman as the official team was being formed (Merari 2020/1993). Dr. Merari has provided the author several unpublished manuscripts and personal communications regarding his direct role in, and observations regarding, the Amram affair.

Leading the team was Brigadier General Rafael Vardi, whose position as the chief negotiator is confirmed for the first time by Dr. Merari. The association is still so secretive that Vardi's Wikipedia entry has a two-year biographical gap between 1978 and 1980 (Wikipedia.org 2020). Vardi was the Chief of Manpower for the IDF. Only ten days after Amram's abduction, he had been officially called to task for the inadequate identification safeguards during Operation Litani which had allowed Amram's group to sneak through an Israeli checkpoint into Lebanon (Davar Newspaper 1978).

The Manpower Department of the IDF had always been the section responsible for POWs, as is traditional in most armed forces; indeed, this structure was replicated when Major General Yaron was involved with the Jibril Deal in 1984-85. But more important, Vardi had been the top IDF officer in the Occupied Territories, as well as the commander of the Jerusalem District during the 1967 war.

Vardi had been instrumental in ensuring that the 1972 elections were free of intimidation from Palestinian notable families, especially in Nablus (Gazit 2003, 175); he had also expelled Gush Emunim members who tried to establish an illegal settlement near Nablus in 1974 (Gazit 2003, 263). Thus, he was well-connected and respected, within a part of the "elite" Palestinian political stratum, as well as the Palestinian prisoner network, and could help ensure that Fatah kept a lid on hostile activity while helping to ease negotiations.

And while this is speculation, it is almost certain that at some point Vardi had met or worked with Hafez al-Dalkamoni, of whom more below.

Weizman's next path was a back channel using Israelis with known Palestinian contacts (Avnery 1986, 170-172). This approach was not immune to specific vested interests. Uri Avnery

claims that soon after Amram's capture, Ezer Weizman approached him and asked for his assistance in freeing Amram. Avnery had extensive contacts within the upper level of the PLO; Avnery in turn contacted a fellow peace activist and civil rights attorney, Amnon Zichroni. The peace movement had not been able to resonate with Israeli civil society (Keren 2002, 97): and Avnery saw this negotiation as an opportunity to elevate the peace movement within Israeli political and social circles by convincing the PLO to hand Amram over to Avnery and Zichroni. Avnery's PLO contact, Issam Sartawi spoke directly to Yasir Arafat, who denied Avnery's appeal. Since Arafat and Jibril were enemies, this exhibits Avnery's basic misunderstanding of the Palestinian dynamic. But Zichroni's obituary still claims that the attorney had a role in Amram's release, a claim which Avnery explicitly denies (Aderet 2017).

A further avenue, which became an Israeli *modus operandi* in future APRI negotiations, was the use of foreign intermediaries: in this case the ICRC and the Austrian Bruno Kreisky (Kreisky and Berg 2000, Avnery 1986). Kreisky was the first western leader to recognize the PLO, and later led a hybrid Austrian government/private enterprise team which specialized in back-channel diplomacy across the middle east.

The change that Kreisky wrought in Israeli prisoner praxis and diplomacy was profound. He was instrumental in internationalizing the Israel-Palestine problem. Kreisky's concern with Middle East peace had begun in earnest with France's transfer of nuclear technology to Israel. He believed détente was a matter of nuclear balance, which Kreisky called "overkill capacity" (Kreisky 1978), and that a nuclear-armed Israel upset that balance. Afterward, the Austrian was convinced that Israeli use of a nuclear weapon was a predictable response to invasion, and thus peace had to be pursued through every possible means (Rathkolb 1994).

Consequently, Kreisky maintained friendly relations with Israeli Labor Party politicians as well as Arab rulers from Sadat to Assad to Qaddafi (Kreisky and Berg 2000). Kreisky was later instrumental in brokering the notorious "Jibril Deal" in 1985 wherein 1150 Palestinian security prisoners were exchanged for three IDF soldiers (Haaretz 2010; Jewish Telegraphic Agency 23 May 1985).

The ICRC was approached on Kreisky's urging in order to internationalize the situation (Maimann 2011). Begin agreed because he still portrayed Amram's plight as a POW event (an attempt to legitimize Operation Litani) and as Jibril himself had recognized, one where "soldier-for-soldier" would be the exchange rate.

Thus, while ICRC involvement lent recognition to PFLP-GC, it also allowed for periodic welfare checks of Amram as well as continual monitoring and media coverage of his condition (Davar Newspaper 03 May 1978; Davar Newspaper, 04 May 1978). This would serve to mollify Mizrahi concerns and show that Likud was actively working toward Amram's freedom. It would also serve to insulate Begin from popular Israeli and PLO pressures because ICRC was the public face of the Amram situation, and not Likud *per se*, a position which Weizman acknowledged vis-à-vis the Egyptian peace talks as well where the US presence provided a modicum of political cover (Weizman 1981).

Another circumstance driving Begin's negotiation strategy was his falling poll numbers. Sadat's visit in late 1977 had given Begin a boost to 80% approval in Israeli opinion polling (Weizman 1981, 339), but only months later Israel endured a Palestinian attack launched from Lebanon which killed 38 people and wounded another 76. Begin launched Operation Litani to clear southern Lebanon of PLO forces, but this conflict coming on the heels of Sadat's peace overture gave the appearance of Israeli belligerence in the face of Egyptian peace-making.

This discourse of Begin's aggression was an impetus for the "officer's letter", signed by several hundred IDF officers, which demanded that Begin work toward peace based on Sadat's undertaking. The letter also gave birth to the peace movement *Shalom Akhshav*.

By the summer of 1978, Begin's approval rating was at just 50% (Weizman 1981, 339). Begin could ill-afford the distraction of a conflict with PFLP-GC while he attempted to negotiate both peace and energy access with Egypt. This is not to say that Begin had no support for his own program; there were counterdemonstrations, of equal size, led by off-duty and retired IDF officers in favor of Begin's policies of a "secure peace" (Jewish Telegraphic Agency 06 April 1978). It was this cohort that Begin was attempting to enlarge (Maariv 1979).

As Reagan would do in 1984 with regard to US hostages in Lebanon, Begin focused on minimizing (but not erasing) Amram's case within the Israeli media, as well as reducing the impact of the political entities which participated in the Egypt-Israel peace talks, in order to increase his electoral chances.

The PFLP-GC

By 1978, the PFLP-GC had broken away from mainstream Palestinian organizations; civil, political and military (Leopardi 2020). Its position as a Syria-centric organization, and its call for

revolution in *both* territories of Jordan reduced its political support from Egypt and the PLO while solidifying its position in Lebanon. Consequently, Fatah was considered a foreign interlocutor in the Amram negotiations, by *both* parties. This would be the pattern in 1985 as well, when the Jibril Agreement was being negotiated (S. M. Katz 1993)

It is evident that in the Amram case, Ahmed Jibril conducted his own negotiations, and one can trace the evolution of his tactics from the way that Israel responded to his demands in subsequent episodes (Ma'ariv 1986).

I have shown that initially Ahmed Jibril understood and accepted the Israeli POW policy of “soldier-for-soldier”; and that both Israel and the PFLP-GC saw Amram’s case as a classic combatant prisoner trade. Jibril himself was under no illusions that he could bargain for security prisoners housed in Israeli jails.

Additionally, Jibril’s tactician in all later negotiations for Israeli prisoners was Hafez al-Dalkamoni, but in 1978, al-Dalkamoni was incarcerated at Ashkelon prison. Dalkamoni had been sentenced to two life terms in 1969 after a bomb he planted exploded prematurely, costing him his right leg. He was an inmate representative in Ashkelon and a designated liaison between Palestinian and Israeli authorities in the prison (S. M. Katz 1993, 100-102).

Circumstantial evidence points to the fact that Jibril saw Amram’s capture as a way to free Dalkamoni: who was one of his earliest acolytes, a seasoned operative, and was later implicated in the Lockerbie bombing. Katz argues that Dalkamoni’s freedom was the *impetus* for Amram’s ambush and kidnapping. The evidence does not support this claim, but after the initial talks, Dalkamoni’s freedom became Jibril’s focus, and a sticking point in the negotiations (Merari 2020).

Social movements, family pressures, and making the “worthy prisoner”

As even Uri Avnery (1986, 171) admits, the Israeli peace movement was not a force in Israeli politics in the 1970s. The ascent of Peace Now, while meteoric, gave Begin more incentive to conclude a peace treaty with Egypt than to recover an IDF hostage. Of greater relevance in regard to Amram, and another recurring theme in Israeli APRI, was the pressure of prisoner families. By the time of Gilad Shalit’s release in 2011, social movements in support of APRI could draw 120,000 people to one march (BBC News 2010). But in Amram’s case, because of the right-wing “Secure Peace” movement, there was little social pressure on the administration

outside of Amram's extended family. There was however, political pressure placed upon Begin by his opponents.

Less than a month after Amram's capture, a short article in Davar (03 May 1978), a newspaper which leaned heavily toward the opposition Labor Party, described Amram's poor physical condition (recall he had been wounded during the ambush when he was captured). The article further highlights the heartache which Amram feels for putting his family through such an ordeal. The next day, Davar printed a bathetic portrait of Amram's family: both his own wife and children and his impoverished, widowed mother ("Amram's mother receives letter through ICRC" 1978).

Ariel Merari had warned against this very thing, and cautioned Weizman and Vardi against allowing any contact between families and government officials. In Merari's view, family members would "press for clear commitments, and too often they get them from the emotionally moved decision makers." Merari saw this as an important factor in the decision to execute APRI: *"Throughout the negotiation process, the hostages' families had direct access to the Minister of Defense, the Prime Minister and to those managing the negotiation. A journalist who was close to Prime Minister Begin recounted that the hostages' families could meet with the Prime Minister whenever they wanted, and that they actually met with him almost every week"* (Merari 2020/1993).

This would prove to be the first but not only time that family pressures changed the hostage dynamic. Merari notes that "As a response to public criticism of the 1985 exchange, Shmuel Tamir, who headed the negotiation team asked: 'How would you behave if a hostage's mother would faint on your desk?'" (Merari 2020/1993).

Prisoner type is, after all, an affective public sentiment, and there was a political agenda behind the discourse surrounding Amram. As events would show, Likud attempted to influence the public through media reporting. But the Prime Minister did not calculate that reports on Amram's captivity could also be used as a political foil against his own administration.

In December 1978, the same month that Davar was reporting Amram's condition, and the fact that he was receiving packages through ICRC, Ma'ariv published an interview with Amram's sister in Hadera. She was quoted as saying that the "government is doing nothing for my brother's release" (Ma'ariv, 12 December 1978). By mid-December 1978, the Knesset was holding debates over Amram's fate: Jacques Amir, a Labor MK and Moroccan Jew, stated that

Likud was giving the impression that it was doing little to free Amram (Ma'ariv, 27 December 1978). Here was a Mizrahi who had made good, reinforcing the “worthy prisoner” discourse and weaponizing it against Likud. This political pressure did not make it more likely that Begin would strike a hard bargain with the PFLP-GC.

The hostage exchange

Jibril’s initial demand in March/April 1978 was not accepted by the Israelis. Whether this was because it was better to keep the PFLP/PLO occupied with negotiations during the Egypt-Israel peace talks (a cynical theory), or because Begin’s team were unskilled negotiators (both Ariel Merari’s and Shmuel Katz’s observation), remains unknown. William Quandt (1983), however, calls Begin “a past master at negotiation”.

The preponderance of evidence indicates that Begin actually wanted the Amram problem solved quickly (not only for the peace talks, but because Amram could quickly become a symbol for *Shalom Akhshav*), and therefore acceded readily to Jibril’s second offer, a lopsided but still not unprecedented demand for a “combatant” exchange. But according to Merari, Begin’s swift acquiescence was the moment when Jibril realized that he had the upper hand. And it also marked the beginning of a year-long process. Katz (1993) claims that at one point, Jibril demanded 140 hostages, which Weizman himself refused.

Meanwhile, Begin could devote little personal attention to Amram’s case, so he saw few of the political machinations which accompanied it. It seems certain that once the negotiations for Amram became protracted, he timed Amram’s release to coincide with his visit to the US to sign the peace agreement. This may have been because he expected political blowback for making such an unprecedented deal, but figured that a completed peace deal would overshadow this.

The timing again is suggestive (Jewish Telegraphic Agency 09 May 1979): first, on 02 March 1979, Begin arrived in Washington DC to meet US President Jimmy Carter in what were considered final discussions before signing a peace treaty with Egypt. To Carter’s consternation (Quandt 1993, 311), neither Weizman nor Dayan accompanied Begin to Washington.

Second, it is likely that Weizman and Dayan were preoccupied. The Shah had fallen three weeks before, putting Project Flower and Israeli energy plans in doubt, at a moment when Begin could not back out of his commitment to withdraw from Sinai. Begin attempted to delay nonetheless, using Weizman as his conduit to Egypt.

Israeli jockeying for position in response to the Shah's overthrow may explain not only Begin's solo trip to Washington, but his sudden belligerence about the treaty terms. In mid-March 1979, Israel attempted to change the Sinai withdrawal plan in a meeting between Weizman; Alfred Atherton, a US negotiator who became Ambassador to Egypt later that summer; and Kamal Hassan Ali, former chief of Egyptian Intelligence and current Minister of Defense.

On 20 March, the US Ambassador attempted to sway Egypt's Prime Minister to be more flexible regarding the Sinai timeline. In a declassified cable he described the Egyptian PM as "loaded for bear and in a more emotional state than I have yet seen him". Ali insisted that there would be no change to the agreed-upon oil framework (US Department of State: Office of the Historian 1979). Indeed, the Sinai withdrawal timeline became the "final treaty issue" between Sadat and Begin, solved only on 25 March 1979 (New York Times: Bernard Gwertzman 1979). And as late as November 1979, in the second round of negotiations, Begin was still hopelessly attempting to change the terms for Sinai oil despite "The complete identification of the United States with the Egyptian demands" (Bar-Siman-Tov 1994, 163).

Concurrently, lobbying on Amram's release was being conducted back in the Israeli capitol by Weizman and Dayan. This was in anticipation of a vote in the Ministerial Defense Committee, a vote which was kept hidden from the full Cabinet. My supposition is strengthened by the fact that Dayan and Weizman opposed each other in the Committee and thus both had an interest in remaining behind. There were seven members of the Committee: four Likud members (Begin, Weizman, Sharon, Shostak) and three non-Likud members (Dayan, Berg, Shmuel Tamir).

Third, there were two meetings of the Committee prior to the final vote (Ma'ariv, 21 May 1979). In the first meeting, probably held between 02-05 March, Weizman brought in his recommendation that the deal be made for Amram: 76 prisoners for one soldier. Sharon asked for more clarification. He wanted a brief on whether every operational/military option had been exhausted before he would vote.

In the second meeting, also probably held between 02-05 March, the brief was presented. The defense staff confirmed that they had no way to get to Amram and no hope of rescue. There had been two Likud holdouts against the trade: Sharon, and Shostak. After hearing the brief, Shostak stated that he would not cast a vote to knowingly let an IDF soldier be killed in captivity. The three non-Likud members held firm. Thus, Begin's vote was necessary to break the tie.

Fourth, on 05 March, Begin returned to Israel and his full Cabinet approved the final measures agreed to by Carter and Begin regarding the peace treaty.

Fifth, President Carter arrived in Cairo for final talks with Sadat on 07 March. Between the successful Cabinet vote on the treaty articles (Begin's priority) and Carter's arrival in Egypt, the Defense Ministerial Committee probably met in secret for a final vote on Amram's exchange. This is because Begin had to break any tie, and it is known that Begin did indeed vote.

The final vote tally was a narrow 4-3, with all Likud members in favor of the exchange, and the non-Likud members voting against it. It seems reasonable to suppose that the vote was taken after approval of the deal was received from both PFLP-GC and the government of Syria, as arrangements had to be made at least a week in advance of the exchange. Amram was transported to Beirut or Damascus (news sources differ), then flown to Geneva. It is more likely that he was transported through Damascus. Jibril, Hafez al-Assad, and Kreisky all had connections there, while the PLO was much more powerful than PFLP-GC in Beirut. The Palestinian security prisoners were flown to Geneva and then sent into exile in Libya; save for 10 who elected to stay in the Occupied Territories.

Private Avraham Amram returned to Israel on 15 March 1979. Political blowback was nearly immediate. Davar's front page headline that day was "Avraham Amram returned - 76 prisoners and dangerous terrorists handed over" (Davar Newspaper, 15 March 1979). A letter to the editor in Davar on 16 March 1979 capsulized popular opinion: "Why Only 76?" read the title, and it asked why Israel didn't just open all the cells and empty the jails (Davar Newspaper, 16 March 1979). The honeymoon ended quickly.

By May, there had been two no-confidence votes called by opposition party members in the Knesset. Party discipline prevented Begin's government from falling, but even his own coalition members admitted that they voted against the no-confidence measure "with a heavy heart" (Jewish Telegraphic Agency 09 May 1979). Further, Ezer Weizman was forced to give his reasoning for such a lopsided trade, and one which had never been conducted in Israeli politics: security prisoners for an IDF soldier. Weizman was blunt, saying that to vote otherwise would have been tantamount to letting Amram be murdered by the Palestinians, and that he would not allow this as long as he was Israel's Defense Minister (The Forward, 10 May 1979).

