1 *The Impunity Presidency*

"We train our boys to be killing machines, then prosecute them when they kill!"[1] thundered Donald Trump, who, despite being known for his shocking statements, still managed to rattle the Pentagon with his foreboding tweet. The comments, posted on October 12, 2019, came just weeks before Trump would do what critics deemed unconscionable: offer clemency to three U.S. servicemembers charged or convicted of war crimes.[2] In the view of many experts, Trump's actions constituted among the most conspicuous, and egregious, rejections of the law of war by a modern American president. The backlash was scathing. The *New York Times* asked whether the laws of war were "history."[3] Trump has "ushered in the death of decency," decried one legal analyst.[4]

What sparked such uproar was not just Trump's bluster. It was his scorn for the law of war itself. Even gruesome details of the atrocities failed to give Trump pause. Chief Petty Officer Eddie Gallagher, who fellow Navy SEALs called "freaking evil," had been charged with slitting an Iraqi teenager's throat and convicted of taking a photo with the

[1] https://twitter.com/realDonaldTrump/status/1183016899589955584?lang=en

[2] Philipps, Dave. Nov. 22, 2019. "Trump Clears Three Service Members in War Crimes Cases." *New York Times*. www.nytimes.com/2019/11/15/us/trump-pardons.html

[3] Philipps, Dave. Nov. 16, 2019. "Trump's Pardons for Servicemen Raise Fears That Laws of War Are History." *New York Times*. www.nytimes.com/2019/11/16/us/trump-pardon-military.html

[4] Brennan, David. Dec. 12, 2023. "Trump Has Ushered in the 'Death of Decency', Former Federal Prosecutor Says after President Meets with Disgraced Navy SEAL." *Newsweek*. www.newsweek.com/donald-trump-ushered-death-decency-federal-prosecutor-president-meets-disgraced-navy-seal-1478775#:~:text=Glenn%20Kirschner%2C%20a%20former%20federal,"Our%20government%20is%20unrecognizable."&text=Trump%20has%20taken%20pride%20in,and%20convicted%20of%20war%20crimes

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corpse.[5] Army 1st Lt. Clint Lorance had been jailed for murdering two civilians in Afghanistan.[6] And Special Forces Maj. Mathew Golsteyn faced charges for the cold-blooded killing of an unarmed Afghan detainee.[7] Neither were the clemencies an anomaly. Earlier in 2019, Trump had pardoned Army 1st Lt. Michael Behenna, found guilty of murdering an Iraqi prisoner.[8] In 2020, Trump would also pardon four mercenaries sentenced for the deaths of fourteen Iraqi civilians.[9]

By the standards of his office, Trump's assaults on America's military justice system are unprecedented. But they are even more alarming when viewed against the backdrop of other brazen threats to upend norms of restraint within the U.S. military.[10] Consider that, as either a candidate or president, Trump has denounced the Geneva Conventions as "the problem"[11] and "out of date,"[12] pledged to bring back "a hell of a lot worse than waterboarding,"[13] advocated the killing of civilians,[14] promoted the widespread loosening of military rules

[5] Dec. 28, 2019. "Edward Gallagher: Navy Seals Called Platoon Leader 'freaking evil.'" *BBC*. www.bbc.co.uk/news/world-us-canada-50931195

[6] Tan, Michelle. Jan. 12, 2015. "Hero or Murderer? Soldiers Divided in 1LT Lorance Case." *Army Times*. www.armytimes.com/news/your-army/2015/01/12/hero-or-murderer-soldiers-divided-in-1lt-lorance-case/

[7] Lee, Carol E. and Courtney Kube. Dec. 13, 2018. "Green Beret Charged with Murdering Afghan Man." *NBC News*. www.nbcnews.com/news/military/green-beret-charged-murdering-afghan-man-n947586

[8] Zaveri, Milhir. May 6, 2019. "Trump Pardons Ex-Army Soldier Convicted of Killing Iraqi Man." *New York Times*. www.nytimes.com/2019/05/06/us/trump-pardon-michael-behenna.html

[9] Wamsley, Laurel. Dec. 23, 2020. "Shock and Dismay after Trump Pardons Blackwater Guards Who Killed 14 Iraqi Civilians." *NPR*. www.npr.org/2020/12/23/949679837/shock-and-dismay-after-trump-pardons-blackwater-guards-who-killed-14-iraqi-civil

[10] Neumann, Peter R. 2019. *Bluster: Donald Trump's War on Terror*. Oxford: Oxford University Press.

