

Loyalty or Accountability? Public Attitudes to Holding Soldiers Accountable for the Murder and Abuse of Civilians

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How does the public view holding soldiers accountable for murdering and abusing civilians? We examine how the public trade off holding a conational perpetrator accountable for wrongdoing against national loyalty. We use survey experiments in the United States and United Kingdom to investigate how the public balances accountability and loyalty. Political theorists have identified the problem of reconciling “cosmopolitanism” and national loyalty. We investigate it empirically. Our findings suggest that while there is public commitment to accountability, it is conditional on the identity of the perpetrator. The findings are nuanced in theoretically important ways by (a) the substance of the violation and the perceived motives of the perpetrator and (b) the public position taken by specific leaders, which we demonstrate using the timing of the 2020 US election to vary leaders as well as messages in the experiments.

Is there public support for holding accountable soldiers who murder or mistreat civilians? We examine how the American and British public view prosecutions for the murder and abuse of civilians and their willingness to apply the same standards to their soldiers as they do to others. The murder and abuse of civilians by security forces represents a fundamental violation of human rights and international humanitarian law (Provost 2002). The public may support the cosmopolitan or human rights ideal of universal accountability in the abstract, but do they support accountability when their soldiers are the perpetrators?

Recent research examines public attitudes to the rule of law, war crimes, and other human rights abuses (e.g., Carpenter and Montgomery 2020; Conrad, Croco, et al. 2018; Conrad, Hill, and Moore 2018a; Dil and Schubiger 2021; Lupu and Wallace 2019; Rathbun and Stein 2020; Wallace 2013). An important focus is the “logic of consequences” and support for

actions that may violate humanitarian law—such as the use of torture, drone strikes, and weapons of mass destruction—but offer a military advantage (e.g., Sagan and Valentino 2017). But for many allegations concerning the murder or mistreatment of those in custody, a consequentialist logic simply does not apply. These more ordinary cases are the focus of this article, and rather than support for violations, and what democratic states can get away with, we examine support for prosecuting these crimes.¹ We examine the willingness of respondents to prosecute crimes where there is no military benefit and no tactical cross-pressure to support violations. It is at once both a realistic and easier test of the public’s commitment to uphold common standards.

The murder and abuse of civilians in custody is a more obvious wrongdoing than say the unintended harm caused to civilians from, for example, the use of drone attacks; it is clearly prohibited in codes of military justice and human rights and

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Support for this research was provided by a British Academy grant (SRG20/200584). Replication files are available in the *JOP* Dataverse (<https://dataverse.harvard.edu/dataverse/jop>). The empirical analysis has been successfully replicated by the *JOP* replication analyst. An appendix with supplementary material is available at <https://doi.org/10.1086/723982>.

1. We thank an anonymous reviewer for emphasizing this point.

Published online August 25, 2023.

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humanitarian law, whereas unintended harm may still be consistent with international law; furthermore, the wrongdoing can be attributed to individual soldiers rather than the military or the state more generally; there are no sovereignty or bias concerns that may be raised with the involvement of international courts or concern that accountability may be at the expense of preserving peace (see Chapman and Chaudoin 2020); the soldier's safety and self-defense is not at issue as the victim is in custody; and, importantly, citizens are not asked to make complex trade-offs about military conduct and military tactics. If there is public support for accountability, it is likely to be in cases like these.

We investigate the conditions under which the public might support individual legal accountability and what shifts that support. Following Grant and Keohane (2005, 29), accountability implies the accountability holder (in this context the state) holding an actor (in this context a soldier) to a standard (in this context human rights and humanitarian law) and to "impose sanctions if . . . responsibilities have not been met" (in this context prosecution). In short, it is "the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls" (UN Security Council Resolution 1325). We use survey experiments in the United States and United Kingdom, two rule-of-law democracies with long experience of conflict, to examine the loyalty-accountability trade-off. We describe the murder of a civilian in custody in the cosmopolitan control. In the treatment, we add the national identity of the soldier and examine the shift in the willingness of the public to prosecute.² We also vary the substance of the wrongdoing and examine whether the public supports their country's personnel "right or wrong." Finally, we vary the government leader's position on prosecution and test whether it shifts public support. Surveys on both sides of the 2020 US election gave us real world leadership or "messenger" (Kuklinski and Hurley 1994) variation to examine the influence on public attitudes.

We find that support for legal norms and prosecution in both democracies shifts with the identity of the perpetrator, consistent with group and identity theory (e.g., Tajfel 1970). In both the United States and United Kingdom, support for prosecution weakens for a conational perpetrator. We find some partial evidence that the identity of the victim does not make a difference, and in probing the limits of loyalty, the substance of the wrongdoing does make a difference. Loyalty

to the soldier is not unconditional. With sexual abuse and the taking of trophy photographs (with no loss of life), there was significantly greater willingness to prosecute the conational. In contrast to the murder vignette, with sexual abuse and trophy photographs the individual's selfish gain from the violation is explicit. While acknowledging alternative explanations, our inference is that the public more strongly favors prosecution where the individual is clearly seen to extract some personal gratification from the violation (Mitchell 2012). Finally, the position leaders take on prosecution may modify attitudes, depending on the identity of the leader and how the public perceives them.

Our article makes three contributions. First, in contrast to the earlier work, which examined the level of support for wrongdoing, we examine public support across two democracies for accountability and punishing wrongdoing when committed by their soldiers. Democracies' superior human rights performance is commonly linked to accountability (e.g., Cingranelli and Filippov 2010; Davenport 2007; see also Blakely and Raphael 2020). In our experiments, we seek to minimize possible biases against prosecution such as claims of self-defense, some tactical benefit from the wrongdoing, or international court involvement. We focus on how national identity shifts support from the universal ideal of accountability where national identity is unspecified. Second, we know that national identity shapes attitudes to conflict (e.g., Althaus and Coe 2011; Huddy and Khatib 2007; Hurwitz and Peffley 1987, 1990; Kam and Kinder 2007). We extend this work to examine accountability for wrongdoing committed by conationals and, through varying the type of wrongdoing from murder to sexual violence, offer a theoretical argument and evidence about where the limits to loyalty to the in-group perpetrator might lie. Third, we examine elite cues and whether changing the leader makes a difference.