To add to Begin's woes, the military also weighed in on Amram as an unworthy prisoner. The front-page article in Davar, dated 15 March 1979, was continued on page 3: there it was revealed

that Amram had been fined 5000 New Israeli Shekels for the crime of wearing his uniform during the unauthorized trip over the border. Further, the newspaper reported that Amram was chronically under-or-unemployed, with his last job as a menial worker in a laundry (Davar Newspaper, 15 March 1979, 3).

Amram Case Analysis: Why APRI?

Electoral concerns may take top priority in a democratic leader's calculus, but Begin was hemmed in during the negotiations by the Prisoner Discourse. First, Begin's acquiescence to Kreisky's demands had long-term consequences. Amram would be treated as a POW under International Humanitarian Law, and Begin's recourse to ICRC and foreign interlocutors meant that he had given *de facto* recognition to the PFLP-GC, and by extension the PLO as state combatants. A problem which arose in later APRI scenarios was the status of Palestinian or Lebanese Shia prisoners (Ben-Natan 2011): were they not POWs as well, if Amram had been?

This course of action was at least in part driven by belligerent category, in that the PFLP-GC was designated as a terrorist organization, and thus direct negotiation was impossible. The use of foreign interlocutors ensured that interests other than Begin's would come into play, and might even take priority. Finally, Begin was to learn that prisoner type had a major impact on public opinion, and he had failed to sway Israeli opinion to his side. Mitchell Bard (1985) shows that public opinion is a lagging indicator of approval for government policies; but the lag in Israeli politics took several years rather than months. Other politicians were able to take advantage of Israeli public approval for later APRI decisions. Begin could not.

Further, as my analysis of Israeli media coverage shows, Begin misread the new dynamic regarding public opinion and news media in his attempt to sway the public in Amram's favor. In 1969, public opinion polls were sponsored only 5% by news media; 71% of polls were conducted by political parties in an attempt to sway public opinion. By 1977 the news media sponsored 65% of polling, to only 22% by political bodies; by 1981, the proportion was 80% news-media driven polls to a diminished 11% by political organizations (Arian, Katz and Shani 2004). This trend would prove helpful to later politicians based on Begin's precedent, but Likud was blindsided by the new media landscape. At the same time, Begin made the political calculus that the peace deal with Sadat would prove to be a more powerful political force than Amram's release; that both would prove politically advantageous; and he was correct.

But the pattern created in 1978-79 set a precedent which gradually hemmed in the Israeli government in both Amram's capture, and in future negotiations.

First, Kreisky's "good offices" came at a price: internationalization of the Israel-Palestine conflict. Whether PLO or PFLP-GC, its operators would heretofore be recognized as state combatants. It is no coincidence that Kreisky became the first western leader to recognize the PLO (Kreisky 1980; Artner 1980). Avraham Amram was the first Israeli prisoner to be exchanged in another country (New York Times 1979); within less than a decade, this process of exchange between "recognized" combatants in Geneva had been normalized (Los Angeles Times Wire Service 1985).

Second, Jibril learned that the negotiations were not a battle of wits, but wills. His initially unacceptable demand would ultimately be met if he merely waited long enough. No Israeli APRI event took less than a year. And during that time, political pressure built on the Israeli leader, not on Jibril. In virtually every case, the Israeli government would weaken first, and proffer a large number of security prisoners in exchange for its hostage. Only then would the real negotiations begin.

Third, just as Ariel Merari predicted in 1978, direct family pressure became an accepted facet of Israeli prisoner praxis. Beginning with Amram's family, IDF captives' families had regular, ongoing, and direct contact with national leaders. This is strongly associated with government decisions to execute APRI.

Fourth, because the Palestinians were categorized as terrorists, negotiations could not be conducted face-to-face, or even in the same country. This made Israel dependent on the interests of foreign interlocutors; for instance, both Kreisky and Willy Brandt of Germany were designated by the Socialist International as official negotiators with the PLO. This was done with the support of Israel's Labor Party, which was also a member of the International (Jewish Telegraphic Agency 1979); and which gave Labor some impact even when out of office.

Finally, evidence suggests that more than humanitarian concerns drove Austrian policies in the region. According to declassified CIA reporting, most of Kreisky's international activity was directed toward diversifying Austria's energy sources, since nearly half of its natural gas supply came from the USSR (CIA 1974). Further, arms sales were an integral part of Austrian foreign and fiscal policy, used to reduce unemployment and aid its balance of payments (Cooley 1980).

The period from 1977-1985 showed a great increase in Austrian arms exports from 1970, the beginning of Kreisky's tenure as Chancellor (NISAT: Norwegian Initiative on Small Arms Transfers 2020; SIPRI: Stockholm International Peace Research Institute 2020). Austria's major arms export to the Third World was the Kuerassier medium battle tank. It was built in a factory at Thessaloniki then shipped out of the port to the Middle East and South America (Cooley 1980); both Tunisia and Oman for example built their admittedly small militaries around it (Jewish Telegraphic Agency 1981).

Austria's largest industrial concern, the state-owned steel company Voest-Alpine, had been unprofitable since 1976. By 1981 a Voest-Alpine subsidiary, Noricum, was desperate enough to begin illegally selling a 155mm artillery piece, the infamous Gerald Bull "Supergun". Noricum sold to both Iraq and Iran simultaneously, using Jordan as a cutout to hide the transactions (Phythian 2000; Anderson and Van Atta 1986; Washington Post 1991).

In the late 1970s and early 1980s, there were several illegal weapons sales brokered through Austrian government officials (New York Times 1977). A necessity to execute oversight over Austrian weapons sales might help to explain the unusual fact that the Austrian Ambassador to Greece, Herbert Amry, became an integral part of Kreisky's negotiating team in the Middle East, far removed from his country of accreditation. In the case of Austria's artillery sales to both Iraq and Iran, Ambassador Amry personally revealed the plot to journalist James Dorsey (J. Dorsey, personal communication, January 23, 2021) and allowed him to publish an article detailing and publicizing it. Amry's assignment may therefore have killed several birds with one stone for Kreisky by normalizing Austrian relations with middle eastern leaders on multiple fronts simultaneously.

Conclusion

In the case of Avraham Amram, the Begin administration was facing electoral pressures from two directions. First was from the general public, which wanted a peace agreement with Egypt finalized, and penalized Begin for his perceived inaction on that front; second was from his Mizrahi base, which saw Amram as a worthy prisoner and lobbied for his release. Nestled within and hidden behind the Israeli public's demand for peace, was the pressure which Iran was

exerting on Begin to successfully maintain negotiations while secretly supplying the Shah with forbidden US technology.

Begin's freedom of action was constrained by the Prisoner Discourse: his dependence on IHL (Amram as POW); belligerent categorization (no direct negotiation with terrorists and no recognition of Palestinian organizations); and the diametric oppositions of worthy versus unworthy prisoner. Thus, Begin was forced to negotiate in complete secrecy. He also had a team which neither supported Begin's priorities, nor could match Ahmed Jibril in a battle of wills. Time was on Jibril's side, a point that he would prove again and again. It seems apparent that Weizman and Dayan were heavily involved in Project Flower, which had much greater ramifications for Israeli security than Avraham Amram's fate.

Begin was finally forced to settle a tie regarding Amram's fate within his own advisory committee. Public outrage followed over the break in precedent that Begin created, but the timing of the APRI, just before completion of the peace treaty, as well as party discipline, lessened the political blow. Indeed, David Meidan, Netanyahu's negotiator for the release of Gilad Shalit, compared his own situation (where the Shalit trade was an Israeli public preoccupation) with that of Likud in 1979: "It was easy for Begin; he knew that the peace treaty would provide cover for the trade" (Meidan 2020).

The election campaign in 1981 has been described as "the most tense and violent in Israel's history. These elections reflected extreme ethnic tension, and—more than in any election campaign before or since—there was a strong correlation between ethnic origin and voting patterns." A majority of the Ashkenazim voted for Shimon Peres and the Alignment, "whereas most Israelis of Sephardic (Mizrahi) origins supported Menachem Begin and the Likud" (Israeli Democracy Institute 2020). It may be argued that part of Begin's electoral success was created through freeing the "unworthy prisoner" Avraham Amram, who did not appear unworthy to the Mizrahi population.

But to reiterate: in 1978, Begin faced several constraints. The IDF was embroiled in a tactical situation whose structure matched the Lyall-Wilson factors for democratic defeat and protracted conflict: mechanized forces, a safe haven for insurgents, and status as an occupier. Israel's COIN praxis given this situation was COIN through capture, which created an asymmetric prisoner structure and made kidnapping a viable insurgent technique. PFLP-GC took advantage of this

imbalance. At first Begin considered Avraham Amram's capture a typical battlefield encounter and negotiated as such.

At the same time, Begin was constrained by the Prisoner Discourse: PFLP-GC was not a recognized state combatant, but a belligerent categorized as a proscribed group; and Amram's status was contested, with Ashkenazim convinced that he was an "unworthy" prisoner while Begin's base, the Mizrahim, supported efforts to release him.

It is clear that electoral concerns largely drove Begin's actions, and a combination of bureaucratic dysfunction and belligerent category dictated the structure used to negotiate Amram's release, while prisoner type ensured that negotiations would continue. Most important to Begin was successful completion of a peace treaty with Egypt, and indeed the peace treaty gave Begin political cover to exchange an unworthy prisoner. That dynamic did not remain the case, as the plight of the hostage took center stage in the 1980s.

Chapter 6 : The Evolution of Israeli APRI 1978-2011: Policy Breaks & Path Dependence

Israel's asymmetric prisoner release policy is the consequence of a *cumulative* and path-dependent process which has steadily evolved since 1979 (see Figure 5, page 147). By the late 1980s Israeli prisoner praxis had become an institution which influenced and constrained "rational" decision-making, exhibiting a sequence of "causal possibility, contingency, closure of alternatives, and constraints to the current path" between the release of Avraham Amram in 1979 and that of Gilad Shalit in 2011 (Bennett and Elman 2006, 250).

In Chapter 5, I showed that Menachem Begin's exchange of 76 security prisoners for Amram was a sharp break with previous practice, and was heatedly contested at the time. There is little doubt that it falls well into the realm of causal possibility for the initiation of modern Israeli APRI. Indeed, more than one source on Israeli negotiation strategy says that it set a precedent, which others later followed (Ma'ariv 1986; New York Times 1979; Merari 2020/1993).

The evidence thus points to Begin's 1979 decision as the likely point of origin for current Israeli prisoner policy. At this critical juncture in 1978-79 there were several options besides an APRI, and such options were still possible as late as 1988. Further, the policy of "no negotiation with Palestinians" increasingly closed off alternatives because of negotiation structures that neither favored Israeli interests, nor allowed for direct talks between parties. Finally, the social and political consequences of Ron Arad's loss would henceforward reduce Israeli choices to APRI, at least in the case of military personnel captured by armed opposition groups. But this is to get ahead of the story. First, I discuss the contingency, closure of alternatives, and future constraints which had their genesis in Begin's decision-making.

Amram's asymmetric exchange was not preordained, but contingent on a variety of factors. There were several options available to the Begin administration in 1978. First, four Israeli soldiers had been killed in the same ambush in which Amram was captured; their remains were held by Fatah. Begin could have pursued a path which used the remains of the four dead IDF soldiers as a reason to start negotiations with Arafat and the PLO. Golda Meir was known to have done this in other instances (Derfler 2014; S. Katz 1981).

Further, Issam Sartawi was already involved in early contacts with Israelis such as Uri Avnery. The two could have opened other doors in a process similar to Oslo, especially with the help of

Bruno Kreisky, who not only invited Arafat to Vienna a few months after Amram was exchanged, but also introduced Sartawi to US Ambassador Milton Wolf at least three times before Arafat's arrival (New York Times 1979). And while Fatah had no real influence on PFLP-GC, Begin might have sacrificed Amram for longer term goals including a comprehensive Palestinian peace agreement.

This possibility was discussed and discarded by Weizmann's negotiating committee. The four soldiers' remains were therefore only recovered in 1982, when the IDF found them during the invasion of Beirut. No trade was conducted for them. Ariel Merari believes that Defense Minister Ezer Weizmann precluded any other options when he met with the five families affected by the PFLP-GC ambush: after only thirty minutes of pressure from the gathered mothers, he had agreed to do whatever it took to get Amram back alive (A. Merari, personal communication January 26, 2021).

Indeed, there was never a military option: the ICRC was contacted almost immediately at Kreisky's urging, a sign that Amram's captivity had been accepted as a *fait accompli* by Begin's cabinet. Amram's location was an open secret, but no rescue was planned. This was made clear to the cabinet advisory committee in the week of the deal, when Sharon demanded a final brief on such an option before voting in favor of the exchange.

Nor did the Amram APRI *per se* have to dictate the outcome of future Israeli hostage situations. It was actually the June 1982 invasion of Lebanon which created an asymmetric prisoner marketplace which Israel found difficult to manage. By late summer 1982, the IDF had between 500,000-750,000 people under its jurisdiction in Lebanon (Sayigh 1983), among them about 10,000 detainees held by various factions (Laffin 1985). Then in early September 1982, eight IDF soldiers were captured by the Syrian Army at Bhamdoun. It was the aftermath of this capture which inadvertently began to close off Israeli alternatives to APRI.

Immediately after the capture, Israel protested that Syria had violated a negotiated cease-fire, and it requested that both the US and ICRC intervene. Since the US Marines were to begin their retrograde in less than a week from Beirut on 11 September (carrying PLO fighters to Tunis), Israel's plea fell on deaf ears. By 7 September the IDF prisoners had been handed over to Palestinian forces: two soldiers were given to Ahmed Jibril's PFLP-GC; the other six were handed over to Fatah. The PLO demanded that Israel provide a list of all prisoners that it held in exchange for ICRC access to the IDF captives. Israel refused.

But events over the next ten days would relegate IDF prisoners to the background anyway: first the IDF invaded West Beirut, followed by the events of 17 September when Phalangist militiamen massacred between 800-2000 women and children at the Sabra and Shatila refugee camps.

It is clear from its actions regarding the soldiers seized at Bhamdoun that Israel considered its captive personnel to be POWs: in fact, they had been taken by another state force, Syria, under conditions of conventional war. Israel had likewise captured nearly 150 Syrians during the invasion (Laffin 1985), so it was not farfetched that an exchange of POWs might take place.

But Syria's handover of the IDF prisoners to the PLO, and Israeli unwillingness to negotiate with the Palestinians ensured that a convoluted, albeit well-worn process would occur when negotiations began in mid-1983. First, the same interlocutors who had facilitated Amram's release were utilized: Bruno Kreisky and Issam Sartawi assisted the Israeli politician Aryeh Eliav in making initial contacts (Petritsch 2010, 380; Jewish Telegraphic Agency 1983).

This structure, while convenient and familiar, also ensured that the exchange would not be conducted as a POW repatriation, but rather in accordance with Kreisky's international interests. Further, as a result of Kreisky's insistence, ICRC was again the lead interlocutor, this time accompanied by French advisors (Jewish Telegraphic Agency 1983). Instead of Ezer Weizman who had resigned in 1980, Israel's ranking negotiator was Shmuel Tamir, who had voted against the Amram exchange in 1979 but who would go on to negotiate the Jibril Deal in 1985. In the years between 1983 and 1985 he proved himself to be vulnerable to pressure from prisoner families, a factor which Ariel Merari had warned about in 1978 (Merari 2020/1993).

It is not unlikely that family pressure swayed Israeli policy, as the Fatah-held prisoners were incarcerated in the coastal Lebanese city of Tripoli. Tripoli had begun to experience heavy fighting, which was publicized worldwide (New York Times 1983). Indeed, this danger to IDF captives as collateral damage, was the public reason given by the Israeli government to justify the haste with which they conducted the exchange (Jewish Telegraphic Agency 1983).

In reality, the May 1983 withdrawal agreement brokered by the US (US Department of State 2016) had led Israeli planners to begin procedures to close the Ansar prison camp in southern Lebanon anyway. At the time of the negotiations, the IDF held 4600 prisoners at Ansar, many of whom had been detained during indiscriminate sweeps of military-age Shia men (Ta'mari 1985).

Time (and presumably family) pressures forced Israel's hand when Fatah demanded release of all Ansar captives plus a group of Palestinian security detainees in exchange for the IDF personnel. A final tally of 4700 prisoners were released, to include 60-65 security prisoners (some serving life sentences) held in Israel. The Israeli government advertised the exchange as a mutual POW swap. This was not the perception of the Palestinians, either at the time of the exchange, or today. In November 2020, *Al-Hayat al-Jadeed*, the Palestinian Authority's daily newspaper, celebrated the 37th anniversary of the "the largest prisoner exchange deal in the history of the [Palestinian] revolution" (Palestinian Media Watch 2020), claiming it as a victory on par with the 1985 Jibril Deal.