[11] Schreckinger, Ben. Mar. 30, 2016. "Trump Calls Geneva Conventions 'The Problem.'" *POLITICO*. www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/donald-trump-geneva-conventions-221394

[12] Benen, Steve. July 27, 2016. "Trump Sees Geneva Conventions as 'out of date'" *MSNBC*. www.msnbc.com/rachel-maddow-show/trump-sees-geneva-conventions-out-date-msna882881

[13] McCarthy, Tom. Feb. 7, 2016. "Donald Trump: I'd Bring Back 'A Hell of a Lot Worse than Waterboarding'." *Guardian*. www.theguardian.com/us-news/2016/feb/06/donald-trump-waterboarding-republican-debate-torture

[14] Hains, Tim. Dec. 2, 2015. "Trump: Islamic State Is Our No. 1 Threat." *Real Clear Politics*. www.realclearpolitics.com/video/2015/12/02/trump_isis_is_our_1_threat_--_we_cant_be_fighting_everybody_at_the_same_time.html

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of engagement,[15] praised torture,[16] and even endorsed dipping bullets in pig's blood, considered impure in the Muslim religion, to intimidate Islamic terrorists.[17] Trump has not just criticized specific rules for combat. He has discarded them as obsolete.

Trump's expressed contempt for international law does not stop there. He has attacked global laws on state sovereignty and the use of force, urging America to "fight fire with fire!"[18] Trump has threatened to bomb cultural sites,[19] proposed pillaging Middle Eastern oil fields for profit,[20] and lambasted the need to fight "politically correct" wars[21] while terrorists "chopp[ed] off heads."[22] Media headlines have screamed, "Endorsing Apparent War Crimes, Trump Abandons All Subtlety"[23] and "Donald Trump Says He'd Force U.S. Military to Commit War Crimes."[24] For decades, observers had seen great powers

[15] Cooper, Helene. Apr. 5, 2017. "Trump Gives Military New Freedom. But with That Comes Danger." *New York Times*. www.nytimes.com/2017/04/05/us/politics/rules-of-engagement-military-force-mattis.html

[16] Feb. 17, 2016. "Donald Trump: Torture Works." *Fox News*. www.youtube.com/watch?v=Kpj3pp10wD8

[17] Embury-Dennis, Tom. Mar. 19, 2019. "Trump Tells Fake Story about US General Slaughtering 49 Muslims Using Bullets Dipped in Pig's Blood, in Resurfaced Video." *Independent*. www.independent.co.uk/news/world/americas/us-politics/trump-muslims-general-pershing-pigs-blood-video-a8829676.html

[18] Jan. 26, 2017. "TRANSCRIPT: ABC News Anchor David Muir Interviews President Trump." *ABC News*. https://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602

[19] https://twitter.com/realDonaldTrump/status/1213593974679769093

[20] Borger, Julian. Sept. 21, 2016. "Trump's Plan to Seize Iraq's Oil: 'It's Not Stealing, We're Reimbursing Ourselves'." *Guardian*. www.theguardian.com/us-news/2016/sep/21/donald-trump-iraq-war-oil-strategy-seizure-isis

[21] Bump, Philip. Jan. 6, 2020. "Trump's Insistence on Proving His Toughness Is in Open Conflict with America's Actual Strength." *Washington Post*. www.washingtonpost.com/politics/2020/01/06/trumps-insistence-proving-his-toughness-is-open-conflict-with-americas-actual-strength/

[22] Hains, Tim. Nov. 23, 2015. "Trump: ISIS Is Chopping Off Heads and We Worry about Waterboarding." *Real Clear Politics*. www.realclearpolitics.com/video/2015/11/23/trump_isis_is_chopping_off_heads_and_we_worry_about_waterboarding.html

[23] Benen, Steve. Jan. 6, 2020. "Endorsing Apparent War Crimes, Trump Abandons All Subtlety." *MSNBC*. www.msnbc.com/rachel-maddow-show/maddowblog/endorsing-apparent-war-crimes-trump-abandons-all-subtlety-n1114976

[24] Morton, Victor. Mar. 3, 2016. "Donald Trump Says He'd Force U.S. Military to Commit War Crimes." *Washington Times*. www.washingtontimes.com/news/2016/mar/3/donald-trump-says-hed-force-us-military-commit-war/

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coalesce outwardly around a set of rules designed to check the use of military force. Trump has proven that there is nothing inevitable about this equilibrium.