PUBLIC SUPPORT FOR VIOLATIONS

The earlier research focused on the conditions under which the public might support violations, providing evidence of an instrumental logic and a willingness to accept torture or civilian fatalities given the prospect of military advantages, but also evidence of the countervailing impact of international law and advocacy by international organizations and nongovernmental organizations (Carpenter and Montgomery 2020; Carpenter, Montgomery, and Nysten 2021; Dil and Schubiger 2021; Kreps and Wallace 2016; Nincic and Ramos 2011; Sagan and Valentino 2017; Sagan et al. 2020; Wallace 2013). In sum, the public care about international legal commitments in some contexts but are susceptible to an instrumental logic. Beyond military advantages, reciprocity may influence the support for violations. Lupu and Wallace (2019) find that the public in

2. Cosmopolitanism directly challenges national loyalty, but other social categories may be relevant, and we examine differences across different subgroups based on political affiliation and demographic characteristics.

Argentina, India, and Israel are more likely to approve of abuses by their government when confronting a violent opposition. The symmetrical implication is that support for prosecution is most likely for ordinary violations where no military benefit is at stake and where the victims are not a violent threat to the soldier.

One study has examined international accountability and its consequences for peace in a developing democracy (Chapman and Chaudoin 2020). In contrast to a nonspecific foreign investigation by the International Criminal Court (ICC), public support in Kyrgyzstan decreases for an investigation in their own country, particularly among those living close to the violence. Noting sovereignty concerns and bias against international courts, attitudes may be influenced by concern about the ICC's impact on a fragile peace (Chapman and Chaudoin 2020). As these authors observe, the ICC tends to operate under these highly charged conditions and with important other considerations influencing attitudes to accountability. The ICC has less relevance for developed democracies and for ordinary violations. The United States has not ratified the ICC's Rome Statute; it has opposed its operation (Kelly 2007); and the ICC indicts leaders (Cronin-Furman 2013, 441), not the perpetrators of ordinary cases of abuse. So what of developed democracies with robust rule of law systems and the public's willingness to hold soldiers accountable when there is no instrumental advantage to be gained by their wrongdoing, no peace to be preserved, no sovereignty concerns about international courts, and for more ordinary cases of abuse?

Finally, accountability and punishment might be applied bilaterally by other states. Tomz and Weeks (2020) show that human rights influence the choice of whom you fight. They find evidence of a moral obligation to fight and more willingness among the American and British public to use force against human rights violating countries (Tomz and Weeks 2020, 182). If American and British publics are willing to punish other countries for their agents' violations, will they punish their own?

THE PUBLIC'S COMMITMENT TO ACCOUNTABILITY

Political theorists anticipate the problem we investigate and the human rights ideal of a universal standard against the countervailing pull of patriotic power and double standards. Erez and Laborde (2020, 193) contrast an individual with cosmopolitan values committed to correcting wrongdoing with an individual "superficially committed to cosmopolitan values" but "faced with an injustice committed by his people, he is inclined to ignore it or rationalize it." When responding to murder and abuse and violations of human rights and humanitarian law, democratic publics may prioritize national loyalty and display double standards when it comes to the injustices committed by their people.

There are three parts to our argument. First, we expect that public support for prosecuting perpetrators is conditional on the perpetrator's identity and is shaped by national group membership. President Trump, for example, justified overturning the demotion of a soldier charged with murder, "given his service to our Nation" (*New York Times* 2019). When their soldiers commit abuses, the public will trade off legal accountability for national loyalty. Here "national loyalty" refers to partiality to a group of people based on a shared national identity and including those in the military and in the service of the national group (see Druckman 1994; Posen 1993). As Erez and Laborde (2020, 195) describe, it is not "a moral commitment contingent on its compatibility with cosmopolitan principles, but one grounded in identification with the national group." To be sure, there may be a public reluctance to approve violations. But when some specific cost is attached, when forced to choose between accountability and loyalty to the conational perpetrator, the public may choose the latter. The public may value accountability sufficiently to punish an unknown soldier for murder but less so if it is their soldier's wrongdoing (see Mitchell 2012).

This part of the argument draws on research on in-group identities (e.g., Althaus and Coe 2011; Huddy and Khatib 2007; Kam and Kinder 2007; Kinder and Kam 2010; Rathbun and Stein 2020; Tajfel 1970) in the structuring of public attitudes. Other reasons for unwillingness to prosecute might include general sympathy for soldiers in conflict, concerns about post-traumatic stress disorder (PTSD), or holding commanders rather than soldiers responsible—but these apply across the vignettes and whether or not the soldier is a fellow national. We expect that willingness to prosecute is conditioned by the national identity of the perpetrator.

H1a. The conational identity of the perpetrator will affect public support for prosecution. A conational perpetrator will decrease support for prosecution.

Support for the null hypothesis of no difference between the control and the treatment where the perpetrator is an American or British soldier would suggest that national loyalty is not the obstacle to cosmopolitan values and a commitment to impartiality that might be expected.

In addition, we examine whether loyalty to conationals extends to situations where the victim is also a citizen. The victim's, as well as the perpetrator's, identity may influence attitudes. Less importance may be placed on victims who are perceived as outsiders, which has long been seen as a constraint on upholding cosmopolitan commitments related to human rights and humanitarian law (see Linklater 2007). While there is a lack of empirical research on public

support for prosecuting abuse, in work on the incidence of wartime prisoner abuse, Wallace (2012, 968) finds the effects of the victim's identity and cultural differences on abuse to be not statistically significant. While they do not provide an empirical test, Conrad, Hill, and Moore (2018, 4) note the growth of populism and suggest that voters may support "aggressive coercive behavior against unwanted others." It is plausible that the victim's conational identity will increase support for prosecution.

H1b. A conational victim will increase public support for prosecution.

Additionally, if national identity and loyalty to conationals influences support for prosecution, then we should also find that those scoring highest on measures of national pride are less likely to support prosecution.