Further proof that the Palestinians did not consider the 1983 exchange a conventional POW trade is found in the testimony of Ferdinand Hennerbichler. Hennerbichler was on Bruno Kreisky's negotiating team for the Jibril Deal, a trade of 1150 prisoners in exchange for the three IDF soldiers held by PFLP-GC. As concern over the PFLP-GC hostages built up, Bruno Kreisky was contacted by Aryeh Eliav and asked to intervene with Ahmed Jibril. Even Kreisky was not allowed to meet privately with Jibril; thus, Hafez al-Assad agreed to hold a dinner, where he sat between Jibril and Kreisky and "relayed" messages between the men. When Kreisky asked what price Jibril demanded for the two IDF soldiers, Jibril responded "4700 prisoners. The same as Arafat got" (Hennerbichler 2011).

It is worth noting that a true POW repatriation occurred only six months after the Ansar exchange, under the same negotiating structure, so that the comparison is apt. Austria, the ICRC and Shmuel Tamir hammered out a deal between Syria and Israel: an all-for-all trade based largely on casualties of the Lebanon invasion, 291 Syrian POW and 72 bodies, for 3 IDF soldiers and five sets of remains. The timing was remarkable: the exchange took place only 25 days before the general election, which an embattled Likud was expected to lose (New York Times byline: Thomas L. Friedman 1984). Menachem Begin was well aware of the power such exchanges held for the Israeli public.

However, the difference in circumstance between the two exchanges is stark, and illustrates the great divide between APRI and normal diplomatic POW exchanges. The 1983 Ansar Deal was a trade of 4700 prisoners for six IDF soldiers, initiated by Israel on the Palestinian's terms through the offices of Austria, France, and ICRC. The six IDF captives were bundled onto a fishing boat

by the ICRC in Tripoli, transferred to a French destroyer in the harbor, then cross-decked to an Israeli gunboat for the trip to Haifa (Jewish Telegraphic Agency 1983).

The other exchange, in 1984, was a conventional “all-for-all” repatriation of combatants and remains, instigated by Syria and conducted by ICRC and the UN in the no-mans-land along the Golan boundary. Diplomatic and military niceties were observed throughout (New York Times byline: Thomas L. Friedman 1984). Even more important, the Syria exchange shows that the Israeli government understood the difference between POW exchange and APRI, but had begun to lose control of the prisoner negotiation process when dealing with non-state actors.

It is clear that restrictive negotiation procedures created by belligerent category; family access to national leaders (Derfler 2014, 107); Israeli insistence on outside interlocutors, each with their own interests; and a combination of both Israeli and Palestinian expectations was cutting off the chances for alternative procedures when Israel was faced with an APRI situation.

There were also structural similarities which forced negotiations along a specific path. Never after 1979 (save in the case of Ron Arad), were Israeli APRI decisions regarding IDF captives case-dependent: they all were based on freeing a worthy prisoner no matter the cost.

Kreisky’s influence changed the legal structure of Israel-Palestinian negotiations forever. He explicitly aimed to make the rule of international law replace *Realpolitik* in the bargaining process. No longer were Arab detainees considered criminals, despite Israel’s best efforts, but POWs: ICRC was the only organization with the mandate to go into Israeli prisons and vet Palestinian detainees. International law, rather than considerations of national interest, drove Israeli policy (for better or worse) in future negotiations.

Next, belligerent category continued to influence negotiation strategy. Because PFLP-GC was Syria-centric, Hafez al-Assad hosted the initial meetings in Damascus, first for Amram and then for the Jibril Deal. The Austrian diplomats were forbidden to meet with Jibril privately, so would speak with him at dinners hosted by Assad (Hennerbichler 2011). The Austrians would get Jibril’s demands, then pass them to the Israelis, who could meet with neither Assad nor Jibril. This clumsy structure remained in place during all of the releases and is in effect today. Contrast with the Spanish, who made negotiation with ETA a very public part of their strategy, thus gaining and maintaining control of the situation in and outside of Euskadi.

Israeli path dependence is also supported by the fact that no leader has ever been voted out for executing an APRI; but neither has any Israeli PM executed an APRI more than once (D.

Makovsky, personal communication, June 3, 2020). This seems to indicate an electoral slant by most prime ministers who execute APRI. In keeping with this, there is a performative aspect of APRI as well: opposition cabinet members vote against prisoner exchanges but then lead efforts for such releases when their party is in power.

Finally, the direct influence of families upon elected officials has been a constant since 1979; Amram, Shalit, and Grof all owed their freedom in part to the pressure which their mothers directly exerted on elected officials. These structural aspects all supported successive Israeli decisions to execute APRI.

As the table in Appendix B illustrates, since 1979 APRI has become a painful but accepted part of Israeli praxis. The infamous 1985 Jibril Deal where 1150 Palestinian security prisoners were exchanged for 3 IDF soldiers (and which some claim facilitated the Palestinian organizational structure for the First Intifada) is a case in point. It was negotiated by Shmuel Tamir, a Committee member who had voted *against* Amram's release only six years before; this hardline stance may have been why he was initially selected for the position of chief negotiator. In July 1984, Tamir was saying openly that a deal was imminent, and would entail 3 IDF soldiers for only 120 *PFLP* prisoners (United Press International 09 July 1984). How the deal got away from him has never been fully explained.

One explanation may in fact be Tamir's hard bargaining. Hennerbichler (2011), who was part of the Austrian negotiating team states that *Jibril's* initial demand was for 4700 prisoners, the number of Lebanese POWs that Israel had freed in 1983. Nagar (2018), who relies on secondary sources claims that Jibril's demand was for only 1187. Tamir's response was to offer either 25 or 27 security prisoners; asymmetric still, but nowhere near what was demanded. At that point, Jibril decided to wait the Israelis out.

Moshe Arens (2018, 118-119) describes the cabinet meeting a year later during which the decision was made to trade 1150 Palestinians for the 3 IDF soldiers: it is worth noting that the sequence of the 1979 Amram APRI discussion was followed nearly step for step.

First, the *PFLP* was designated a terrorist organization and so Austrian interlocutors, (whose interests were not always congruent with the Israelis), were necessary. Kreisky again demanded that the ICRC play a role, especially as all 10,000 Palestinian detainees had to be vetted, and the Austrian government was not authorized to enter Israeli facilities on its own initiative.

Israeli popular anger was ostensibly so fierce at the Austrian role in the Jibril Agreement that Kreisky was advised to cancel a state visit on the grounds that his safety could not be assured. Where and how this anger manifested is not entirely clear. Kreisky himself claims it was right-wing fury which caused the cancellation (Jewish Telegraphic Agency 23 May 1985; Kreisky and Berg 2000, 473). If true, this shows that APRI had become an institutionalized praxis in the Labor Party electorate by 1985, and within the right-wing electorate by 1987-88. But it must be stated that at least among right-wing *politicians*, APRI decisions had already become path dependent. For example, a Jewish Telegraphic Agency (JTA) report stated that while the Israeli Right as a whole was infuriated by the Jibril Deal, Shamir and Arens had “made their peace with the prisoner exchange” as “the government had no choice”: this was because the IDF hostages were in danger (Jewish Telegraphic Agency 1985).

There is some evidence that a new settlement policy in the West Bank was initiated to assuage popular right-wing anger over the Jibril Deal, as well as provide political cover to Defense Minister Rabin. Gush Emunim was “absolutely unequivocal” in its attitude against the Jibril exchange, and claimed to already be collecting the names and addresses of released Palestinians who had returned to the West Bank, ostensibly for security purposes (Jewish Telegraphic Agency 1985). The government seemed to support a new hard line in the OPT: for example, not only did administrative detention and house destruction in the West Bank intensify (New York Times: Reuters 1985), but settlement activity itself showed a substantial increase, with settler population rising from 107,000 in 1983 to 159,000 in 1985 (Foundation for Middle East Peace 2011). Further, the Israeli government began immediate deportation proceedings against some released Jibril Deal prisoners, claiming that such deportation from the West Bank was part of a secret agreement between Israel and the ICRC (New York Times: Reuters 1985).

Second, there was great pressure put on lawmakers by family members. Tamir’s comments about “fainting mothers” referred to Miriam Grof, mother of IDF hostage Yosef Grof. Her refusal to accept anything short of her son’s return played a primary role in changing the negotiations: “In large part it was Miriam Grof’s battle for her son that allowed Jibril to get his deal” (Bergman 2011). This pressure was not only emotional but political: US Secretary George Schultz met with the parents of the captured Israeli soldiers, an act which Menachem Begin acknowledged and appeared to support as political cover (Jewish Telegraphic Agency 1983).

Third, by 1985, Jibril's demands were "take it or leave it" (Arens 2018); the Defense Minister briefed the Cabinet that there was no military option possible to rescue the three soldiers. Shmuel Tamir did not discuss his personal misgivings with any of his colleagues, and subsequently the vote in favor of the deal was 26-1. Tamir then resigned his position in disgust. Evidence suggests that he had seen the hardening of Israeli APRI into a path-dependent social fact and chose to have no further association with the process.

Peres himself faced little electoral pressure to deny the Jibril Agreement: his arrangement within the coalition government ensured that he would have to give up the premiership to Shamir by October of 1986. And as the polling shows, Peres' approval rating rose from 42% pre-APRI to 47% post-Jibril Deal. Indeed, in a recent national poll, Peres had a 74% approval rating, making him the second-most popular politician in Israel (Podolsky 2013).

This popularity did not extend to other politicians, however. And the popular outcry over the Jibril Agreement had a direct impact on Israel's deepest prisoner tragedy: Lt Ron Arad, who was shot down on 16 October 1986, in the week that Peres and Shamir traded positions as Prime Minister. By this point Israeli APRI had hardened into a social fact, though national politicians were unaware of it at the time. The Jibril Deal created minor political difficulties for Israeli leaders, which they tried to reduce by resetting their APRI policies and refusing to negotiate for Arad's release. By the time they realized their mistake, it was too late to find Arad through their own resources.

Arad was captured by Amal. Of the Shia groups in Lebanon, it was the friendliest to Israel. According to some sources, Amal's initial offer was made to trade Arad for Lebanese civilians in Israeli jails. This offer was rebuffed due to fears of public disapproval related to the Jibril Agreement (Coughlin 1993; Bergman 2008); a later offer, made just before Arad was transferred from Amal to Hezbollah custody, was also rebuffed for the same reasons (Meidan 2020). It is clear that Shamir had electoral concerns: only two months before, his political popularity stood at 7% to Peres' 47% (New York Times byline: Thomas Friedman 1985). The unpopularity of the Jibril Agreement seemed to harm Shamir more than Peres, and it appears to have affected his willingness to execute APRI in the case of Ron Arad. In fact, it was not Shamir, but an unnamed attorney acting on behalf of defense minister Yitzhak Rabin who contacted Hennerbichler in Autumn 1988, attempting to open secret negotiations and get Arad back (Hennerbichler 2011, 140-141).

Hennerbichler, in addition to his work with Amry and Kreisky on the Jibril Deal, had been a successful hostage negotiator in his own right, personally leading delegations which freed several Europeans held by Iraqi Kurds (Hennerbichler 1986). Rabin's office (through Eliav) asked Hennerbichler for help getting official Austrian assistance in negotiating a trade for Ron Arad who, it was rumored, had been taken to and from Tehran and was presently under torture in Hezbollah custody. It is clear that by 1988, Israel had discarded any thought of "resetting" its prisoner policy and desperately wanted to find Arad (Hennerbichler 2011).

Israeli prisoner policy was becoming path dependent not because there were no other choices. Rather, APRI is an intensely personal but public decision, and associated directly with those prime ministers and cabinet members responsible for soldiers and their welfare. The loss of Arad appeared to be a personal betrayal of the IDF by politicians. Indeed, every leader since Begin, (when his party was in power), has personally refused to be responsible for an IDF captive's death: Shostak and Weizman in 1979 explicitly said this, as did Rabin in 1985, and Sharon in 2004. This was because by 1988, the entire government, rather than merely the current leader, had become responsible in public discourse, for the welfare of captured soldiers.

A necessary feature of such institutional hardening is the support of a government's permanent bureaucracy. All agencies in the Israeli government still agree on the importance of finding Arad. This is reinforced by David Meidan's observation that not only was his entire generation haunted by Arad's fate and the government's failure to free him; Meidan and his cohort vowed that there would be no future repeats of the government's attempted "reset". At this point it is clear that Bennett and Elman's fourth component of path dependence, political constraints to the current path of APRI policy, had hardened. Israeli APRI policy, which meant returning a hostage no matter the price, was turning into an institution. By Gilad Shalit's exchange in 2011, the middle-ranking bureaucrats of 1985 were cabinet-level officials, and stalwart supporters of the institution.

The failure to rescue Arad has had a seismic effect on Israeli decision-making with regard to prisoner release. According to a former intelligence officer and NSC director, Arad's whereabouts are still an essential element of information (EEI) in every Israeli Operating Directive (OD), the instruction given to intelligence agents on collection assignments (Theroux interview 2020). Indeed, David Meidan admits that every Israeli intelligence officer of his generation is haunted by Arad's fate, and the political/intelligence failures that led to Arad's

captivity. There is little question left in any politician's mind that worthy prisoners are to be freed at virtually any cost. But the discourse of the "worthy prisoner" would be sorely tested in the case of Ariel Sharon and IDF Reserve Colonel Elhanan (Eli) Tannenbaum.

In October 2000, Eli Tannenbaum was mired in debt and looking for a way out. A boyhood friend offered him a lucrative drug deal in Dubai. Tannenbaum flew to Brussels, procured a forged passport, then continued to the UAE. There he was drugged by his "friend" and shipped to Lebanon, where he was held by Hezbollah for the next three years (Associated Press October 29, 2003).

Tannenbaum had a history of unsavory dealings. In fact, there probably would have been little sympathy for him: except his family filed for, and was granted, a gag order which forbade the Israeli press from reporting on Tannenbaum's activities, especially the circumstances surrounding his capture. The gag order was effective: a search of the National Library of Israel media archives shows no mention of Tannenbaum in the press between the years 2000-2003. The gag order was only lifted by the Israeli Supreme Court in late October 2003.

Meantime, Ariel Sharon's government was busy trying to make a deal for not just Tannenbaum, but the bodies of three IDF soldiers who had been killed in 1982 during the battle at Sultan Yacoub. Getting these remains was not straightforward: at one point, Syria buried four bodies in the Jewish cemetery in Damascus and claimed that these were four IDF casualties from Sultan Yacoub. ICRC exhumed them and proved that only one was a missing soldier. Only after lengthy investigation did the IDF finally list the three as killed in action (Dudkevitch and Lazaroff 2004).

Sharon was also facing a great geopolitical challenge: how to disengage from Gaza and parts of the West Bank. He had submitted his first draft of the disengagement plan in October 2003 and met immediate resistance, especially from Likud parliamentarians (Angus-Reid Global Monitor July 3, 2005). Coincidentally, October 2003 was also when news reports "leaked" about an upcoming prisoner exchange which was said to include information on Ron Arad. The pressure on Sharon from families of the MIA soldiers (one of whom was an American citizen) was in direct contrast to the pressures from Tannenbaum's family, which sued to maintain the gag order regarding his predicament after a district court overturned it. In light of the controversies surrounding the trade, Sharon was forced assure the public that the entire Cabinet would get a vote on any prisoner exchange deal (Alon and Melman 2003).

Sharon's process in negotiating for Tannenbaum was similar to earlier Israeli APRI. This is because Israel was constrained by the Prisoner Discourse when attempting to conduct talks with insurgents. First, the belligerent categorization of Hezbollah as a terrorist group prevented direct negotiation between Israeli officials and Hezbollah.

Second, the Israeli refusal to negotiate necessitated the involvement of a German interlocutor, whose motives remain a mystery: at one point, he reported to Sharon that Tannenbaum's teeth had all been extracted without anesthesia as a means of torture. This report, published extensively, proved false (Associated Press October 29, 2003) but exerted pressure on Sharon to hasten a deal.

Third, familial pressure remained high and focused on Sharon. Both the Sultan Yacoub families as well as the Arad family (which sued one of Arad's imprisoned captors, Mustafa Dirani in a legal attempt to prevent his release) kept media and government fixed on the soldiers' plights.

Fourth, it is clear that the torture allegations, as well as the gag order, were attempts to create the idea that Tannenbaum was a "worthy" prisoner. There was no military option by late 2003 to rescue Tannenbaum, thus, the logic seemed to point to APRI as the only option for his release.

Finally, there were electoral/political pressures, largely connected to the Gaza disengagement plan; it is clear that the 2003-2004 APRI was closely connected to a campaign to build support for Sharon's political priority, which was disengagement from Gaza.

The evidence is suggestive that Sharon may have used the 2004 Tannenbaum APRI to curry favor with Palestinian authorities as well as the Israeli public. News reports from late September 2003 (Jewish Telegraphic Agency September 23, 2003) note that "for the first time, the radical Lebanese Shi'ite organization is negotiating for the release of *Palestinian* prisoners, not just members of Hezbollah and other Lebanese prisoners" (italics mine). Nor was interest in Sharon's plan merely domestic. The Bush administration expressed a desire that Israel not execute any Gaza disengagement prior to the 2004 US presidential elections (CBS News 2004).