Trump now returns to office with an apparent mandate from voters, flanked by a Republican-controlled Congress. The main lobbyist for Trump's war crime clemencies, former Fox News anchor Pete Hegseth, has taken the helm as Secretary of Defense – a man who in 2024 declared that "[o]ur boys should not fight by the rules written by dignified men in mahogany rooms eighty years ago."[25] Mathew Golsteyn, who was granted clemency by Trump, celebrated the unorthodox appointment, saying that the military would no longer be "lions led by morally bankrupt sheep."[26] When Trump left the White House the first time, the risk of an impunity agenda emerging within the U.S. military was considerable. Now with him back in office, the risk seems inevitable.

How did we get here, and how will events play out? Put simply, that is what this book tries to answer. It is about a leader, Trump, who has not just strained the law of war in private, but dismissed the law's very validity, blatantly and unrepentantly, in the open. To date, nearly all analysis on the law of war in Western democracies, including the U.S., has assumed that leaders would pay at least nominal respect to the law's principles.[27] Even President George W. Bush, the modern American leader most castigated for ignoring the law of war, was known for vigorously trying to justify his post-9/11 "war on terror" in legalistic terms. Despite regularly testing, and at times clearly violating, the Geneva Conventions, Western leaders have long paid lip service to their basic strictures.

This book, by contrast, examines a radical departure from that norm – a democratic leader who has dropped even the veneer of caring about the law of war. It explores how Trump's defiance shatters

[25] Hegseth, P. 2024. *The War on Warriors: Behind the Betrayal of the Men Who Keep Us Free*. Fox News Books, p. 181.

[26] Ryan, Missy, Dan Lamothe, John Hudson, and Alex Horton. Nov. 12, 2024. "Pete Hegseth Has Said Exactly How He Will Shake Up the Pentagon." *Washington Post*. www.washingtonpost.com/national-security/2024/11/12/pete-hegseth-trump-defense-secretary/

[27] However, see: Travern, David. 2021. *Law and Sentiment in International Politics: Ethics, Emotions, and the Evolution of the Laws of War*. Cambridge: Cambridge University Press.

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the long-held assumption, ingrained in the years following the signing of the Geneva Conventions in 1949, that Western democratic leaders will show public respect for international humanitarian law (IHL), the main corpus of law governing military conduct globally.[28] As the Trump case illustrates, even outward deference for the laws that guide warfare is fragile. The idea that flagrantly denigrating the law of war is no longer off-limits marks a crucial shift. It calls into question decades of presumptions about the normative influence of the global order regulating conflict.

This book examines the causes of Trump's overt challenges to IHL, but its analytic aim is broader. It attempts to advance a generalizable theory of when Western leaders may abdicate not their private, but their public-facing responsibilities to pay respect to the law of war. It makes a conditional case for this susceptibility. Drawing on in-depth case studies of Trump's war crime clemencies during his first term and original survey evidence from the U.S. public, this volume explains the conditions under which Western leaders may behave in ways outwardly hostile to the Geneva Conventions. Specifically, it answers three main puzzles: *What gives Western democratic leaders the (1) means, (2) motive, and (3) opportunity to overtly challenge the law of war?*

Regarding *means*, this book addresses how Western leaders can overcome a litany of executive constraints that, on the surface, appear to safeguard the law of war. "Structuralist" theories suggest that democratic leaders should be unable to maintain public support while driving through state and bureaucratic veto points that subvert IHL. By comparison, this book draws on studies of collective mobilization[29]

[28] For an overview of IHL, when it applies, and its underlying ethical basis, see: Bohrer, Ziv, Janina Dill, and Helen Duffy. 2020. *Law Applicable to Armed Conflict*. Cambridge: Cambridge University Press. Crawford, Emily and Alison Pert. 2024. *International Humanitarian Law*. Cambridge: Cambridge University Press. Dill, Janina. 2015. *Legitimate Targets: Social Construction, International Law and US Bombing*. Cambridge: Cambridge University Press. Frowe, Helen and Seth Lazar. 2018. *The Oxford Handbook of Ethics of War*. Oxford: Oxford University Press. Rudolphy, Marcela Prieto. 2023. *The Morality of the Laws of War: War, Law, and Murder*. Oxford: Oxford University Press. Solis, Gary D. 2012. *The Law of Armed Conflict: International Humanitarian Law in War*, 3rd ed. Cambridge: Cambridge University Press.