Second, to probe the limits of in-group loyalty, we investigate whether attitudes to prosecution may be modified by the nature of the violation and whether the individual conational agent is perceived to benefit from it. Those perceived as primarily motivated by selfish gratification, where their acts are explicitly linked to service to themselves, are more likely to receive punishment: "it is evidence of a selfish motivation, not necessarily the gravity of the case, that creates an opportunity for accountability" (Mitchell 2012, 177). This argument fits well with a separate line of inquiry pursued by Krebs, Ralston, and Rapport (2021). They too examine the idea that the public may key on the perceived motivations of soldiers and find that the public are more likely to support the use of force when soldiers are seen as patriots serving the country than when they are motivated by material benefits received in exchange for serving.

With punishment, a key characteristic is the perceived motivation for the crime. If national group identity matters, it follows that individuals' actions are likely to be evaluated by whether the actions are perceived to be motivated more by the individual's selfishness. We argue that there is variation in the ease with which violations may be attributed to individuals acting selfishly to benefit themselves. With behavior that has an explicit self-seeking dimension, where the individual gains personal gratification, as with sexual violence, abuse, humiliation, and the taking of "trophy photographs" (for example, in the Iraq conflict with UK soldiers at Camp Breadbasket or US soldiers at Abu Ghraib), then the public will be more willing to support the prosecution of the perpetrators. We included trophy photographs in the scenario to match real-world examples but also as it made more explicit the selfish component, as sexual violence and abuse can at the same time bring strategic or organizational benefits (e.g., Cohen 2016; Hoover

Green 2016; Nordås and Cohen 2021; Wood 2018). We focus on the opportunism and a "spoils of war" motivation: "the notion that armed actors consider women trophies or booty in war" (Kreft 2020, 475; see also Butler, Gluch, and Mitchell 2007; Mitchell 2004). The selfish gratification may be, for example, to gain power over women or for peer approval and to demonstrate "machismo," and it may be perceived as such. Civil society actors "overwhelmingly perceived gender-unequal power structures . . . a reason frequently offered as to why men perpetrate sexual violence is that they perceive women to exist in order to satisfy men's sexual desires and needs" (Kreft 2020, 466). Where agents clearly appear to gain some private benefit, we expect more willingness to prosecute those agents. Public attitudes will be contingent on the perceived loyalties of the perpetrator and whether he or she is seen as self-serving. After the Abu Ghraib photographs became public, US Attorney General Alberto Gonzales attempted to distinguish what had happened from administration policy. To do so, he pointed to the selfishness of the soldiers involved: "This is simply people who were morally bankrupt having fun and I condemn that totally" (BBC 2005).³ We expect that where the violation can be more easily attributed to the "fun" of the perpetrator, the public will be more willing to support prosecution, even for arguably less severe crimes. While it is difficult to establish firm boundaries for what might be perceived as "selfish crimes," our claim is that some actions have a clearer self-seeking dimension than others. In the sexual abuse and extortion scenarios, selfishness is explicit. In the murder scenarios, there is no selfish "trophy taking" gratification described and no private benefit is attributed to, or suggested for, the perpetrator.⁴ This part of the argument yields the expectation that the public will be more willing to prosecute sexual abuse and humiliation than crimes such as murder that involve the loss of life and customarily receive long sentences.⁵

3. Loken, Lake, and Cronin-Furman (2018) analyze sexual violence in Sri Lanka, the decision to prosecute in order to win political legitimacy and the symbolism of female victimhood. In our main vignettes gender is unspecified, although respondents familiar with "trophy photographed" abuse will know that the victims were predominantly male.

4. We define private benefit as some form of personal gratification, without specifying the precise form of gratification—for example, whether it is from what the perpetrator gets from the abuse directly or from peer approval for being seen to inflict the abuse. Kreft (2020, 473) notes that the perpetrator gains power over the violated woman but also gains power over his peers "the more one raped, the more macho one was." Which it is might be ascertained from surveys of ex-combatants or some other self-reporting; for our theoretical argument what is important is simply that the perpetrator is perceived to act selfishly.

5. In 2016, time served in state prisons in the United States averaged 15 years for murder and six years for rape and sexual assault (Kaeble 2018).

H2a. The public are more willing to support prosecution for sexual abuse and trophy photographs than for murder.

To further test this part of the theoretical argument, we analyze an alternative example of the “spoils of war” and a selfish violation with no discernible benefit other than to the individual perpetrator and no actual physical mistreatment occurring. The soldier extorts bribes from the civilian. If the selfish motivation of the perpetrator is a powerful influence on public attitudes, then the public will be more willing to support prosecution, even for such a substantially less severe offense.

H2b. The public are more willing to support prosecution for extortion than for murder.⁶

Third, if national group identity is important, then representatives of the national group may affect public attitudes on holding their uniformed personnel accountable. We expect that national loyalty may be reinforced in the statements of national leaders such as President Trump who claim “fidelity to the warfighter,” which helps cue public attitudes to abuses (*New York Times* 2019). But what if leaders advocated prosecution? A long-standing literature on elite cues ought to transfer to this issue. Berinsky (2007; see also Baum and Potter 2015; Darmofal 2005) finds that elite discourse shapes public support for war. Zaller (1991, 1227) finds that President Johnson could mobilize support for the Vietnam War among some liberals.⁷ While public opinion is not simply shaped by leaders (Kertzer and Zeitzoff 2017; Kreps and Wallace 2016), we explore whether a message from leaders makes a difference.

H3a. A national leader’s message in support of or opposition to prosecution will increase or decrease public support for prosecution of a conational perpetrator.

The influence of a message may depend on who the “messenger” is (Kuklinski and Hurley 1994). The degree of political polarization may limit leaders’ ability to influence citizens who do not share their views (Guisinger and Saunders 2017). Or the public may be more receptive to “against-type” signals. Mattes and Weeks (2019) find that “hawks” are more trusted on their policy choice of conciliation than “doves”; hawks have not

blindly followed ideological inclinations and have chosen a moderate course. Similarly, an unlikely (against-type) message in support of prosecution from President Trump may shift public support for prosecution. In short, public willingness to prosecute will be influenced by national leaders’ cues, but this influence will depend on the identity of the leader and their ability to influence both partisan and nonpartisan followers.