The Cabinet vote on the Tannenbaum APRI was taken in early November, and the decision to move forward on the prisoner exchange was close: the cabinet voted 12-11 to approve the trade (Ynet.com 2003). How much of this was predicated on Tannenbaum's status as unworthy prisoner, and how much based on resistance to freeing Palestinians at Hezbollah's behest, is open to debate.

A further point of contention was the release of one particular prisoner: Ron Arad's captor, Mustafa Dirani, who had been captured in 1994 as a bargaining chip for the return of Arad. Arad's presence loomed, as it continues to loom, large in any Israeli APRI deliberations.

When the exchange was completed in January 2004, Sharon was on the tarmac to meet the aircraft which transported the IDF remains back to Israel, and he made a speech on the occasion. In keeping with what appears to be an almost-unique Israeli concern with soldiers' remains, Sharon called the exchange "a Jewish decision" (Independent Media Review and Analysis, 29 JAN 2004).

Tannenbaum arrived to no welcome, but immediate interrogation; he was considered a security threat who may have given up secrets to Hezbollah (Ynetnews 2005). He was later arrested in 2018 for over 60 traffic offenses, as well as tax evasion. After being muzzled for several years, the Israeli media made certain that Tannenbaum's status as unworthy prisoner never changed (Grinzig 2018).

Neither did Sharon immediately gain political capital from the prisoner exchange. He was personally linked to Tannenbaum in early March of 2004, when it was revealed that Tannenbaum's ex-father-in-law had been a business partner of Sharon's. Sharon claimed that he had not spoken to the partner in decades, but it does raise the question of close familial interference with regard to an otherwise unworthy prisoner (CBS News 2004).

Several years later, Sharon's disengagement policy would be a major factor in creating a nearly untenable situation for the Government of Israel: the capture of Gilad Shalit.

Chapter 7: The world's worthy prisoner: Gilad Shalit and the "social fact" of Israeli APRI 2006-2011

The Gilad Shalit case is arguably the best-known example of Israeli APRI. Captured in 2006, Shalit was held by Hamas in Gaza until October 2011. The exchange of 1027 Palestinian prisoners for Shalit seemed to catch many domestic observers by surprise, despite decades of Israeli APRI.

Hardening the path dependence which guided Israeli prisoner policy after Ron Arad's disappearance, Shalit's situation solidified the "social fact" of Israeli APRI: a willingness to pay any price to retrieve an IDF captive. This "social fact" may be attributed in part to a new development in the evolution of Israeli prisoner policy: internationalization of Shalit's plight. Unlike the majority of Israeli APRI events prior to 2006, which were largely domestic affairs (and in some cases actively discouraged by allies), Shalit's cause was taken up not only in Israel but throughout the diaspora.

While this may appear related to earlier global pressures on nonstate actors holding hostages (such as European Parliament pressure on ETA or UN resolutions regarding LtCol Higgins), the resemblance is superficial. Globalization of Shalit's plight was more akin to the symbolic power of yellow ribbons in US hostage situations. This is because diaspora pressure was exerted almost entirely on Israeli leaders while ignoring the participation of nonstate actors. Agency, in the eyes of the diaspora, rested entirely in Israel's hands.

Gershon Baskin (2020) explicitly attributes much of Netanyahu's decision-making to the combination of electoral politics, social movements, and worldwide manifestations of concern for Shalit, such as the empty place setting at Passover Seder, which symbolized Shalit's continued captivity. This internationalization ensured that Shalit's case would remain front and center globally, and not merely in Israel. It added a new facet to the pressures exerted on Olmert and Netanyahu.

Shalit's case follows a classic sequence.

First, there existed a marketplace created by COIN through capture: there were about 9000 security prisoners in Israeli facilities when Shalit was abducted (B'Tselem 2006).

Second, because of the uneven prisoner balance, abduction of an IDF soldier by a “terrorist” organization was a viable technique.

Third, the IDF attempted an ultimately unsuccessful military response to force Shalit’s release; fourth, indirect negotiations were mooted, but hampered by Israeli categorization of the belligerent as a “terrorist organization”.

Fifth, family pressures were exerted upon individual leaders, while the debate over Prisoner Type (worthy vs unworthy) was settled in favor of Gilad Shalit as worthy. Sixth, electoral pressures intruded, which effected the leader’s calculus; and finally, an Israeli negotiating position changed and allowed a deal to go forward.

Shalit’s captivity bridged two Prime Ministers’ tenures: Ehud Olmert, who announced his resignation in July 2008 and Benjamin Netanyahu, who was elected in early 2009. Much of the primary source material for this case study comes from interviews with Gershon Baskin, who led the back-channel negotiations between Israel, Egypt, and Hamas; and David Meidan, a former deputy director of Mossad and Netanyahu’s lead negotiator for Shalit’s release.

Failure of the July 2000 Camp David summit, followed by the chaos of the Second Intifada, drove Israel’s 2005 decision to disengage from Gaza (Alon, Ilai & Daniel Bar-Tal, Eds 2016, xix). This had the obvious effect of weakening Israeli capabilities in Gaza.

Much of Ariel Sharon’s thinking was driven by a desire to give up all responsibilities for the population of Gaza, especially with regard to international humanitarian law. This tactic was ineffective, and the ICRC continues to regard Israel as an occupying force in Gaza (ICRC 2005). Further, the expulsion of Jewish settlers and evacuation of IDF personnel ensured that there was little if any HUMINT capability in Gaza. Next, when Hamas won the elections in Gaza, Sharon decided to withhold tax revenues guaranteed to the Palestinian Authority under the Oslo agreements. This severely handicapped law enforcement in Gaza. Israel thus had a weak posture there by the next year, while unrest ensued between the Palestinian Authority and Hamas. Amidst this, Hamas leaders announced that they would use the tactic of kidnapping Israelis in order to bargain for Palestinian prisoners (Baskin 2013, 9).

On 25 June 2006, a team of Hamas fighters breached the fence separating Gaza from Israel and attacked the crew of a Merkava tank, wounding three and killing two. They captured one of the wounded Israeli soldiers, Corporal Gilad Shalit, took him through the fence, and returned with their hostage to Gaza.

Israel's military reaction was swift. It was also apparent that little had changed between 1979 and 2006 regarding the tactical response to seizure of an IDF hostage. Israeli doctrine still favored a rescue option first (the "Rabin Doctrine"), but reflecting the difficulty of such rescue operations, the IDF had adopted the proactive "Hannibal Doctrine": this advocated killing an IDF hostage rather than allow him to fall into captivity. According to Mitchell Bard this option was never actually exercised (M. Bard 2020), and thus, the only option remaining was a harsh military strike on Gaza.

This military strike had to fulfill two criteria: first, it had to be so firepower-intensive that IDF formations were not to suffer either casualties or captured troops. According to Yagil Levy, whose book *The Death Hierarchy* discusses Israeli casualty sensitivity and tactical methods of reducing casualties, these technologically advanced displays of overwhelming force are explicitly designed to prevent more Shalit cases (Y. Levy, personal communication, July 11, 2020). Second, the strike had to create enough destruction to convince Hamas to release Shalit. Note that mission accomplishment takes a back seat to casualty avoidance.

Operation Summer Rains was launched on 28 June 2006. It had "the stated goals of stopping rocket fire from the southern Gaza Strip and securing the release of Corporal Gilad Shalit" according to the Israeli Defense Force (Israeli Defense Force 2020); in the next six months, Israeli forces killed 405 Palestinians. Of these, 205 were not active combatants and did not participate in the fighting (B'Tselem 2006). The operation ended in late November 2006, yet Shalit was still not freed.

Setting the stage for the Shalit Abduction:

The Prisoner Discourse and domestic pressures:

As in the case of Avraham Amram, the prisoner discourse largely shaped Israeli negotiation strategy. The peculiar Israeli attempt to circumvent the Geneva Conventions in the OPT (primarily to excuse settlement activities) had an adverse impact on the political situation in Gaza and created conditions whereby Hamas increased its power at the expense of the Palestinian Authority.

International Law

Ariel Sharon's disengagement plan had both a demographic factor (Lustick, 2013; Shamir and Shikaki 2010) and a political slant. It facilitated a set of conditions which, based on the COIN through capture sequence and Lyall-Wilson factors, created a structure which made kidnapping a viable insurgent technique in Gaza.

Sharon intended to create a state of exception by evacuating all Israeli settlements and military installations in Gaza. According to Sharon, "no permanent Israeli civilian or military presence in the...Gaza Strip will remain" (Ha'aretz 2004). This move would also derogate any Israeli obligations under international law: "As a result, there will be no basis for the claim that the Gaza Strip is occupied territory". This meant, of course, that Israel would then find itself free from the controversy surrounding international law in Gaza. At the same time, however, "Israel reserves for itself the basic right of self-defense, including *taking preventative steps as well as responding by using force against threats that will emerge from the Gaza Strip* (italics mine)" (Ha'aretz 2004).

This step was taken as an attempt to weaken the Palestinian Authority; Sharon stated "Israel has come to the conclusion that at present, there is no Palestinian partner with whom it is possible to make progress on a bilateral agreement. In light of this, a unilateral disengagement plan has been formulated..." (Ha'aretz 2004). It negated any ability for the Palestinian Authority to mitigate conditions in Gaza because Israel had "withdrawn" as an authority in the territory, and it set the stage for a Hamas takeover several years later.

Sharon was also wrong about juridical opinion regarding international law in the OPT. For instance, the International Court of Justice ruled in July 2004 that "the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out" and that the opinion applied to Gaza as well (International Court of Justice 2004). This did not prevent Israel from using such questionable tactics as outlawing all family visitations to Gaza prisoners housed in Israeli facilities, on the basis that they were "foreigners" (Addameer 2017).

Therefore, "Effective Control", i.e., even indirect control of border crossings and utilities, for instance, meant that Israel could not conduct military operations in Gaza without adhering to IHL (ICRC 2005). Proportionality still governed IDF actions under IHL, and international

observers still considered IDF strikes which attempted to free one prisoner at the expense of hundreds of Palestinian lives disproportionate (B'Tselem 2006). This constrained Israeli options, and made negotiation the most likely successful option to free Shalit.

Belligerent Category

Belligerent category governed negotiating strategy in Shalit's case and it was much more complex than in earlier APRI negotiations. Hamas' role in Israeli political calculations went far beyond merely "terrorist" versus "non-terrorist".

Hamas *was* considered a terrorist group with whom Israel could not hold discussions. However, this categorization was complicated by Hamas' role as an elected political organization within both Gaza and the West Bank. This lent a political cast to Israeli relations with Hamas, because the Israeli public actually supported negotiating with them. But in 2006 Hamas parliamentarians were arrested for being members of Hamas, whether involved in terror activities or not (Urquhart 2006). This almost certainly had a negative effect on negotiations for Shalit.

Next, Sharon had actively weakened the Palestinian Authority, with whom Olmert's government wanted to discuss a long-range peace plan under US auspices. But Hamas was hostile to the PA; thus, there was little incentive for the Olmert government to be in contact with Hamas.

Further, Sharon's disengagement plan prioritized military action with regard to crises in Gaza; IDF doctrine called for massive strikes which minimized IDF casualties while maximizing Palestinian deaths. The threat of such action was a constant shadow over any talks; with Hamas categorized as beyond the pale (even by the PA), negotiation became a secondary option only when military strikes had failed to achieve Israeli aims.

Fourth, Israel had to be wary of the interests of any mediators. In the case of Gaza, Egypt was a power; until 2007 it had a consulate there. In 2006, it had an interest in keeping any Hamas influence out of Egypt, as it might strengthen the Muslim Brotherhood. The Palestinian Authority, of course had its own problems with Hamas, and wanted to keep it contained politically and physically, within Gaza. And Jordan, with its large Palestinian population, wanted to minimize Hamas contacts or influence on its citizens (Baskin 2013).

Given the complications of belligerent category in the Shalit case, it is not surprising that Netanyahu's negotiation strategy and structure would differ radically from Olmert's as the crisis continued.

Prisoner Type

Prisoner type was arguably the major factor in Israeli decision-making regarding Shalit. There was never any question as to whether the young soldier was alive. This knowledge added to the pressure to return him to Israel.

Second, Gilad Shalit's grandfather was a "*noble Israeli Zionist*"; his mother an executive for the Israeli Society for the Protection of Nature; his father was a prominent businessman whose twin brother was killed in the 1973 war. "*Pressure to free Shalit was because of his social class*" says Gershon Baskin (Baskin interview 2020).

Both Gershon Baskin and David Meidan are clear on this point. If one contrasts the treatment afforded Shalit versus that of Avraham Mengistu, an Ethiopian Jew who crossed into Gaza and was captured by Hamas in September 2014; or Hisham al-Sayed, an Israeli Arab who crossed into Gaza and was captured in April 2015 (Lazaroff 2019) the differences are stark. According to Baskin, there is little social mobilization on their behalf. "*These prisoners ARE considered unworthy. They are both civilians, not soldiers. They are both said to have mental or emotional problems. They ...crossed into Gaza on their own. They are both from marginalized social groups*" (Baskin interview 2020).

David Meidan currently sits on a 30-member government committee dedicated to helping and supporting the families of these two prisoners. When asked if the two captives were a priority, Meidan was forthright: "*All leaders are politicians... These two gentlemen (Mengistu and al-Sayed) are said to be mentally challenged; they went into Gaza on their own. It is hard to create public sentiment in their favor based on these conditions. Further, the Bedouin family has asked us not to publicly assist them. It is important to find a solution, but there is little public pressure to do so*" (Meidan interview 2020).

Further, this discourse of the worthy prisoner translated into a potent social movement which was manifest in vigils, mass marches, and empty table settings representing Shalit throughout the Diaspora (Baskin interview 2020).

Two of Israel's most prominent negotiators recognize that without the "worthy" prisoner discourse, and consequent domestic pressure, government action is unlikely to occur. It is impossible to argue that APRI is automatic in hostage situations, given that fact. It is not; it remains contingent but has become an institution when IDF personnel are involved.

The negotiations for Shalit followed two paths: Shalit I was conducted under Ehud Olmert; while Shalit II was conducted by Benjamin Netanyahu. They exhibited similarities but also great differences.

Negotiation Strategy

Shalit I: Olmert

Ehud Olmert was elected Prime Minister in March 2006, successfully running on a platform of "Convergence", whereby Israel would consolidate settlements along the border area in the West Bank, a demographic play similar to Sharon's Gaza disengagement. Olmert was riding a wave of Israeli political centrism: "the Right had given up on a Greater Israel, and the Left had given up on Peace Now", and self-identified centrists made up 52% of the population (Shamir and Shikaki 2010, 99). Further, in March 2006 (both Olmert's party, Kadima, and Hamas won their respective elections that month), 62% of Israeli citizens favored negotiations with Hamas if necessary for peace (Shamir and Shikaki 2010, 105). Olmert's political position was solid when it came to negotiations; despite the government's categorization of Hamas as "terrorists", the Israeli public recognized the Islamist party as negotiation partners.

However, Olmert faced several political challenges which made the Shalit case a difficult one for him. First, it took over an hour before the IDF knew that Shalit was missing, an eternity given the conditions in Gaza. A military rescue operation was nearly impossible. Second, the next option, Operation Summer Rains, did not have the desired effect. Third, two weeks after Shalit was kidnapped, Hezbollah conducted a cross-border raid from Lebanon which killed several IDF soldiers: two more were thought to be alive and captive. So not only were there now additional IDF prisoners, but Israel was conducting full-scale wars in both Gaza and Lebanon. Further, Olmert began facing various corruption charges, and by 2008 he was forced to resign.

But in June 2006, Olmert occupied the political high ground. Regardless he, and his government, refused to hold talks (Baskin 2013, 17-18). This refusal to negotiate between Israel and Hamas/Hezbollah left several other less attractive, but familiar options. The dual shocks also

seemed to paralyze the Israeli government. It took 50 days for Olmert to designate a chief negotiator, Ofer Dekel.

In the meantime, several other avenues were beginning to form. The first was through the offices of the Palestinian Authority. The PA had lost its power in Gaza between disengagement and Hamas' election victory. But because the Israeli government refused to speak with Hamas, the Prime Minister's office was working through Saeb Erekat, the PLO chief negotiator (Baskin 2013, 38). As I will discuss, this channel was in some ways Olmert's preferred method.

Second, Gershon Baskin had begun a back-channel with Hamas through Ghazi Hamad, the chief spokesman for both the Hamas government, and for Hamas' Prime Minister, Ismail Haniyeh. Further, Baskin was in constant contact with Dana Olmert, the Israeli Prime Minister's daughter. This back-channel would prove to be pivotal, but early on Baskin encountered government resistance. It was not until 18 August that he met with Ofer Dekel for the first time.