H3b. The identity of the national leader will influence whether their message in support of or opposition to prosecution will impact public support for prosecution of a conational perpetrator.⁸

RESEARCH DESIGN

Our survey experiments use nationally representative samples of US and UK populations. We randomly assign participants to treatments and compare differences in attitudes between experimental groups, inferring the causal effect of the perpetrator’s national identity, statements by national leaders, and the nature of the wrongdoing. Generalizing to other liberal democracies is not straightforward. The United States and United Kingdom have a common “Anglo-American approach to military justice” (Dahl 2011). Few others have as much involvement in conflict, and there is variation in national sentiments. But the United States and the United Kingdom are not notable outliers. In the World Values Survey (2017–20), for the national pride item the United States and United Kingdom had 45% and 46% “very proud” respondents against a mean for all countries of 53% (Inglehart et al 2014).⁹ Elsewhere, we expect that national in-group loyalties will also pull on the willingness to prosecute—a recent Australian inquiry reported allegations of 39 unlawful killings not done “in the heat of battle” and other allegations of cruel treatment of persons under the control of Australian soldiers (Brereton Report 2020, 2). But this requires examination.¹⁰

We designed the vignettes to closely replicate the information in newspapers and in relation to actual conflicts engaging the country’s soldiers (see app. A). For the US interventions in Afghanistan and Iraq, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions described “chronic and deplorable accountability failures with respect to

6. This hypothesis was developed after the initial analysis and to further probe the power of selfishness motivation as an influence on attitudes. It was preregistered.

7. See Brulle, Carmichael, and Jenkins (2012) for politicians’ influence on the public’s perception of climate change.

8. This hypothesis was developed after the initial analysis and the 2020 US presidential elections to further investigate leaders’ influence on public support for prosecution. It was preregistered.

9. The United States and the United Kingdom had a slightly lower proportion of “very proud” respondents than liberal democracies such as Australia (53%), Canada (51%), and France (47%) (Inglehart et al. 2014).

10. We expect leader cues to be most noticeable in polarized political environments such as the United States and United Kingdom when our surveys were administered.

policies, practices and conduct that resulted in alleged unlawful killings, including possible war crimes” (UN General Assembly 2009, 3). Military documents revealed approximately 100 detainee deaths that had been inadequately investigated and which “resulted in impunity” (UN General Assembly 2009, 25). We describe the wrongdoing in similar terms to the reporting. We refer, for example, to charges of murder as in the reporting: “Trump pardons Michael Behenna, former soldier convicted of killing Iraqi prisoner . . . Behenna was found guilty of unpremeditated murder” (NPR 2019).¹¹ We ask respondents about their willingness to prosecute.

We minimize other possible influences on public attitudes such as attaching some tactical benefit to the wrongdoing that might reduce the willingness to prosecute (Carpenter and Montgomery 2020; Sagan and Valentino 2017). We place the murdered civilian in custody, which matches many cases reported in the media and by the UN Rapporteur, and puts the victim in a more controlled environment. It makes it difficult to excuse the crime as “heat of the action” or self-defense as reasons not to prosecute. For example, the British Army Aitken Report (2008, 2; *Guardian* 2008) detailed cases of abuse and unlawful killing of civilians in Iraq that “could not be mitigated by decisions made by British soldiers ‘in the heat of the moment’, or in the face of an immediate threat to their own safety . . . They involved either the death or injury of Iraqi civilians who had been arrested or detained by British troops.”

In addition, we do not describe prosecution by other countries or by international courts, which again might bias domestic public opinion against prosecution. Civilians are protected in the US Uniform Code of Military Justice and the British military justice system, in international humanitarian law, and by human rights conventions providing protection in war and peace (Wallace 2013, 108). For UK troops, the European Convention on Human Rights applied to the conduct of British troops in Northern Ireland and in Afghanistan. Finally, cases are normally brought in military courts but are also brought in civilian courts after soldiers leave the service (for example, a US soldier in US District Court in Kentucky for rape and murder in Iraq). We do not assume knowledge of the relevant codes of military justice and the legal complexities. We focus on the crimes of murder and sexual abuse and the identity frame.

We conducted experiments in the United Kingdom in March 2020 ($n = 3,294$), in the United States in October 2020 ($n = 3,704$), and a third (a second US survey) in April 2021 ($n = 3,841$), taking advantage of the election result. We retained the same design across these surveys and, assuming the

public updated the reference to the president in the vignette, the election enabled us to vary the messenger. We used the second US survey to further test how the selfishness of the perpetrator affects support for prosecution.¹² YouGov administered our surveys, which were embedded in larger surveys using their nationally representative online panels of respondents (see apps. B–D for survey samples and instrument).

SURVEY EXPERIMENTS

Respondents received a vignette in which a soldier had committed murder or abuse. We varied parts of the vignettes in order to test our arguments.¹³ In line with experimental realism (see McDermott 2002), the vignettes replicate, as far as possible, news articles about wrongdoing by soldiers (see app. A). The media attention to allegations of murder and sexual abuse aided us in designing plausible vignettes.

To test the effects of adding the national identity of the perpetrator, we first set up a “cosmopolitan” control group vignette where the soldier’s national identity is not specified (No Nationality vignette):

Violent conflicts involve soldiers and combatants from different countries around the world. A soldier who served in a conflict was recently arrested and charged with murder, following a newspaper article showing clear evidence that several years ago the soldier had beaten to death a civilian held in custody. The soldier could face life imprisonment. The soldier’s wife and former soldiers have launched a campaign to have the charges dropped, pointing to his loyal service against a brutal enemy.

To test our main argument regarding public support for prosecuting Conational identity soldiers, we repeated this vignette adding the identity of the soldier as American for the US surveys and British for the UK survey and located the conflict in Afghanistan (see app. B).