Third, there was involvement from foreign intermediaries. Egypt, as mentioned, had an interest in Gaza, and numerous contacts. While they did not want to see Hamas in power, they could use their good offices to assist Israel. In fact, on 09 September 2006, Dekel informed Baskin that General Mohammed Ibrahim, head of the Egypt office in Gaza, was now the official intermediary, and ordered Baskin to disengage from the process. Egypt insisted on only one official intermediary, and demanded that all negotiations include them.

Concurrently, the German government, which had become a powerful mediating partner in these types of negotiation, was assisting in the talks with Hezbollah in Lebanon. The condition of the two IDF soldiers still missing in Lebanon was unknown. The negotiator, Gerhard Conrad, was a German intelligence officer with extensive contacts. Gershon Baskin had attempted, unsuccessfully, to open a back-channel with Hezbollah, leaving that arena entirely in the hands of Conrad.

Hamas

Hamas' negotiation strategy was based on the structure created by Israeli COIN through capture and the prisoner discourse: Shalit was to remain hidden in Gaza while his captors spoke through layers of mediators and demanded great numbers of prisoners in exchange for the soldier.

Sharon had purposely weakened the PA in Gaza, so that Hamas was in a powerful position by summer 2006. Its slate had won mayoral elections in the West Bank cities of Nablus, Jenin, Ramallah and al-Bireh; and legislative elections in Gaza. Further, the Palestinian public overwhelmingly saw Hamas as the victor in Israel's departure from Gaza: 84% of Palestinians agreed that Hamas' tactics had hastened disengagement (Shamir and Shikaki 2010, 101).

Hamas refused to allow ICRC involvement in the negotiations, probably in order to keep the Israelis guessing about Shalit's location. Unlike Hezbollah, which refused to tell the Israeli government about its hostages' condition, Hamas went out of its way to let Israel know that Shalit was alive.

Hamas was also enduring intense Israeli military strikes, in retaliation for the kidnapping of Shalit. Shalit was being held by Ahmed Jabari, chief of the Hamas military wing; negotiations flowed through several others before terms were presented to him. This created numerous opportunities for delay, obfuscation, and misunderstanding. But Hamas' demands on Israel remained consistent: *a ceasefire in Gaza; re-opening of the Rafah crossing; and a prisoner exchange* (Baskin 2013, 118).

For the first year of Shalit's captivity, there was an uneasy power-sharing agreement between the PA and Hamas in Gaza; but by summer 2007, Hamas had won a military struggle and controlled the Gaza Strip. Now only Hamas would negotiate for Shalit's return. And Hamas was not a priority for Olmert.

Shalit I: The Negotiations

Despite Ehud Olmert's powerful start in office, events began to crowd upon him. Simultaneous wars in Gaza and Lebanon, as well as concurrent prisoner crises, were difficult to direct. Further, the 2006 war in Lebanon became a disaster. The Winograd Commission (Ynet News 2008) made clear that the government was guilty of malpractice in the prosecution of the Lebanon campaign. And by January 2007, Olmert was the focus of several corruption investigations which would ultimately lead to his resignation; a poll that month showed his support at only 14% (BBC News 2007).

Gershon Baskin discusses the desultory attitude shown by Olmert in regard to Shalit's captivity, despite the great social pressures levied upon him. Olmert's negotiator, Ofer Dekel was trying to negotiate with both Hezbollah and Hamas simultaneously. Further, Olmert had a political agenda

which actively interfered with any progress on Shalit. Olmert was focused on the Annapolis Conference, where in November 2007 he and Abbas “agreed to launch continuous bilateral negotiations in an effort to conclude a peace treaty by the end of 2008” (Migdalovitz December 7, 2007).

Prior to that, in June of 2007, “leaders of Egypt, Jordan and Israel met with Palestinian leader Mahmoud Abbas *to offer support during his battle with rival Palestinians in the Hamas organization*” (italics mine). This support included a non-reciprocated APRI as a confidence-building measure: “Israeli Prime Minister Ehud Olmert said he will release 250 Fatah members from Israeli prisons” (Kenyon June 25, 2007). Olmert’s focus on the Annapolis Peace Conference is not pure conjecture: as late as 2020, he continued to extol Abbas’ virtues as a peace partner and bemoan the lost opportunities caused by his own forced resignation (T. Lazaroff 2020).

Thus, while Olmert concentrated his efforts on a prisoner exchange for the bodies of two IDF soldiers killed in the Lebanon War, he did not wish to alienate or weaken Abbas by negotiating with Hamas. In June 2008, Olmert submitted the Hezbollah exchange to his cabinet for a vote. In his speech he admitted for the first time that the IDF soldiers, Ehud Goldwasser and Eldad Regev, were dead. He also admitted that no further information on Ron Arad was forthcoming, although this had been an Israeli condition for the APRI (Jewish Virtual Library: Israel Prime Minister's Office 2008). Despite this, the Cabinet vote was 22-3 to trade five Palestinian prisoners (to include the notorious Samir Kuntar) as well as dozens of Lebanese bodies for the remains of the two IDF soldiers (JTA & Roy Eitan 2008).

But this was Olmert’s last gasp: the corruption investigations and the defeat associated with the Lebanon war created political hurdles which Olmert could not overcome. He announced his resignation at the end of July 2008, effective when a new government could be formed. While it would seem that Olmert was now in an ideal position to negotiate boldly for Shalit, instead, he vacillated. When queried about this, Gershon Baskin explained: “*Remember, (Olmert) resigned. He was not voted out. He was convinced that he would successfully fight the corruption charges. This meant that he could expect a comeback. So, his political calculation was that he could walk away, say that he had negotiated in good faith, while maintaining any objections to an asymmetric trade*” (Baskin interview 2020). The timing of Olmert’s next moves are suggestive: on 24 December Israel refused to honor Hamas’ unilateral ceasefire in Gaza; and on 27

December 2008, it launched Operation Cast Lead, another overpowering air/land offensive into the Gaza Strip. Baskin (2013, 118) repeats claims that the operation was an attempt to rescue Shalit. This attempt also failed.

It is clear that Olmert was not fazed by domestic pressures so much as allured by the electoral consequences of a US-brokered peace deal and the potential of a political comeback. Thus, he could negotiate with Hezbollah, a posture which had no negative effects on the Palestinian Authority, but could not risk negotiations with Hamas.

It is also apparent Olmert knew that this strategy was ineffective. In March of 2009, when he was less than two weeks away from leaving office, he and his negotiator, Ofer Dekel, tried an unorthodox tactic to free Shalit:

“In March 2009, imprisoned members of the Palestinian Legislative Council and other prominent political figures associated with the Hamas movement were gathered in Israel’s Ketziot prison in the Negev desert and given mobile phones with clear instructions to influence prisoner-exchange negotiations that were taking place in Cairo at that time. Although the Palestinian prisoners refused to take part in these negotiations, as the Israeli authorities did not allow them to participate more directly in the talks, this incident reflects Israel’s view of the pivotal role that Palestinian prisoners can have on specific political events, and possibly an entire peace process” (Addameer December 2009, 4-5).

This story, reported by a Palestinian prisoners’ organization, was backed by news reporting: according to Ha’aretz, “Hamas’ most senior prisoners held a special meeting at Ketziot Prison to discuss Israel’s offer, the Palestinian news agency Maan reported. The Israel Prison Service - which, according to Maan, approved the meeting - declined to comment” (Ha’aretz 2009). This meeting was an obvious attempt to both bypass the prohibition on negotiating with Hamas, and concurrently maintain the PA’s status. It did nothing to change the state of play.

With Shalit ending his third year of captivity, Benjamin Netanyahu formed a government on 30 March 2009. And the Israeli negotiating strategy would change again.

Shalit II: Netanyahu

Netanyahu's first negotiator was Hagai Hadas, a retired Mossad official. Baskin was frustrated by Hadas' refusal to consider a back channel, and his insistence that the process work through Dr. Gerhard Conrad, the German intermediary who had been responsible for negotiations with Hezbollah. Conrad would work under Egyptian auspices, a posture which Baskin found untenable due to Egypt's troubled relationship with Hamas in Gaza (2013, 122-123).

In December 2009, Dr. Conrad had submitted a draft agreement to both sides. Later it was discovered that the draft was 150 pages long, and in English. Essentially, Hamas refused to read it, and asked Conrad to not return. Indeed, Ahmed Jabari was convinced that the Germans were working for the Israelis (Baskin 2013, 136-137).

By July 2010, with no apparent progress in negotiations, the Shalit family decided to increase their pressure on the government. They marched from their home in Northern Israel to Jerusalem, intending to stop at Netanyahu's home. Over 120,000 people joined the march at various times, up to 20,000 at one time. Shalit's father was scathing in his criticism of Israel's government: "We are troubled that after four years in which Gilad has been rotting in Hamas' dungeons, all Netanyahu succeeds in doing is recycling Olmert's press conference," he said. This put pressure on Netanyahu, who stated that he was willing to "release 1000 prisoners if necessary", but that there were limits to who he would release (Jack Khoury, Haaretz News Service 2010).

The figure of 1000 prisoners was not rhetorical: it had been developed by Olmert's team, which had agreed in principle that 450 prisoners would be released outright, and then another 550 freed after Shalit's return. This number would become a point, not of contention, but of sophisticated bargaining after Netanyahu relieved Hagai Hadas of his duties and replaced him with David Meidan in April 2011.

Meidan's appointment was part of a general bureaucratic shakeup in the Israeli security establishment. Not only was there a new IDF Chief of Staff, Benny Gantz (Keinon 2011); a new head of Shin Bet, Yoram Cohen (Haaretz Service 2011); and a new head of Mossad, Tamir Pardo (Winer 2018), but according to Baskin (2020) the most important staff change was a new negotiator. "*David Meidan was not a has-been, but an active player who was being mooted to head Mossad. So, it was clear that he would be given a new mandate, to bring Gilad Shalit back.*"

Meidan approached his role differently than any other Israeli official had. *“I would not have accepted the job if there had been any preconditions. Netanyahu knew this before I accepted. We would have to release Shalit no matter what. Crazy, I know.”*

Much of this outlook was based on what Meidan describes as *“our greatest mistake and failure”*, Ron Arad, the Israeli Air Force navigator shot down and captured in 1986. Meidan’s view permeated the upper levels of Israel’s intelligence and security bureaucracy, all of whom shared similar ages and backgrounds. Like Meidan, Yoram Cohen had also joined the IDF in 1979, and was a graduate of Shin Bet’s Arabic language course who had done a tour in Southern Lebanon. Pardo, the new Mossad director, was not a HUMINT collector, but had participated in the Entebbe rescue under Yonathan Netanyahu (Melman 2010). *“We wanted him back so badly. We took HUGE risks just to get information on his condition, much less his location. You cannot imagine.”*

This is not mere hyperbole, as Peter Theroux indicated in his observations of Israeli intelligence priorities, and makes it apparent as to why the Israeli security establishment as a whole would be willing to pay any price for a captured soldier. The failure to recover Arad is still shrouded in mystery. Indeed, I quote another source in this dissertation which claims that Amal’s offer to trade for Arad was refused within weeks of his downing in 1986. Meidan refutes this. *“We got a concrete proposal from Amal in 1988, two years after he was shot down. The legend is that Shamir turned one down immediately after Arad was captured, but it was Rabin in 1988 who refused Amal.”*

Meidan’s timing tracks with the known fact that Mustafa Dirani defected from Amal to Hezbollah in 1988, taking Arad with him (Ynet News 2000). This 1988 offer may have been Amal’s attempt to prevent Dirani, (a Hezbollah sympathizer who ran Amal’s intelligence and security division) from absconding with Arad (CIA August 16, 1985).

The timing may also explain the Israeli government’s secret overture to Austria, which is on record in Helene Maimann’s German-language book *Uber Kreisky* (2011) and confirmed by Ferdinand Hennerbichler. A secret Austrian channel would allow for Arad’s return without explicit Israeli involvement. Meidan attributes Israeli secrecy explicitly to political pressures: *“Rabin was still wounded by the Jibril deal. He did not want to repeat it. And we spent another decade trying to undo that mistake. This was my generation’s quest.”*

While Meidan's view is indicative of a new conceptual framework, these new concepts were still bounded by the old constraints. First, Israeli decision-making followed a specific sequence, and Meidan had to first consider the military option to rescue Shalit. He was convinced that this was fruitless.

There were *“two options only: forget him or negotiate.”* Nor did Meidan fear that negotiation would create a “marketplace: *“I don't like deals...We had no choice but to negotiate for the best price. I am an Oriental Jew, if you want to call it that. I speak fluent Arabic. My early service was in SIGINT as an Arabic linguist. So, I knew how to do it (either rescue or negotiate), and we had no other option.”*

Indeed a “prisoner marketplace”, the result of Israel's COIN through capture already existed. In 2006, when Shalit was kidnapped, there were 9300, primarily Palestinian, security prisoners. The numbers fell progressively, the result of an inability to execute COIN through capture within Gaza. By 2011, when Meidan was appointed to his position, there were still 4300 prisoners held by Israel (B'Tselem 30 June 2020).

While prisoner numbers fell, Meidan faced other legacies of Sharon's disengagement: reduced HUMINT capability; Israel as occupier (effective control); and external support for Hamas (especially after Morsi took power in Egypt). Meidan had seen this before with Arad. *“Between Lebanon, Syria, Iran, just locating a guy, much less rescuing him, was difficult. They always had another place to take him. It was the same blank spot that Gaza became.”* This similarity with Arad's case effected the speed of the negotiations, and Meidan's assessment of the situation effected the tenor of them.

David Meidan had run *Tavel*, the Mossad's foreign intelligence liaison service and was a seasoned HUMINT collector. He was aware of the differences between Israel's networks in the West Bank and the situation in Gaza. *“It was much harder for us in Gaza than it would have been in the West Bank. A combination of things made our efforts ineffective...No policing, no information, these all made it difficult to try and find Shalit's location, much less mount an operation to free him... There were two options only: forget him or negotiate.”*

Second, the Prisoner Discourse created specific handicaps. Prisoner type, indeed Gilad Shalit's status as a “super-worthy” prisoner both in the eyes of the public and of Meidan himself, drove Israeli decision-making in only one direction. But Hamas' categorization as a terrorist organization meant that there were still no direct negotiations between Israel and Hamas. Unlike

earlier negotiators, Meidan had the advantage of working through “colleagues” from friendly intelligence services because of his time running *Tavel*.

Once the military option had been rejected, Meidan felt that his initial task was to find new interlocutors. The German deal had “gone stale” and Meidan looked to Qatar, Egypt, and Turkey. *“I actually asked Turkey first. This approach honestly had two purposes, two birds with one stone. One was Shalit, but we hoped to use the cover of the Shalit deal to rebuild our ties with Turkey. Turkey was eager; they offered to host negotiations and take the German proposal as the start point.”*

But there were growing pains:

“After a few weeks, it was clear that Turkey suffered from several handicaps. First, it appeared to Egypt, who had much greater interests in Gaza, that Turkey could not get around without Egyptian help. Second, language was a barrier. So, I tried dual negotiators. I had no idea how bad the relationship really was. So, I went with Egypt, who had their own interests, as I mentioned, but also had some pull over Hamas in such matters as the border crossing.”

Meidan was eager to explain the actual negotiation process, given the criticisms of the trade itself. First, he disagreed with the refrain that the trade was “*Shalit for 1027 prisoners*”. As mentioned earlier, Netanyahu was stuck with Olmert’s numbers. *“The figure was always 450 prisoners, even under Olmert.”* This is confirmed in contemporary reporting: “Israel has agreed to free 450 prisoners in exchange for Shalit, including 325 of the specific 450 demanded by Hamas by name. However, it refuses to free the remaining 125...” (Ha’aretz 2009).

Regional politics, rather than poor negotiating skills, played a hand in the final prisoner figure: *“As background, Mubarrak and El-A’aser (General Nader el-A’aser, head of the Israel-Palestine desk at Egyptian General Intelligence) greatly opposed the conditions of the deal. Hamas was a headache for them in Gaza. Olmert had said that he would release another 550 as long as Israel had veto power over the 550 released”.*

Meidan stated to me that it was a heretofore unknown fact that during Shalit II, Israel delayed discussion on the 550 prisoners in order to give Egypt political stature; the extra 550 were only agreed-upon after making it appear that Egypt had leaned on Israel to make the deal. The timing of their release was structured in such a way as to strengthen Egypt’s influence in the region. I asked Meidan “These were the actual contours of the deal?” He responded “*Yes. Understand that*

of the last 550, 300 or so were near the end of their sentences and would have been released within the year anyway.”

Gershon Baskin confirms this: *“In the case of Shalit, the Arab Spring exploded. The peace treaty with Egypt is perhaps Israel’s overriding foreign policy concern.”* But Mohamed Morsi became Egypt’s political leader in February 2011, after Hosni Mubarak resigned that month. *“When Morsi took over, he refused to meet with Israelis. But the US told Morsi to maintain the relationship, or risk the billions of dollars in US assistance. So, the Egyptian Intelligence Service took up the reins. They not only maintained the relationship, their own interest in Gaza ensured that they had good intel and they kept Israel informed.”* In addition, they maintained a modicum of control over Hamas, especially over Jabari.