While we are interested in the difference national identity makes to the application of standards where nationality is unspecified, we included a treatment group in which the soldier has a different national identity than the in-group national identity (the soldier’s nationality is known but is not that of the survey respondents). We include this treatment, which also identifies the conflict as Afghanistan, as a robustness check to ensure that differences observed in responses between those that receive the control vignette and those that receive a vignette

11. We do not ask respondents to express support for crimes, which may have a negative impact on public attitudes to war crimes (see Carpenter et al. 2021).

12. We preregistered the hypotheses and analysis conducted in the second US survey experiment in a pre-analysis plan online. The pre-analysis plan is available at <https://osf.io/9r6pj>.

13. Vignette texts are in app. B.

with the in-group national identity are not the result of the specificity of the latter vignette but are due to the soldier having an in-group national identity.¹⁴

In the UK survey experiment, we used the British Army's involvement in Northern Ireland to include a treatment group in which the identity of the victim is Northern Irish rather than Afghan, to provide a qualified test of the conational victim hypothesis (see app. B). In the US survey experiment we test whether the nature of the wrongdoing shapes support for prosecution. We argue that there will be variation in the way violations are perceived and the ease with which they are attributed to individuals acting selfishly. We test this part of the argument by altering the crime in the Conational vignette from a soldier beating to death a civilian held in custody, to a soldier sexually abusing an Afghan civilian and taking "trophy photographs" (see app. B). In the third survey experiment, to further probe our selfishness conjecture we included two additional vignettes—one in which the soldier commits the transparently self-serving action of Extortion, and the other in which the Conational vignette is altered to specify that the victim was a Female Civilian. If selfishness is motivating the willingness to prosecute, then we expect extortion to increase the willingness to prosecute even though no physical abuse occurs and the violation is likely to be regarded as the least severe. Finally, to ensure that willingness to prosecute sexual abuse is not a result of assumptions that the victim was female, rather than the selfish component of the action, we include a Female Civilian vignette.¹⁵ We discuss these vignettes further in the results and analysis section below and include the full vignettes in appendix B.

For leader effects, we included two variations of the Conational vignette, adding the leader's position for and against prosecution and a quote attributed to the leader. In the first leadership vignette, the leader expresses support for the campaign to have the charges dropped and opposition to prosecuting the soldier. The quote is based on a statement by former UK Prime Minister Theresa May calling for an end to "legal witch hunts" against soldiers in the context of British

14. For this additional treatment group, we chose a nation with troops in Afghanistan, but one that respondents in the United Kingdom and United States would be unlikely to know much about (although they will likely know they are an ally of the United States and United Kingdom). We assigned Estonian nationality to the perpetrator in this vignette and expect that as an ally of British or American troops there will be somewhat less support for prosecution than with the control.

15. As Kreft (2020, 468) says, "victimization in sexual violence, in sum, is coded female, conceptually reserved for women as the subordinated collective in society."

soldiers' actions in Northern Ireland.¹⁶ For example, for the US vignette we add the sentence: "The President has expressed his support for the campaign, telling reporters that 'American soldiers should be protected from such legal witch hunts.'" In the second leadership vignette, the president/prime minister expresses support for bringing soldiers to justice: "The President has told reporters that 'any American soldiers found guilty of committing war crimes must be brought to justice.'" In the third survey experiment, we tested the additional leadership hypothesis (3b) to capture leadership effects.¹⁷ To do this, we repeat the two leader statement vignettes but after the 2020 US presidential election.

Our dependent variable across the experiments measures, on a four-point scale, respondents' attitudes to prosecuting soldiers charged with murder, sexual violence, and humiliation and extortion. As we expect the willingness to prosecute to be conditional on the national identity of the perpetrator, respondents with high levels of national pride should be more likely to oppose prosecuting the conational soldier than those that do not express such strong national pride. We included a national pride item earlier in the survey to reduce the risk that participants' response to the question on prosecution would be influenced by their responses to how they identify with their nation (see app. B). YouGov provided data on participants' sociodemographic characteristics and political preferences. We provide further information about our samples in appendix D and include a regression model that includes these covariates to test the robustness of our findings (see the appendices).

RESULTS AND ANALYSIS

We start the national identity of the perpetrator and willingness to prosecute. Figure 1 presents the average treatment effects of the Conational (UK/US) treatment group compared to the No Nationality control group on public support for prosecuting the soldier. There is a significant decline in support for prosecution when respondents are informed that it is a conational perpetrator (British or American soldier). For both the United Kingdom and United States, the public is less willing to hold fellow nationals accountable for murder. These results are robust to the inclusion of covariates, such as age, gender, education, and political affiliation (see app. E). We conducted an additional test with an Estonian rather than conational soldier showing no statistically significant effect of an Estonian perpetrator on public support for prosecution in either the United

16. "May orders end of army witch-hunt" and Conservative MPs, in keeping with in-group loyalties say "our motto is now defend those who defended us" (*Daily Express* 2018).

17. As noted, we preregistered the additional hypotheses tested in the second US survey experiment at <https://osf.io/9r6pj>.

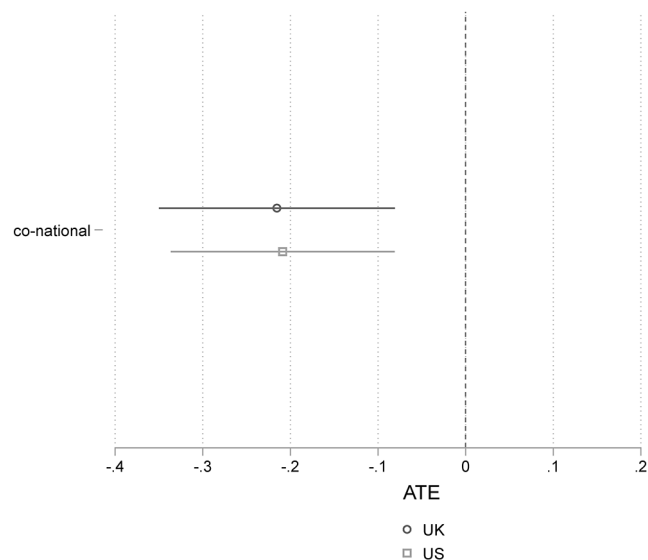


Figure 1. Average treatment effects (ATE) for Conational treatment on support for prosecution for the United Kingdom and United States. Negative values indicate lower support for prosecution relative to the No Nationality control. Horizontal lines indicate 95% confidence intervals.

Kingdom or United States (see app. E). This suggests that the results in figure 1 are not because of the greater specificity of the Conational vignette but are due to the reduced willingness of the public to hold fellow nationals accountable for murder. In both countries we find support for hypothesis 1a that the conational identity of the perpetrator decreases public support for prosecution.¹⁸ Overall there is support for prosecution in these “easy” cases where the soldier’s safety and self-defense is not an issue, as the victim is in custody, and where respondents are not asked to make complex trade-offs about military conduct and military tactics. For US participants, around 78% of those that receive the No Nationality vignette express support for prosecution, falling to 69% for those that receive the Conational vignette; and in the United Kingdom, the figures are 71%, falling to 59% for those receiving the Conational vignette.¹⁹ The identity of the perpetrator shifts a significant proportion of respondents in both countries to prioritize loyalty to the conational over accountability.

18. We compared the treatment effects between those that express higher and lower levels of national pride (see app. E). As expected, the former are less supportive of prosecuting a conational supporter than the latter. Altering the nationality of the perpetrator had no significant effect on support for prosecution among those expressing low levels of national pride.

19. We cannot explore the cross-national differences in this study. The lower UK willingness may be due to the salience of the issue of prosecution with recent cases in Northern Ireland, the strong stance taken by successive governments against “spurious” prosecutions (ICC 2020, 168), and the publicity, including a TV drama, on the conduct of lawyers with murder and abuse cases from Iraq: “The [government] agenda was clear: they hate human rights, they hate human rights lawyers and there’s a big agenda supporting the army” (*Guardian* 2017).

In the UK survey, and to stay close to real events, we used the prosecution of British soldiers for murder in Northern Ireland to explore whether victim identity shapes willingness to prosecute. Attitudes may differ if the victim is viewed as a “distant stranger” compared to a victim with whom they share citizenship. To explore the effect of victim identity, we included a treatment in which the murder victim is a Northern Irish civilian rather than an Afghan civilian and compared the effects of the Northern Ireland treatment in relation to the Conational control group. The results (see app. E) show that loyalty to the perpetrator effects willingness to prosecute even when the victim is a fellow citizen, contrary to hypothesis 1b. While Northern Ireland is the only conflict that we could realistically incorporate in our survey to get at victim identity, there is a limit to what we can learn from the example. It tests cocitizens but in this case they may not be perceived as conationals. Respondents may assume that the victim identifies as Irish or “Nationalist”—or respondents, themselves, may not consider the victim to belong to the same group (see Hazley 2021).²⁰

Nature of the violation, perpetrator motives, and the limits of loyalty

We argued that if there are limits to public loyalty they might rest on the nature of the violation and who benefits. In the US experiment we include a vignette that changes the violation from the murder of a civilian to the sexual abuse of a civilian and taking “trophy photographs.” The control in this test is the Conationality rather than the No Nationality vignette. The results in figure 2 show that the Sexual Abuse treatment has a large positive effect on support for prosecution in relation to the standard Conational vignette.²¹ Even compared to the No Nationality vignette, the Sexual Abuse treatment significantly increases support for prosecuting the soldier (see app. F), consistent with hypothesis 2a.

Theoretically, we link this finding to the selfish component of the crime; the Sexual Abuse treatment increases support for prosecution because the public views this violation as resulting from the soldier “having fun.” But there are other possible explanations. Our finding may reflect public outrage against the shocking nature of sexual violence in conflict rather than the public imputing selfish motives to the perpetrator. Alternatively, the finding may reflect assumptions about the gender of the victim. We do not state the gender of

20. Recent survey evidence suggests that British people increasingly see themselves as having less in common with people from Northern Ireland and support the region holding a reunification referendum (Fitzpatrick 2020). We are grateful to an anonymous reviewer for this caution.

21. Around 88% of those that receive the Sexual Abuse vignette support prosecuting the soldier.

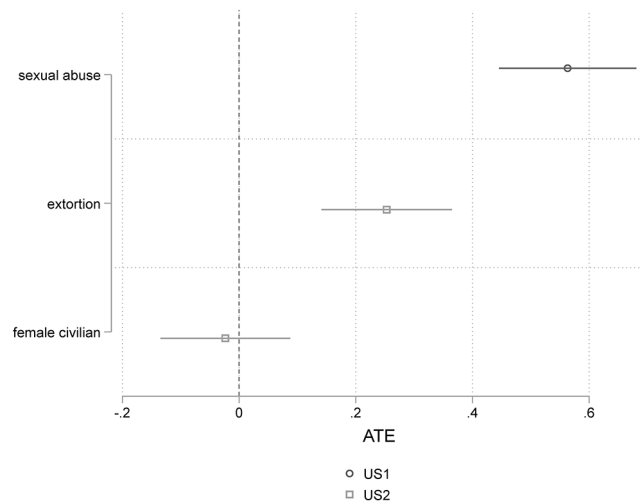


Figure 2. Average treatment effects (ATE) for type of wrongdoing on support for prosecution for the first US survey experiment (US1) and the second US survey experiment (US2). Positive values indicate higher support for prosecution relative to the Conational control. Horizontal lines indicate 95% confidence intervals.

the victim in either the Conational vignette or the Sexual Abuse vignette; however, the mention of sexual abuse in the latter vignette may lead to the assumption that the victim is female. Recent studies describe how men are portrayed as the perpetrators of wartime sexual violence and women as the victims (Alison 2007; Gorris 2015; Kreft 2020). Survey participants may assume that the victim is female in the Sexual Abuse vignette and male in the Conational vignette and are less accepting of violence toward women.