The public pressure on Netanyahu was coming from several directions, and not just from family groups. Starting in April 2011 a series of partial strikes, which were the longest in Israeli history, were initiated by Israeli hospital physicians after eight months of unsuccessful negotiations (Weil, Nun and McKee 15 August 2013). Baskin also notes a connection between Netanyahu’s timing and other electoral pressures: *“In July 2011, there was a youth uprising in Israel over housing costs. 500,000 were in the streets, shouting “Do something”. Many were carrying pictures of Shalit.”* Baskin is not convinced that the timing of Shalit’s release was coincidence, a view which Dahlia Scheindlin shares. Baskin states *“I think the decision was already made. These marches were the same week as the breakthrough document. It was easy to make the exchange look like a response to the youth movement.”*

Netanyahu had tapped into a vein of Israeli popular feeling. The vote to exchange Shalit was 26-3 in the Cabinet, and 80% of the Israeli public supported the release. Baskin sees a continuity within right-wing politicians and Israeli APRI: *“Likud party discipline was very powerful as well (in 1979). Begin knew this even when his Mapai colleagues in the cabinet voted against him. But politics still comes down to individual leaders in a case like this. Meidan lost the Mossad job (he was being considered as head of Mossad when Netanyahu made him chief negotiator) but kept his credibility and has public adulation. Netanyahu brought Shalit home. And was reelected.”*

Meidan seconded this observation regarding the electoral calculations of individual leaders: first, he acknowledged the performative aspect of APRI within Israeli politics. I asked him about the phenomenon of politicians voting against APRI when their party is out of power. “Yes”, he responded. *“Every one of these “no” votes is political. Lieberman’s party voted against the*

Shalit deal; meanwhile popular support for it was 80%! Likewise, it was easy for Begin; he knew that the peace treaty (with Egypt; MJ) would provide cover for the trade.”

Meidan: *“And to continue, no cost is too excessive when negotiating for an IDF soldier. Further, all Prime Ministers have the right to pay these high prices. Ariel Sharon, a tough, tough, guy, had to fight his own party to bring back that bad Colonel, ...”*

MJ: Tannenbaum.

DM: *“Yes! Tannenbaum was a criminal and Sharon’s own party voted against him, so Sharon took unilateral action. But most Israelis would agree with me, that the Prime Minister has every right to take unilateral action if he feels the price must be paid”.*

By early October 2011, the Egyptians had taken control of the negotiations under Meidan’s supervision, and were putting subtle pressure on Ahmed Jabari. The Egyptians dined him, took him on jeep tours in the desert, and even provided him with laser surgery to free him of his eye glasses (Baskin 2013, 230-232). Finally, the deal was hammered out in a marathon session; and Gilad Shalit returned to Israel on 18 October 2011. While there were many people who made the return possible, Baskin singles out Ghazi Hamad as “The Man Who Made it Happen” by keeping a line of communication open between Israel and Hamas for five years (Baskin 2013, 239).

Baskin himself deserves a great deal of credit.

Despite the happy ending with Shalit, Gershon Baskin has reservations regarding the ongoing Israeli approach to APRI. One deals with the fact that he believes domestic pressure is still a prerequisite to APRI: *“Yaron Blum (whom I call “Y” in my book) is running the negotiations for the two civilians and two bodies of IDF soldiers. No one expects success because Netanyahu is under political pressure and not inclined to make a Shalit-like deal.*

Netanyahu’s inaction is largely a function of prisoner type, according to Baskin, *“Because the hostages are, as you say, unworthy. The IDF has no real desire to put people at risk for such a rescue. Further, there is great political opposition to a Shalit-like deal from both parties; Likud, as you know, is the champion of the so-called “Oriental” Jews and even they are not calling out for such an attempt.”*

According to Meidan, however, the Israeli Minister of Defense met with these families “on day one” upon taking his position in June 2020 (Meidan 2020). Meetings, of course, are different than rescue attempts or negotiations. And so far, as my data have shown, no Israeli Prime Minister has executed two APRI. History does not support a second APRI under Netanyahu.

Baskin sees a further policy weakness in Israeli concern with soldiers' remains, and especially Israel's inability to register that other cultures do not share it. Netanyahu is currently under fire for failing to bring home the remains of two IDF soldiers presumed KIA during the 2014 Gaza War (T. Lazaroff 2018). Because of this pressure, Baskin contends, the IDF is cataloguing Hamas bodies in hopes of a body exchange. But Hamas is not receptive. One Hamas contact told Baskin, "We already consider our martyr's bodies to be buried in Palestine. It is the Israelis who have to place their bodies within a very specific plot of ground." Baskin sent this information to the new Minister of Defense, but has still received no response.

Conclusion

The Shalit negotiations occurred in what is arguably the most complex and persistent set of hostage situations that an Israeli Prime Minister has found himself. Olmert faced two wars (Gaza and Lebanon); two capture events in two different combat zones (Shalit in Gaza & Goldwasser/Regev in Lebanon); two sets of negotiations, one with Hamas and one with Hezbollah; disengagement from Gaza; civil war amongst Palestinian factions; and a US president intent on solving the Middle East peace problem before he himself left office.

That said, the Shalit case still exhibits continuity with other Israeli APRI. The asymmetric prisoner structure which existed in 1979 or 1985 was present again in 2006. This fact strengthens my argument that it is democratic COIN praxis which creates the "marketplace", and not specific political events. Political events, constrained by the prisoner discourse, shape negotiating strategy and decision-making.

With regard to the Israeli sequence of COIN through capture in 2006, Sharon's disengagement strategy in Gaza created a state of exception outside of International Law. And with its disengagement from Gaza, Israel had derogated its obligations as an occupying power despite ICRC and ICJ disagreement. This derogation had the effect that law enforcement and intelligence networks in Gaza were weakened to the point of nonexistence.

While criminalization of political activity did not occur (Israel having departed) the laws remained. At the same time, Israel reserved the right to invade Gaza, which meant that other prisoners might be taken. During Operation Cast Lead, over 100 Hamas fighters were captured by the IDF (Ron Ben-Yishai 2009). Even while "disengaged" from Gaza, COIN through capture remained Israeli praxis.

Further, the Lyall-Wilson conditions which are associated with COIN failure, protracted conflict, and APRI, existed in Gaza in 2006: Israel was perceived as an occupying force by the populace as well as the international community; Israeli tactical doctrine was explicitly focused on mechanization and reduced Israeli casualties (Levy 2012); and, because of disengagement and proximity to Egypt, conditions which approximated the support of an outside party (the “blank spot” described by Meidan).

The Israeli practice of COIN through capture in the OPT had resulted in over 9000 Palestinian prisoners incarcerated in 2006 (B'Tselem 2006); this constituted the marketplace which made kidnapping an IDF soldier a viable strategy for Hamas to force an asymmetric prisoner release.

As in earlier APRI, the Prisoner Discourse set the parameters for Israeli response to Shalit's capture. First, the governance of IHL over Israeli operations in Gaza created pressures to lessen its forceful military strikes in keeping with the principle of proportionality. This took negotiation from a secondary to a primary option for hastening Shalit's release.

Second, categorization of Hamas as a “terrorist” group hampered and complicated negotiations. The fact that Hamas was also an elected political entity in the OPT made it increasingly difficult to treat them as merely a pariah, and when Islamist governments took power in Egypt and Turkey, Israeli negotiators had to take these other views into account as well.

Third, the typology of Shalit as a “worthy” prisoner put domestic and international pressure on Israeli leaders to execute APRI, but also made such a decision acceptable to the public at large.

What makes the Shalit case different than other Israeli APRI events is the way that electoral pressures ultimately took a back seat to foreign policy concerns as the impetus (or at least as the mechanism) to secure a deal; though it must be said that Olmert appears to have put his own political comeback at the forefront of his thinking.

Olmert found himself floundering and thus felt too vulnerable to execute an APRI for Shalit while still planning a political comeback and using his good-faith prisoner negotiations as an accomplishment; neither was Olmert willing to let Egyptian interests regarding Hamas override his own desire to strengthen Abbas. Like Begin before him, Olmert gave policy preference to US-led peace talks, and so spent political capital strengthening the PA at Hamas' expense. Shalit by definition was a secondary concern.

Netanyahu was both “pressurable” (in Baskin's words) and “politically astute” in Dahlia Scheindlin's estimation (D. Scheindlin, personal communication, July 2, 2020), testing the

political waters and then using the Shalit APRI not only to appease domestic groups, but to forward his own regional goals with Egypt, Turkey, and the Palestinians. This took a special negotiation structure, one where the Israeli interest was recognized and protected, rather than subsumed to those of the foreign intermediaries.

Whether the outcome was luck, based on the confluence of Meidan's linguistic and cultural knowledge and his ties to the Egyptian intelligence services, or a calculated plan by Netanyahu remains unknown. Both Baskin and Meidan see an obvious plan. And indeed, appointing an Egypt-born Mossad officer who ran foreign intelligence liaison, to work with Egyptian intelligence officers on a prisoner exchange, does not seem a stretch.

This chapter has continued to illustrate that my theory behind APRI holds some explanatory power when discussing APRI decisions. The Lyall-Wilson conditions consisting of occupation, third-party support, and HUMINT weakness perpetuated the protracted conflict which leads to the COIN through capture sequence (state of exception, derogation, criminalization, detention). This in turn builds the "marketplace" of prisoners which makes kidnapping a viable insurgent strategy; and the Prisoner Discourse (International Law, belligerent category, and prisoner type) drove specific negotiating strategies within successive Israeli governments, and further made them susceptible to social pressures rising from "worthy prisoner" discourse.

Further, it is evident from the chief negotiator's own words that APRI has become path dependent and is an institution within Israeli prisoner praxis. There is little question that after military strikes were unsuccessful in gaining his release, an asymmetric trade was the only option for repatriating Shalit, even as Olmert evaded this conclusion. The figure of 1000 prisoners was publicized even while Olmert placed little emphasis on Shalit's release in order to pursue a US-brokered peace with the PA. While Netanyahu also finessed the exchange, he and his administration did not waver from the fact that an APRI for Shalit was going to occur.

With Shalit's release as an end point, I have traced Israeli APRI from its origins to its most recent iteration. In the following chapter (Chapter 8) I shall synthesize my findings and discuss my conclusions as to why some democracies fighting domestic insurgencies resort to APRI as a conflict management technique.

Chapter 8: Conclusions

Winston Churchill is reputed to have said “*Americans can always be trusted to do the right thing, once all other possibilities have been exhausted.*” It is much the same with asymmetric prisoner release. Asymmetric Prisoner Release Initiatives (APRI) are a rare event, utilized as a conflict management technique by democracies engaged in domestic COIN, and executed when all lesser means have failed. During both the Amram trade and the Jibril Deal, negotiations were stalled just as an agreement had been struck between the Israeli government and PFLP-GC. In both cases Ariel Sharon demanded that a final vote be delayed, so that he could be briefed as to why other (read: military) measures to recover the prisoners could not be undertaken/attempted. This after several years of trying to execute those other methods.

Rescue remains the first option, and Israeli rescue techniques have likewise evolved: through conventional raids in the 1970s to the Hannibal Doctrine in the 1980s to disproportionate wholesale invasion in the 21st century, all in an attempt to avoid capture of IDF personnel. But when Sharon himself was Prime Minister, no such late debate over military options occurred. Evidence suggests that he had political reasons for desiring a lopsided exchange in 2004, and might strengthen my supposition that he had political reasons for opposing an earlier asymmetric prisoner trade in 1985. It is clear that while APRI has hardened to a social fact (at least in Israeli prisoner praxis) its execution remains contingent upon specific factors: these dictate not whether, but when, APRI will finally be conducted.

This study was conducted to answer the question: ***what factors account for a state’s decision to execute asymmetric prisoner release initiatives (APRI) in conditions of protracted conflict: why are APRI executed in some cases but not others which appear to be similar?*** I also wished to explore ***whether there are specific conditions which might help predict whether states will recourse to APRI in situations other than end-of-conflict prisoner exchange.***

I have examined the military structures, domestic political conditions, and legal and discursive framings leading to asymmetric prisoner exchanges. I have identified several factors which account for a state’s decision to execute APRI in conditions of protracted conflict.

I found that the two most important, and recurring, factors which influence APRI decisions are the Prisoner Discourse and the Democratic Counterinsurgency Complex (DCC). The Prisoner Discourse exerts the combined pressures of international law/norms, belligerent category, and

prisoner type on leaders confronted with a hostage situation. This discursive structure shapes domestic prisoner policy and counterinsurgency doctrine in response to international law; negotiating strategy as a function of belligerent category, and societal/electoral pressures on government based on prisoner type.

The DCC is the culmination of democratic COIN praxis. Three aspects of this praxis – use of heavily mechanized forces with concomitant weak HUMINT collection, societal perception of the incumbent state as occupier, and presence of a safe haven for insurgents in a third country – comprise the Lyall-Wilson factors. These factors are strongly linked to protracted conflict and ultimately an unsuccessful campaign. Government failure to quickly suppress a revolt leads to the second structure of the DCC: the “Counterinsurgency through capture” sequence. At its heart, the COIN through capture sequence is a reaction to the pressures of international law, showing that the Prisoner Discourse and DCC are linked. It attempts to circumvent international law by a specific series of events: declaration of an emergency, derogation of IHRL obligations, criminalization of political activity, and detention of large numbers of insurgents under these laws.

These are the common and specific factors which lead governments to execute APRI. There is also a commonality among those states which did not execute APRI. Most critical was lack of a safe haven for insurgents, while an unwillingness to categorize belligerents as “terrorists” (and thus negotiate directly with them) was nearly as important. This provides an explanation for why APRI are executed in some cases, but not in other cases which appear to be similar.

This work has focused on democracies; but not because of any preconceived notions about democratic versus autocratic tendencies. In fact, my original intent was to explore the effect of regime type and conflict type on APRI execution by state leaders.

However, the data set in Chapter 2 showed a weak tendency for democracies, rather than autocracies, to execute APRI as conflict management. Most examples of democratic APRI also occurred during domestic insurgency. Adding further strength to this democratic tendency was the fact that one of the critical junctures which effected developed states in the late 1970s was a privileging of International Human Rights Law (IHRL) to the detriment of domestic law. Research has shown that democratic governance is a necessity for IHRL to have a positive impact on domestic law and practice (Besson 2018; Moeckli, Keller and Heri 2018). The effect of international law is a critical factor when examining the Prisoner Discourse and DCC. While I

discovered fairly quickly that democracy is an indicator, I was still left with a need to find causation for asymmetric prisoner exchange even if democratic regimes were the focus. Why do some democratic regimes execute APRI while others in a similar political/military situation do not?

My research covered the years between 1978 - 2011 because this period exhibited a series of changes in political, social and military mores which constituted a critical juncture in democratic conflict management and COIN praxis, and eventuated in the institutionalization of APRI in Israeli prisoner praxis. While other states faced similar situations in this period, none ever experienced the combination of factors which seem to necessitate APRI as praxis. Consequently, none exhibited the path dependency which Israel has shown, whereby APRI is now a societal expectation when an IDF soldier is captured.

This study period is also conveniently bookended by two Israeli APRI events: the first Israeli trade of an IDF soldier for security prisoners occurred in 1978/79, when Avraham Amram was exchanged for 76 Palestinian prisoners, and the last occurred in 2011, when Corporal Gilad Shalit was exchanged for 1027 security prisoners.

As mentioned, by the late 1970s, international human rights law had begun to supplant international humanitarian law with regard to state treatment of its detainees, prisoners, and other citizenry even if they were in revolt. This conflict between sovereignty claims and international law was a flash point in Spain, Northern Ireland and Israel and effected the situation of US citizens in Lebanon. It would loom large across the entire period as prisoners and their treatment became just another front in both insurgent grievances and the states' COIN campaigns.

Militarily, both Spain and the UK faced full-blown combat against their own citizens, and strong societal approval for secession within the insurgent territory and population. Israel had nearly lost a conventional war in 1973, and its 1978 invasion of Lebanon gave birth to a peace movement which continues to this day. Global terrorism surged, due not only to the inability of democracies as a whole to respond adequately, but also to the international recognition of guerilla forces through the Additional Protocols to Geneva in 1977. Western democracies, which had focused on mechanizing their militaries to meet a Soviet armored threat, were both materially and doctrinally unsuited to combat "wars of liberation". They were ill-suited to prosecute hearts-and-mind campaigns and were no longer permitted to conduct mass civilian transfers in order to control the population.

The states thus engaged in domestic COIN found themselves susceptible to specific stresses which remain largely peculiar to democracies. The Prisoner Discourse and the Democratic Counterinsurgency Complex created nearly universal constraints upon the way regimes fought, and ultimately negotiated with, insurgents who had captured a states' citizens. It is a painful fact that despite spectacular failures in COIN prosecution and conflict management, some of these trends continue to constrain certain regimes today.

The cross-case comparison in Chapter 4 has reinforced my contention that democracies share common practices when prosecuting domestic COIN; in addition, the study uncovered specific conditions which provide reasonable prediction as to whether states will recourse to APRI.