To address these issues and the interpretation of our results, we tested additional hypotheses in the second US survey experiment. We employed a vignette with content suggesting that the violation committed by the soldier was for selfish motives, while avoiding mention of sexual violence. This vignette described threatening civilians in Afghanistan with violence unless they paid off the US soldier, which we use to test hypothesis 2b. We also included a vignette that differed from the Conational vignette by explicitly stating that the civilian the US soldier had beaten to death was female (see app. B). With this vignette, we tested the following hypothesis: the victim of the murder being a female civilian has no significant effect on public support for prosecution. These additional hypotheses were both preregistered.²²

The results of these tests, also presented in figure 2, show that there is greater public support for prosecution for abuses where a selfish or corrupt personal interest is explicit. Consistent with hypothesis 2b, the Extortion vignette leads to

22. The two hypotheses are in the pre-analysis plan for the second US survey, which was preregistered, and is available at <https://osf.io/9r6pj>.

significantly higher support for prosecution in relation to the Conational vignette: the public are more willing to support prosecution for extortion committed by a US soldier than they are willing to prosecute murder. It is worth noting that this result is driven by shifts in support for prosecution among those that identify as conservative and/or Trump voters who are more predisposed to oppose prosecution, rather than more liberal Biden voters who tend to be more supportive of prosecution (see app. F). The Female Civilian vignette has no effect on public attitudes to prosecuting the soldier. Whatever the victim's gender, the public are significantly less willing to support prosecution of a US soldier than an unknown soldier. These additional results are consistent with our conjecture about the perceived selfishness of the perpetrator.²³

Leadership statements

Finally, we use two treatments to investigate leader effects on support for prosecution. In the first, the leader (prime minister in the United Kingdom and president in the United States) calls for charges against the soldier to be dropped (Leader Oppose Prosecute), and in the second the leader calls for those found guilty to be brought to justice (Leader Support Prosecute). We compare these two treatments to the Conational control to test whether leadership statements influence public attitudes to prosecuting a conational soldier.

The results in figure 3 are asymmetric. There is no significant effect of the leader opposing the prosecution of the soldier compared to the conational group treatment. Opposition to prosecution is the leaders' expected position. It is worth noting that compared to the No Nationality group, there is lower support for prosecution among participants that receive this treatment. However, beyond the effect of the soldier being of conational identity, there is no additional effect of the leader stating opposition to prosecuting the soldier.

Yet when a national leader supports prosecution, which we suggest is a more unlikely or against-type message, there is a significant increase in support for prosecution in both countries (see Mattes and Weeks 2019).²⁴ The statistically significant positive effect for this treatment holds in comparison to the No Nationality group in the United Kingdom and United States (see app. G). While support for prosecution shifts with the

23. We note that we cannot rule out the possibility that support for prosecution in the cases of sexual abuse and extortion are for separate reasons. While, as noted, with the inclusion of the "trophy photograph taking" to the sexual abuse scenario to make explicit the selfish component, there is the possibility that responses to this scenario are more influenced by norms against sexual abuse than the perceived selfishness of the perpetrator. An area for future research will be to further unpack these causal processes. We thank an anonymous reviewer for this qualification.

24. Around 84% of US respondents who receive the Leader Support Prosecute support prosecution, and 77% UK respondents.

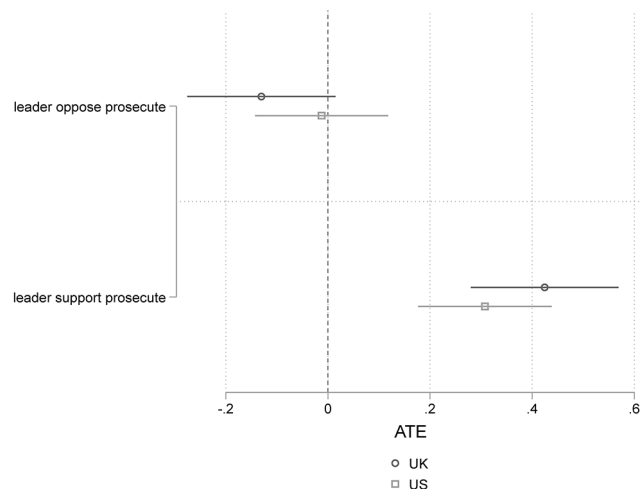


Figure 3. Average treatment effects (ATE) of leader statements on support for prosecution for the United Kingdom and United States. Positive values indicate higher support for prosecution relative to the Conational control. Horizontal lines indicate 95% confidence intervals.

identity of the perpetrator, were leaders to seek accountability, they can positively influence the public. The results provide partial support for hypothesis 3a: a national leader's message in support of prosecution will increase support for prosecution of a conational perpetrator; however, a leader's statement opposing prosecution has no effect on public attitudes.

When the first two surveys were fielded, the leaders in both countries shared similarities that may influence our findings. Both Boris Johnson and Donald Trump used nationalist rhetoric to strengthen support among the electorate (Boot 2019), and both have opposed prosecutions of soldiers. But what if the identity of the leader changed? President Biden's victory allowed us to address this question and test hypothesis 3b. With the April 2021 US survey, we used the same leadership statement treatments with the only difference being the leadership change.²⁵ President Biden had been in office for three months. We present the results of the leader treatments for both the first survey during the Trump presidency and the second survey during the Biden presidency in figure 4.

The results, again, demonstrate that the leader statements have an asymmetric effect—but crucially, we find that the direction is reversed by the election result. With the first survey, the statement in opposition to prosecution, assumed to be attributed to President Trump, has no effect on public attitudes, while the statement in favor increases support for prosecution. With the statements attributed to President Biden in the second US survey, we find that the statement in opposition to prosecution has a significant effect in lowering public

25. In the surveys the vignettes only refer to the “president,” not the name of the president.

support for prosecution, but the pro-prosecution statement has no effect on public attitudes. The results provide support for hypothesis 3b on the identity of the leaders influencing the impact of their messages on public support.