For instance, I showed that each democracy was faced with pressure to act in accordance with international law and that each tried to circumvent this obligation. In the case of the UK in Ulster, it was a specific request to derogate its IHRL obligations under the ECHR; for Israel, it was a refusal to acknowledge the authority of the Geneva Conventions; for Spain, a declaration that its Constitution inherently allowed for derogation; for the US, after its use of artillery and naval gunfire against populated areas around Beirut, an appeal to military necessity and its status as an invited peacekeeper.

In addition to international law, belligerent category plays an integral part in negotiating strategies. While autocratic regimes may promulgate a terror discourse, it is only specific democratic regimes which refuse to negotiate with "terrorists". Many European countries rely on ransom (and have done so since the 1960s and 1970s). They are thus freed from the political pressures placed upon states which refuse to openly recognize or negotiate with terrorists.

However, unless the government negotiates, a prisoner cannot be freed through diplomatic means. This is a key point. It is not the lack of an effective back-channel which is associated with APRI: *it is the lack of a front-channel*. The absence of a legitimate negotiating strategy creates the diplomatic climate that prolongs such talks.

This was a factor in the long-term captivity of US prisoners in Lebanon. The US "negotiating team" (North, Secord, McFarlane) was constantly fooled by intermediaries who had interests which the US did not share and usually did not even know about (Draper 1991, 120-122). Indeed, even erstwhile allies such as the Christian South Lebanon Army (SLA) refused to facilitate the release of Western hostages in Lebanon without IDF and SLA captives being included in the discussions (Tatro May 17, 1990). The US seemed willing to deal (secretly), but

had no influence over either its Israeli allies, Hezbollah negotiators, the Iranians, or the Kuwaitis who held the prisoners for whom Hezbollah wanted to trade.

Thus, each state in my study was hamstrung by the prevailing concept of “no negotiation with terrorists”. This ensured that various outside interests would become involved, while the national interest would be subsumed. The tacit admission that this policy was ineffective may be seen in the fact that each democracy in the comparative study found itself conducting secret talks with “terrorists”. These “work-arounds” seldom redounded to the credit of the government, and often involved extrajudicial and unconstitutional behavior. The UK use of what amounted to death squads such as the MRF in Ulster; US weapons sales to Iran; Israeli use of the PLO to weaken the PFLP-GC; or Spain’s assassination of its own citizens in neighboring France all showed that “no negotiation with terrorists” was in the end politically unsupportable. The later Spanish approach, whereby negotiations with ETA became both public and persistent, proved more effective and politically sustainable. In fact, virtually every public opinion poll taken with regard to APRI situations shows that official state negotiations are supported by a majority of the citizenry.

Finally, Prisoner Type consistently proves to be the most potent aspect of the Prisoner Discourse. If not for the political cover of the Israel-Egypt peace treaty, Menachem Begin would probably have been forced out of office immediately after Avraham Amram was released. Begin justified his asymmetric 1979 trade by appealing to the suffering of Private Avraham Amram’s family. But Amram, a marginalized Mizrahi, was considered unworthy by much of the populace. He was vilified in the press, and was tried for military offenses upon his release.

By 1985, there was some societal change, but still enough contestation over the practice of APRI that Rabin did not want to be seen supporting a trade for the release of Ron Arad; though by 1988 at the latest he was also secretly desperate to obtain Arad’s release. By 2011, it was imperative to 80% of Israelis that Netanyahu accomplish the release of “super-worthy” captive Gilad Shalit. The discourse regarding Prisoner Type has evolved in Israel to the point that there is little, if any indication that a future IDF prisoner will be regarded as unworthy by the populace. This creates an inherent bias in favor of APRI in virtually any circumstance involving a soldier.

In contrast, the two current Israeli hostages in Gaza are both civilians from marginalized communities (Ethiopian and Arab Bedouin); David Meidan, Netanyahu’s negotiator for the

Gilad Shalit APRI, states that despite the government's best efforts, they cannot gin up much popular support for these two prisoners (Meidan 2020).

With regard to Spain on the other hand, ETA's indiscriminate targeting created such a sense of individual dread that it transformed the Prisoner Discourse: if *everyone* was an ETA target, then *no one* was a *legitimate* target. Every ETA victim became worthy.

Different still was the US response. It is apparent that Prisoner Type exerts the same pressures on US politicians that it does on Israeli officials, but US politicians appear to be much more cynical in their willingness to create a discourse of unworthiness. In the case of US hostages imprisoned in Lebanon, the dynamic of prisoner type held: all of the US captives were in that dangerous place willingly, and in spite of government entreaties to leave Lebanon. Even LtCol Higgins was openly accused of violating UN safety procedures and causing his own capture in Lebanon (W. McHenry, personal communication, June 20, 2020). Higgins' wife was also a US Marine, and worked tirelessly to facilitate her husband's release. Her high-level contacts notwithstanding, neither the US Marine Corps nor the US public ever truly got behind the hostages, even a seemingly worthy captive like LtCol Higgins (Higgins 2000).

A little-studied aspect of the worthy prisoner discourse is family access to leaders, something which is seldom a feature of autocratic regimes. A bathetic trope of Soviet society, for instance, was the "Letters to Power": attempts to make Josef Stalin aware of abuses taking place in the Soviet system, especially regarding family members arrested and sent to the GULAG (Khlevniuk and Budnitsky 2015; New York Times 1987). The writers honestly believed that conditions would change "if only Stalin knew". This is the same impulse seen when family members seek help from democratic governments in freeing their own captive family members.

A constant of Israeli prisoner praxis is the fact that, beginning with Avraham Amram, Israeli hostages' parents have had direct, at least weekly, access to both elected leaders and to negotiators (see Merari 2020/1993). This became even more pronounced by 1985 (the Jibril Agreement), and by 2000 the family of Eli Tannenbaum sued the Israeli media to keep his disreputable past out of the news. This was done explicitly to maintain the worthy prisoner discourse on the Tannenbaum's side. Nor is this unique to Israeli APRI: US Army Sergeant Bowe Bergdahl's father had personal contacts with Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, and it was this breakthrough that brought Bergdahl's case to the attention of President Obama (Farwell and Ames 2019).

Thus, when it comes to Prisoner Discourse, one can make specific observations and predictions about APRI execution. *First*, democracies are more likely to make asymmetric trades because of their emphasis on international law, paradoxically the need to avoid it. This leads to praxis which results in the DCC as discussed below.

Second, if the belligerent is categorized as a terrorist, the state's negotiation strategy will be ineffective and ultimately counterproductive. No APRI has been forced upon a state in the midst of open diplomatic negotiations with a nonstate actor.

Third, Prisoner Type will dictate a regime's response. If it can control the discourse, as the US has been able to do, no APRI will occur. But if the polity controls the narrative, not only will the government feel pressure to bargain with insurgents, but the trope of the worthy prisoner will create constant pressure and result in the institutionalization of APRI. This was the case in Israel by the late 1980s, after Israel's attempted APRI "reset" had failed and Ferdinand Hennerbichler was asked to use Austria's good offices to find Arad.

But none of this discursive and affective framing occurs without the Democratic COIN Complex which is instrumental in creating the conditions for protracted counterinsurgency and the existence of an unbalanced prisoner marketplace. The common western military practice (the Lyall-Wilson factors) of utilizing mechanized forces to the detriment of HUMINT capability; political and tactical actions which create perception of government forces as an occupier; and presence of an outside safe haven create the conditions for protracted conflict. Democratic governments respond to initial failure in putting down an insurgency by executing the COIN through capture sequence: declaration of emergency; derogation of IHRL obligations; criminalization of political activity, and detention of rebels under these restrictive criminal codes. Figure 4 (page 119) showed that all of the states which this study compared had produced such a prisoner imbalance. This prisoner marketplace is a baseline condition which makes insurgent kidnapping of state personnel a viable tactic for gaining some advantage.

The case of Spain best illustrates how the DCC effects asymmetric prisoner release. In the period 1975-1982, general amnesties and democratic transition resulted in a decline of ETA prisoners held in Spanish jails from 750 to only 5. However, there was no Spanish HUMINT capability in the Basque Country; the government's security forces were considered occupiers; and the French authorities provided safe haven and political asylum to ETA fighters, even those who had committed murder.

Thus, these liberal measures backfired against the government of Spain (GOS). ETA attacks increased, and in 1979 the GOS was forced to execute its only APRI, an exchange of 26 ETA prisoners for Javier Reperez, a career diplomat.

As a result, the GOS was obliged to pursue the COIN through capture sequence in an attempt to reset its policies. Counterintuitively, this intensification of security measures was largely accomplished by a Socialist government which had run on a platform of softening the GOS stance on terrorism. Basque prisoner numbers increased, but this did not solve the problem of ETA attacks. What ultimately broke ETA's back was the loss of French safe havens. In tandem with the GOS policy of open negotiation with ETA, and ETA's increasingly indiscriminate targeting, these changes created a cascading effect whereby both the Prisoner Discourse and the Lyall-Wilson factors turned in Spain's favor.

International law was now on the GOS side, with human rights organizations condemning ETA attacks; belligerent category was not inhibiting GOS negotiation strategy, and was highlighting ETA intransigence; and the general societal view of ETA kidnap victims was that of worthy prisoners held by unworthy insurgents.

By 1997, none of the Lyall-Wilson factors were in play: Spain had a viable HUMINT network in Euskadi, there was no safe haven for ETA operators, nor were the security forces considered occupiers.

This points out that specific political practices make state execution of APRI more likely. While the COIN through capture sequence is important in creating an unbalanced prisoner situation, it does not necessarily result in execution or institutionalization of APRI as conflict management. The presence of a safe haven for insurgents, family access to elected leaders, government willingness to create an unworthy prisoner discourse, and a refusal to negotiate openly with insurgent forces play a larger role in this process.

The hardening of APRI as political praxis comes down to government unwillingness to control for all of these, despite the power to do so.

Israel is the only state to have made APRI into an institution. It has consistently fought its COIN with all three of the Lyall-Wilson factors favoring the insurgent: in the Israeli case, lack of HUMINT creates safe haven in Gaza, much less Lebanon, even without undue foreign intervention. No Israeli prisoner has been held for long in the West Bank, which reinforces

David Meidan's observation that in comparison, Lebanon and Gaza are HUMINT deserts for Israeli operators.

The Lyall-Wilson factors in turn foretell the COIN through capture sequence; and over time, the line between security prisoner and POW (as in Lebanon in 1983) has blurred. Despite widespread social upheaval after Amram's exchange, in 1983 the trade of 4700 POWs for 6 Israelis was *accepted*; and by 1985, an 1150-for-3 ratio was *expected* by both Israelis and Palestinians. In 1985 APRI was a social fact for the Israeli public, a development which made Shmuel Tamir, Israel's head negotiator, resign in disgust; and by 1988, both society and senior government bureaucrats had made the decision to execute a prisoner trade no matter what the cost. Future Israeli APRI was to become wholly path dependent, relying on past policy and positive social feedback for the exchanges.

And while belligerent category still hamstrings negotiation strategy, it is safe to say that no worthy prisoner will ever expire in captivity because the Israeli government was unwilling to pay the insurgents' demand: the political price for inaction will always be greater than the price for executing APRI. Indeed, APRI truly is an institution: it influences and constrains government decision-making when a worthy prisoner is involved, and at this point in time nearly preordains the outcome, though not the cost.

My findings point toward several avenues for future research. First, and with perhaps the greatest implications for western democracies, is the "no negotiation with terrorists" policy. Spain has shown that open and public negotiation with separatist insurgents is productive. It showcases the government's willingness to compromise while pointing out the insurgents' unreasonable demands; admits that the insurgents may have a grievance, and do have the right to present it in a democratic, peaceful way; and removes the factor of outside interests, inimical to the state's own, driving negotiations.

Second, there is considerable research to be done on the give and take inherent in the narrative surrounding prisoner type. It is apparent that in the Israeli case, early execution of APRI was still accompanied by political machinations: both the Amram trade and the Jibril Deal are evidence of this. Whether government control of the narrative weakens because of family access (Ariel Merari's view), or is co-opted by bureaucratic opinion (as David Meidan seems to indicate), or is overwhelmed by social movements, global and domestic, in favor of the prisoner (as Gershom Baskin points out) is still a ripe field for study. The Tannenbaum family's

manipulation of the media exposes a fourth avenue of approach, that of private parties' control of such narratives.

Finally, there is government control of the narrative *in toto*; for example, by creating unworthy prisoners of any non-government citizen in danger zones, such as occurred with US hostages in 1980s Lebanon or journalists in the Islamic world after 9/11. The evidence is clear that the Reagan and Bush Administrations purposely did this in the case of Lebanon, and even extended the category to include UN military observers when it suited them. Whether this framing is merely political expediency, or part of the “discourse of danger” with regard to the Islamic world is beyond the scope of this study, but bears examination.

Asymmetric prisoner release is a contingent, political decision based largely on discursive structures and tactical exigency and which appears to evolve and harden through the cumulative process called path dependence. It is rare: at present, only Israel has institutionalized APRI within its COIN praxis.

It is unlikely that other governments will follow suit anytime soon. While western militaries continue to fall prey to the Lyall-Wilson factors (both Iraq and Afghanistan, for instance remain cautionary tales) it is increasingly difficult to execute the COIN through capture sequence with any degree of freedom. And although declaration and derogation remain legal under IHRL codes, there is increasing critical examination of such procedures, as I have shown in the case of Ukraine. Even more important is the relative power of IHRL over domestic legal codes: the UK, US, Spain and Israel have all seen their COIN through capture strategy derailed by high courts which privilege IHRL over domestic detention statutes. Combine these with the ubiquity of mass and social media, and government policies which violate IHRL become nearly impossible to execute. Given the right combination of Prisoner Discourse, Democratic Counterinsurgency Complex, and domestic pressures, APRI execution remains a possibility, though such conditions would be extraordinary. But whereas before this dissertation, asymmetric prisoner releases were seemingly inexplicable, they will hereafter be reasonably predictable.

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While most of the sources cited below are in English, many of the primary sources for the Israeli cases are in Hebrew (and at least one in Yiddish); several of the sources which deal with Austria's role in Israeli prisoner negotiations are in German. I was able to use some Spanish-language sources when discussing the campaigns in Basque Country, and some French sources which deal with Lebanon in the 1980s. All of the translations are mine, and for the most part were done using a dictionary and my nodding acquaintance with the languages. I did not depend wholly on electronic programs for any of the translations which I performed. There were few available Arabic sources, sadly; and none that I found shed more light on Israeli APRI than the Hebrew, English, and French sources.

I have broken the bibliographical entries into Primary, and Secondary sources for the body of the work. In addition, I have separated the sources for Appendix A (Truth Tables) into their own category as all of them are secondary and largely general descriptions of the circumstances surrounding the 50 conflicts which I analyzed in the plausibility probe found in Chapter 2.

I have followed the general rules regarding primary and secondary sources: archives and government documents qualify as primary sources, as do interviews, personal communications, and news accounts which are contemporary to events discussed. Secondary sources are largely books, journal articles, and media accounts which provide background rather than contemporaneous reporting.

Several background sources either refused to agree to interviews (for varying reasons to include time constraints), or in the case of one negotiator was formally prevented by his government from going on-record (I was allowed to read the correspondence forbidding the interview). In these cases, I attempted to find other indicators which proved, or strongly suggested that the source was correct in his or her claims. For those persons who agreed to go on record for only one specific point rather than sit for an entire interview, I have listed the interaction as a personal communication.

The primary sources titled "DFUSED" are from the 72-volume series "*Documents from the US Espionage Den*", a collection of documents seized from US Embassy Tehran after

the building was stormed and occupied for good in late 1979. Volume 19 especially contains a great amount of information regarding Project Flower; but also shows that elements of the US government knew about the project.

In the case of modern Israeli newspaper reporting, only *Yediot Ahronoth* has not digitized its holdings and did not respond to queries. Despite yeoman assistance from the Israeli State Archives I was unable to break through *Yediot's* curtain of silence with regard to its Hebrew-language archives. The few references from *Ynet.com* are sadly the only source material from this widely-read newspaper.

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Appendix A: Truth Tables

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	1. Iran Mahabad Barzani (239) 005	2. Moldova Transdniepr 1992 (236) 205	3. Greek Civil War 1946-49 (221) 006	4. Indochina 1946-54 (356) 009	5. India Hyderabad “Operation Polo” 1948 (363) 015
CONFLICT TYPE (Gantzel & Schwinghammer)	B Internal War, not anti-regime	B Internal War, not anti- regime	A Anti- regime war	D Decolonization war	C Interstate war
DOMINANT ACTOR IDENTITY	Iran Government	Moldova Govt	Greece Govt	France Govt	India Govt
POLITY IV SCORE	-1	5-1992 7-2003	8-6	NA	9
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Democratic 1	Democratic 1	Colonial .5	Democratic 1
ASYMMETRIC PRISONER RELEASE?	1	1 Yakovlev	1	0	1
AMNESTY?	1 Barzani refuses offer	1 Moldova in 2003 for war actions	1 Amnesty for loyalty pledge	0	1 General Amnesty
BELLIGERENT IDENTITY	Exiled Iraq Barzanis	Trans Nistria	DSE Greek Communist	Viet Minh	Nizam of Hyderabad
BELLIGERENT STATE ACTOR	0	0	0	0	0 UNRECOGNIZED
References	Eagleton Jr. 1963 Lortz 2005 MacDowall1 1997	MHRC 1992 Art of War n.d. Isachenko 2012, 55 Mallinder 2008	Voglis 2002 Nachmani 1990 Voglis 2000	US House Select Committee on Missing Persons in Southeast Asia 1976	Ray 1992 Copland 1997 Menon 1955 Sherman 2007

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	6. Costa Rica Coup Attempt 1948 (183) 016	7. North Yemen 1948 (240) 017	8. Arab-Israeli 1948-49 (241) 018	9. Malayan Emergency 1948-60 (359) 020	10. Kenya Mau-Mau 1952-59 (327) 029
CONFLICT TYPE (Gantzel & Schwinghammer)	A Anti-regime war	A Anti-regime war	C Interstate war	DA-2 (D) Decolonization war	D Decolonization war
DOMINANT ACTOR IDENTITY	Costa Rica Government	North Yemen	Israel	UK/Malay Alliance	UK
POLITY IV SCORE 0 to -10 Autocratic 0 to 10 Democratic	10	-10	10	10-1957	NA
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Democratic 1	Autocratic 0	Democratic 1	Colonial .5	Colonial .5
ASYMMETRIC PRISONER RELEASE?	0	0	1	0	0
AMNESTY?					
BELLIGERENT IDENTITY	Exiled CR Republicans/ Nicaragua	Rival Tribes and army	Various	Malayan Communist Party	Mau Mau
BELLIGERENT STATE ACTOR	N	N	Y	N-Mostly ethnic Chinese	N
REFERENCES	Regan 1996 Yashar 1997 Olander, 1996 Lehoucq and Molina 2002	Peterson 2008 Dresch 1989 Hollander 2005	Bligh 2017	Aljunied 2012 Renick Jr 1965 Paul et al 2013	Alam 2007 Elkins 2010 Anderson 2005

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	11. PRC Quemoy 1954 (421)	12. Tibet/PRC 1954-59 (419)	13. Costa Rica Coup Attempt 1955 (186)	14. Cameroon Independence 1955-1963 (313)	15. Hungarian Revolution 1956 (223)
	032	033	037	039	043
CONFLICT TYPE (Gantzel & Schwinghammer)	C Interstate war	AB (A primary) Anti-regime war	A Anti-regime war	DA Decolonization war	A Anti-regime war
DOMINANT ACTOR IDENTITY	PRC	PRC	COSTA RICA GOVT	1955: France 1960-63: Cameroon	Hungary Govt
POLITY IV SCORE	-8	-8	10	1955-NA 1960- -6	-7
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Autocratic 0	Democratic 1	Colonial .5 Autocratic 0	Autocratic 0
ASYMMETRIC PRISONER RELEASE?	0	0	0	0	1
AMNESTY?					
BELLIGERENT IDENTITY	Taiwan	TIBET		UPC	Hungary Army
BELLIGERENT STATE ACTOR	Y	N (Occupied)	N	N	N
REFERENCES	Tucker 2005 Cole 2006 Tunsjo 2008	Goldstein 1997 Harrer 1998	Lehoucq & Molina 2002 Cruz 2005 Yashar 1997 DKMK 1955	Terretta 2010 Joseph 1974/76 Amaazee 1994 Awasom 2002	Arendt 1958 A.R. 1957 Korda 2007

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (GANTZEL & SCHWINGHAMMER 2000)	16. Jebel Akhdar War 1957-59 (244) 048	17. Lebanese Civil War 1958 (245) 049	18. PRC/Taiwan Quemoy 1958 (423) 050	19. Indonesia Civil War 1958-61 (368) 052	20. Ethiopia Eritrea 1962-91 (328) 063
CONFLICT TYPE (Gantzel & Schwinghammer)	B Internal War, not anti-regime	AB (A primary) Anti-regime war	C Interstate war	AB (A primary) Anti-regime war	B Internal War, not anti-regime
DOMINANT ACTOR IDENTITY	Sultan of Oman	Lebanon Govt	PRC	Indonesia Govt	Ethiopia Govt
POLITY IV SCORE	-10	2	-8	From 0-5	From -9 to -8
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Democratic 1	Autocratic 0	Democratic 1	Autocratic 0
ASYMMETRIC PRISONER RELEASE INITIATIVE?	0	1	0	1	Y-TPLF
AMNESTY?		Nasser demanded 1958		Y	
BELLIGERENT IDENTITY	Imam Nizam	UNF (Majority Muslim)	TAIWAN	Rebels	Eritrea Liberation Movements
BELLIGERENT STATE ACTOR?	Y Autonomous	N	Y	N	Fluid
REFERENCES	Meagher 1985 Phillips 1966 Kechichian 1995	Attie 2004 Haugbolle 2010 Salibi 2011 (C. Young 1966)	Bush 2005	FRUS Vol XXVI DoS Pub 10784 Liow 2005 Cribb & Kahin 2004 Barter 2014 Feith & Lev 1963	Young 1997 Clapham 1998

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	21. Brunei 1962 (374) 067	22. Indonesia Malaysia Confrontation 1963-66 (376) 074	23. Zaire Uprising 1964-66 (317) 078	24. Colombia (ELN) 1965- (207) 079	25. Mozambique Independence 1964-74 (346) 081
CONFLICT TYPE (Gantzel & Schwinghammer)	A Anti-regime war	C Interstate war	A Anti- regime war	A Anti-regime war	D Colonial War
DOMINANT ACTOR IDENTITY		Indonesia Govt			Portugal Govt
POLITY IV SCORE	NA	-5	-9	7	-9
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Autocratic 0	Autocratic 0	Democratic 1	Colonial .5
ASYMMETRIC PRISONER RELEASE INITIATIVE?	1	0	0	1	1
AMNESTY?	Y? All but 47 of 2000 freed by 1968	N	N	Y	Y
BELLIGERENT IDENTITY	PRB TNKU	Malaysia	Simba		
BELLIGERENT STATE ACTOR?	N	Y	N	N	N
REFERENCES	Majid 2007 Stockwell 2004	Liow 2005 Hindley 1964 Taylor 1964	Wrong 2001 O' Ballance 2000 Bobb 1999 Young 1966 Glijejes 1994	Scott 2003 Chernick 2003 Christman et al 2004 Stokes 2005	Chimango 1975

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	26. Third Iraqi- Kurd War 1965-66 (250) 085	27. Peru Guerilla War 1965-66 (209) 086	28. Thailand 1965-80 (383) 089	29. Chad Civil War 1966- (318) 092	30. Six Day War 1967 (253) 095
CONFLICT TYPE (Gantzel & Schwinghammer)	B Internal War, not anti-regime	A Anti-regime war	A Anti-regime war	ABC- (A primary)	C- Interstate War
DOMINANT ACTOR IDENTITY	Iraq Govt	Peru Govt	Thailand Govt	Chad Govt	Israel Govt
POLITY IV SCORE	-5	5	-7 to 1980 1980 2	-7 (91 coup)	10
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Democratic 1	Autocratic 0	Autocratic 0	Democratic 1
ASYMMETRIC PRISONER RELEASE INITIATIVE?	0	0	1	1	1
AMNESTY?	Y	N	1 Chamanan offered	1 French mediated 1969	0
BELLIGERENT IDENTITY	Kurds	MIR/ELN	Communist Party Thailand	Various	Arab States
BELLIGERENT STATE ACTOR?	N	N	N	Y/N	Y
REFERENCES	Harris 1977 Tomasek 1976/7 Entessar 1984 Naamani 1966 Mamikonian 2005	Williams 1972 Campbell 1973 Wickham- Crowley 1990	Parker 1973 Wedel 1981 Marshall 2014 Barter 2014	Harshe 1979 Ali 1984 Fuchs 1996	Bligh 2017

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	31. Cambodia 1968-75 (385) 099	32. Iraqi-Kurd War 1969-70 (257) 102	33. Black September 1970-71 (259) 108	34. Cyprus III 1974 (230) 116	35. East Timor 1975- (396) 121
CONFLICT TYPE (Gantzel & Schwinghammer)	AC (A primary) Anti- regime/interstate war	B Internal War, not anti-regime	AB (A primary)	BC (C primary)	AB (A primary) Anti-regime Internal War
DOMINANT ACTOR IDENTITY			Jordan Govt	Cyprus Govt	Indonesia Govt
POLITY IV SCORE	-9 (68-70) -5 (75 REV)	-5 to -7	-9	7	-7
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Autocratic 0	Autocratic 0	Democratic 1	Autocratic 0
ASYMMETRIC PRISONER RELEASE INITIATIVE?	0	1	0	0	1
AMNESTY?	0	1 March Manifesto 1970	0	0	1 (CTF)
BELLIGERENT IDENTITY		Kurds	PLO	Turkey Govt	East Timor
BELLIGERENT STATE ACTOR?	N	N	N	Y	N
REFERENCES	Henderson and Cochrane 2017 Pike 1971	Yildiz 2007	Bligh 2017	Papadimitriou 1975 Kayaoglu 2008	Jenkins 2002 Crouch 2003 Cristalis 2009 Hack & Rettig 2006 Kammen 2012 Strating 2014

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	36. Pak-India Ziach Glacier 1984-89 “Op Meghdoot” (406) 161	37. Bougainville 1989 (410) 167	38. Liberia Sierra Leone 1989 (308) 168	39. Romania 1989 (231) 169	40. India Nagas 1969-75 (386) 172
CONFLICT TYPE (Gantzel & Schwinghammer)	C Interstate war	B Internal War, not anti-regime	A Anti-regime war	A Anti-regime war	B Internal War, not anti- regime
DOMINANT ACTOR IDENTITY	PAKISTAN	Papua NG	LIBERIA/SL	Romania Govt	India Govt
POLITY IV SCORE	-6 to 7	4	-6	-8	8/9
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Democratic 1	Autocratic 0	Autocratic 0	Democratic 1
ASYMMETRIC PRISONER RELEASE INITIATIVE?	0	1	0	0	0
AMNESTY?	0	1-Lincoln Agreement 1998	0	0	0
BELLIGERENT IDENTITY	India	BRA	Various	Uprising	Naga
BELLIGERENT STATE ACTOR?	N	N	N	N	N
REFERENCES	Gokhale 2015 Kumar 2016 Verma & Williams 2010	Text Lincoln Agreement 1998 Regan & Griffin 2005 Breen 2008 Cochrane 2017 Braithwaite, et al 2010 UNIFEM 2004	Bekoe 2008 Harris 2012	Williams & Deletant 2001	Singh 1980 Baruah 2003

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (<i>GANTZEL & SCHWINGHAMMER 2000</i>)	41. Nigeria Tiv Uprising 1964 (304) 184	42. Rwanda- Uganda 1990- (324) 189	43. Djibouti 1991 (342) 190	44. Laos Meo War 1990-92 (414) 192	45. Desert Storm 1991 (284) 194
CONFLICT TYPE (Gantzel & Schwinghammer)	AB (A primary) Anti-regime war/Internal War, not anti- regime	AB (A primary) Anti-regime war/Internal War, not anti- regime	AB (B primary) Anti-regime war/Internal War, not anti-regime	B Internal War, not anti- regime	C Interstate War
DOMINANT ACTOR IDENTITY	NIGERIA GOVT			Laos Govt	USA Coalition
POLITY IV SCORE	-7 (64/5 coup)	-7	-8 to 2	-7	10
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Autocratic 0	Autocratic 0	Autocratic 0	Democratic 1
ASYMMETRIC PRISONER RELEASE INITIATIVE?	0	0	1	0	1
AMNESTY?	0	0	1	0-Repatriation	0
BELLIGERENT IDENTITY	UMBC/Tiv			ELOL/ULNLF	Iraq Govt
BELLIGERENT STATE ACTOR?	N	N	N	N	Y
REFERENCES	Jackson 1972 Uwazurike and Mbabuike 2004 Aluaigba 2011	McDonough 2008 Bentrovato 2015	Schraeder 1993	Castella 1991 Amnesty International 1993 Gunn 1983 Johnson 1992 Lee 2000 Stuart-Fox 2008	Quilter 1993

CONFLICT NAME, (PAGE) & CONFLICT NUMBER (GANTZEL & SCHWINGHAMMER 2000)	46. Iraq: Shia Revolt 1991- (286) 196	47. Mali/Niger Tuareg 1990- (311) 197	48. Yugoslavia 1991 (233) 200	49. Georgia Anti-regime 1991 (287) 201	50. North Ossetia 1992- (290) 209
CONFLICT TYPE (Gantzel & Schwinghammer)	A Anti-regime war	B Internal War, not anti-regime	BC (B primary) Internal War, not anti-regime/ Interstate War	A Anti-regime war	B Internal War, not anti-regime
DOMINANT ACTOR IDENTITY	IRAQ GOVT			Republic of Georgia	Republic of Georgia
POLITY IV SCORE	-9	Pre-90 -7	-5	4	4
REGIME TYPE 0 to 10 Democratic 0 to -10 Autocratic	Autocratic 0	Autocratic 0	Autocratic 0	Democratic 1	Democratic 1
ASYMMETRIC PRISONER RELEASE INITIATIVE?	0	1	0	0	0
AMNESTY?	0	1	0	0	0
BELLIGERENT IDENTITY	Shia	Tuareg	Various	Various	S Ossetia
BELLIGERENT STATE ACTOR?	N	N	Y	Y/N	N
REFERENCES	Human Rights Watch 1992	Pezard & Shurkin 2015	UN Security Council Report 1994 Annex VIII	Jawad 2005 Dorff 1992 Souleimanov 2013 Cheterian 2008	Souleimanov 2013 Cheterian 2008

Appendix B: Major Israeli APRI 1979-2011

Trends and similarities

APRI Event	Amram 3/1979	Jibril 5/1985	Arad 10/1986 1988	Tannenbaum 1/2004	Shalit 1 (2006-2010)	Shalit 2 (2010-2011)
Ultimate Deal	1 IDF: 76 prisoners	3 IDF: 1150 Prisoners	NONE	1 IDF: 430 Prisoners 3 IDF bodies	NONE	1 IDF:1027 Prisoners
Original Deal	1 IDF: “a few” combat- ants captured in Lebanon	3 IDF: 120 PFLP	1 IAF: “Lebanese civilians in Israeli jails”		1 IDF: 450 Palestinian prisoners Plus 550 to be released after Shalit	1:1000 27 female prisoners added as “goodwill” gesture
Israeli Negotiator (Israel PM)	Weizman (Begin)	Tamir (Peres)	1986- Peres 1988- Shamir	Sharon (Sharon)	Various (Olmert)	Meidan (Netanyahu)
Prior APRI Vote?	N/A	1979 Tamir vote: Amram-No		1979 Sharon vote Amram- Yes	2004 Tannenbaum- Yes	2004 Tannenbaum- Yes
Family Involved?	Yes- Weekly	Yes- Weekly	Yes	Yes- Gag order by Tannenbaum Yes-Lobbying against by Arad family	Yes	Yes
Worthy/ Unworthy?	Mixed	Worthy	Worthy	Unworthy	Worthy	Worthy

APRI Event	Amram 3/1979	Jibril 5/1985	Arad 10/1986 1988	Tannenbaum 1/2004	Shalit 1 (2006-2010)	Shalit 2 (2010-2011)
Prime Minister	Begin	Peres	Shamir	Sharon	Olmert	Netanyahu
Cabinet vote on APRI?	No: Ministerial Defense Committee 4-3	Cabinet 25-1 (Friedman, 9/22/85)	NO	Cabinet 12-11 (Jewish Telegraphic Agency, 11/10/2003)	NO	Cabinet 26-3 (Meidan 2020) (Ravid 2011)
Cabinet members any prior APRI votes?	No	Burg- No on Amram Yes on Jibril	NA	Sharon- Yes on Amram	NO	Netanyahu- Yes on Tannenbaum
General Polling Approval	61 seats Likud vs 56 seats for opposition 1981	2/1985 Peres 42.4% Shamir 8.6% (Friedman, 02/05/85)	NA	58% support for Sharon if he is not guilty of corruption (Hermann 2004) 53% want resignation if guilty (CBS News 2004)	Olmert 1/2007 33% Approval (Yaar 2007)	2010 49% 2011 55% 2012 35% (Reinhart, 2/21/2018)
Electoral Event?	Egypt Peace Treaty	Coalition Government	Jibril Agreement	Gaza Disengagement	Olmert Corruption Charges	Doctor's Strike? Housing protests

Polling Approval of APRI	NA	8/1985 Peres 47.3% Shamir 6.6% (Friedman, 8/18/85)	NA	63% support Tannenbaum deal (Hermann 2004) 3/2004, 57% say Sharon is untrustworthy based on connection to Tannenbaum (CBS News 2004)	71% against Barghouti release (AR Global 8/8/2007) 54% against, 39% support prisoner exchange (Yaar 2007)	80% approve Shalit trade (Tami Steinmetz Center 2011)
Reelected?	YES	YES	YES	YES	RESIGNED	YES