These contrasting effects suggest that leaders have influence when delivering an “against-type” or “off-message” message: Trump is not expected to support prosecution; Biden is not expected to oppose prosecution. Taking these unlikely positions suggests that they may have moved to a more “moderate” position (see Mattes and Weeks 2019). Trump supporters are more conservative and nationalist and have lower support for prosecuting the US soldier. When Trump issues a statement in opposition to prosecution, a view that his supporters already tend to hold, we see no effect on attitudes to prosecution. In contrast, when Trump issues a pro-prosecution statement, he convinces some supporters to increase their support of prosecution, leading to the effect we observe in figure 4. In contrast, Biden's supporters tend to be more supportive of prosecuting the soldier (see app. D). With a pro-prosecution statement, Biden is telling them what many may already believe, and we see no effect of Biden's statement supporting prosecution. Yet, when Biden states that the soldier should not be prosecuted, he is able to influence his supporters to change their stance, and we see the reduced support for prosecution.²⁶

DISCUSSION AND CONCLUSION

We examine public support for holding soldiers accountable for murdering and abusing civilians. Our approach was to describe the wrongdoing in the survey experiments in similar terms to the reporting, presenting the information as closely as possible to the way respondents would engage with such issues in the real world, without any consequentialist advantages or “heat of the moment” or self-defense justifications attached to the wrongdoing and biasing the respondent against prosecution. These ordinary, “easy to support prosecution” cases are drawn from the cases described by the UN Special Rapporteur, by military reports (Aitken Report 2008) and from media reporting. There are no earlier studies of public willingness to prosecute war crimes to draw on, but the findings suggest a trade-off between cosmopolitan values and national loyalty. The public is significantly less likely to support prosecuting their country's soldiers. Such shifts in support can have disproportionate policy implications on issues where public support is divided (see Canes-Wrone and Shotts 2004; Lupu and Wallace 2019).

26. To further explore leadership dynamics, we analyzed the conditional effects of leadership statements across different groups and broadly find, not surprisingly, that Trump commands greater influence over his supporters and that if Biden adopts the “Trumpian” position of opposition to prosecution he can also influence Trump supporters (see app. G).

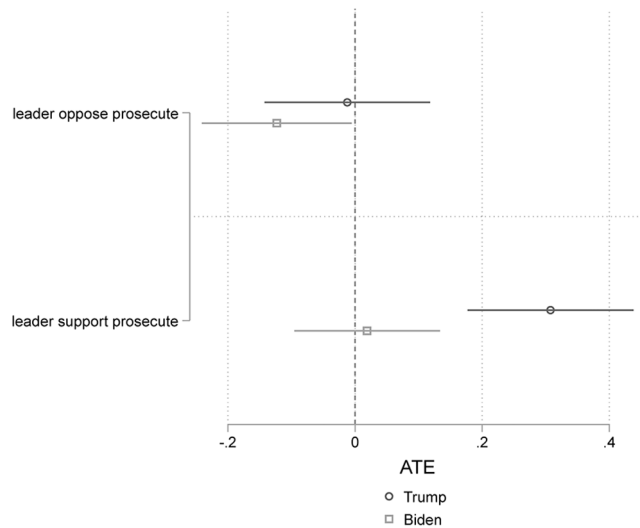


Figure 4. Average treatment effects (ATE) of leader statements on support for prosecution for the first US survey experiment during the Trump presidency (Trump) and the survey experiment during the Biden presidency (Biden). Negative values indicate lower support for prosecution relative to the conational control, and positive values indicate higher support for prosecution relative to the conational control. Horizontal lines indicate 95% confidence intervals.

Leaders' positions move public attitudes in both countries, which broadly relates to other studies suggesting that cues from international organizations and nongovernmental organizations influence public support for controversial actions such as drone strikes (Kreps and Wallace 2016). Were democratic leaders to support prosecutions, they might bring some of the public with them. Segments of the public can be persuaded to put aside national loyalties by a leader who upholds accountability. But at least in the UK and US contexts, leaders' influence on the public will partly depend on who the leaders are: just as a "hawk" is more believable in supporting conciliation (Mattes and Weekes 2019), a more conservative or nationalist leader is more likely to increase support for prosecution. The notable case of leaders actually pushing for prosecution was with the Abu Ghraib scandal, where leaders attempted to distance what had happened from the policy of the administration. Whether or not it accorded with their policy, they pointed to selfish gratification motivating the abuse.

If the crime is attributable to "fun," then the public are more willing to uphold legal norms and support prosecution. We interpreted the greater willingness to prosecute sexual abuse and humiliation as a consequence of the perceived selfishness of the violation. The public's response is not to support "my soldier right or wrong." When they discern selfish motivations, also displayed in the extortion experiment, they are more willing to punish.

We expect the public in other democracies with experience of conflict to display similar tension between national loyalty

and commitment to the rule of law, but this requires empirical assessment. While the results are comparable across the two democracies, further research might examine the somewhat lower British willingness to prosecute, and the impact of the salience of the issue, and leader engagement with it, in the two countries. We further tested the selfishness of the perpetrator part of the argument with the extortion vignette, but additional work on the perceived motivations for wrongdoing, sexual violence, and the "selfishness aversion" inference is required and how an agent's goal variance may influence the attribution of blame and accountability (see Mitchell 2012).²⁷

Beyond the importance of accountability to the institutional integrity of civilian-led militaries, the broader practical, reputational, and policy importance of these findings is underlined by the critical literature on the futility, "end-times," or utopian nature of human rights (e.g., Hopgood 2013; Moyn 2012; Posner 2014). This literature picks up on accountability failures and points to the corrosive hypocrisy of Western democracies advocating one standard for the rest of the world but not applying it to themselves. As political theorists (Erez and Laborde 2020) have argued, the issue is to reconcile "cosmopolitanism" with the motivating power of "patriotism." The challenge is to make decent conduct and adherence to the rule of law consistent with national pride and loyalties.

ACKNOWLEDGMENTS

We thank Tanya Abraham, Kristin Bakke, Sabine Carey, Sofia Collignon, Laurence Cooley, Kate Cronin-Furman, Daniel Ellis, Lior Erez, Jacob Field, Jeffrey Howard, Tim Hicks, David Hudson, Slava Jankin, Nick Martin, Miranda Simon, Katerina Tertychnaya, Manuel Vogt, the University College London Conflict and Change group, and the editor and anonymous reviewers at the *Journal of Politics* for invaluable comments and suggestions. Support for this research was provided by a British Academy grant (SRG20/200584).

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27. We thank an anonymous reviewer for the term "selfishness aversion."

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