[29] Medina, Luis Fernando. 2013. "The Analytical Foundations of Collective Action Theory: A Survey of Some Recent Development." *Annual Review of Political Science* 16(1): 259–283. Olson, Mancur. 1965. *The Logic of*

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to show how leaders, as political entrepreneurs,[30] can marshal allies to consolidate power while disregarding the law of war. The explanation resembles a substantial scholarship on democratic backsliding, where would-be authoritarians undercut institutions by relying on ideologically aligned partners both inside and outside of government.[31]

Next, concerning *motive*, this book grapples with why democratic leaders may possess an incentive to blatantly disrespect IHL even when voters profess to value law and order. "Domestic audience cost" theories indicate that no natural electorate exists in democracies for explicitly challenging the law of war. Yet mounting research shows that citizens are often willing to trade off between an ethical aversion to contravening IHL and other priorities, such as achieving military advantage.[32] This volume adds to that scholarship by tracing

Collective Action: Public Goods and the Theory of Groups. Cambridge, MA: Harvard University Press. Ostrom, Elinor. 2009. "Collective Action Theory." In Boix, Carles and Susan C. Stokes, eds. *The Oxford Handbook of Comparative Politics*. Oxford: Oxford University Press.

[30] Moe, Terry M. 1988. *The Organization of Interests: Incentives and the Internal Dynamics of Political Interest Groups*. Chicago: University of Chicago Press. North, Douglass Cecil. 1990. *Institutions, Institutional Change, and Economic Performance: The Political Economy of Institutions and Decisions*. New York: Cambridge University Press. Riker, William H. 1986. *The Art of Political Manipulation*. New Haven: Yale University Press.

[31] Diamond, Larry. 2021. "Democratic Regression in Comparative Perspective: Scope, Methods, and Causes." *Democratization* 28(1): 22–42. Haggard, Stephan and Robert Kaufman. 2021. *Backsliding: Democratic Regress in the Contemporary World*. Cambridge: Cambridge University Press. Haemin Jee, Hans Lueders, and Rachel Myrick. 2022. "Towards a Unified Approach to Research on Democratic Backsliding." *Democratization* 29(4): 754–767. Norris, Pippa. 2017. "Is Western Democracy Backsliding? Diagnosing the Risks." HKS Working Paper No. RWP17-012. www.hks.harvard.edu/publications/western-democracy-backsliding-diagnosing-risks/. Przeworski, Adam. 2019. *Crises of Democracy*. Cambridge: Cambridge University Press. Waldner, David and Ellen Lust. 2018. "Unwelcome Change: Coming to Terms with Democratic Backsliding." *Annual Review of Political Science* 21: 93–113.

[32] Carpenter, Charli, Alexander H. Montgomery, and Alexandria Nylen. 2020. "Breaking Bad? How Survey Experiments Prime Americans for War Crimes." *Perspectives on Politics* 19(3): 912–924. Chilton, Adam S. 2015. "The Laws of War and Public Opinion: An Experimental Study." *Journal of Institutional and Theoretical Economics* 171(1): 181–201. Gelpi, Christopher, Peter D. Feaver, and Jason Reifler. 2009. *Paying the Human Costs of War: American Public Opinion and Casualties in Military Conflicts*. Princeton: Princeton University Press. Hatz, Sophia. 2021. "What Shapes Public Support for Torture, and Among Whom?" *Human Rights Quarterly* 43(4): 683–698.

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how ideology correlates with the foundational moral values of voters, which can yield public support for overt challenges to the law of war. It further reveals how elites can activate these preferences through selective, top-down messaging.

Last, regarding *opportunity*, this book addresses how democratic leaders can exploit political openings even in militaries that purport to prioritize IHL in their official doctrines and training. "Socialization" theories tend to assume that respect for IHL is deeply embedded in the cultures of professionalized, Western militaries. However, growing research indicates that these norms of restraint are often uneven within armed organizations.[33] Leveraging studies that highlight political polarization in the U.S. military,[34] this volume explains how pockets of ideological extremism can, even if isolated, back overt rejections of IHL. Amid civil-military relations that offer a permissive climate for partisan activation, leaders may manipulate this environment for office-seeking ends.

Liberman, Peter. 2006. "An Eye for an Eye: Public Support for War Against Evildoers." *International Organization* 60(3): 687–722. Sagan, Scott D., Benjamin A. Valentino, Charli Carpenter, and Alexander H. Montgomery. 2020. "Does the Noncombatant Immunity Norm Have Stopping Power? A Debate." *International Security* 45(2): 170–186. Wallace, Geoffrey P.R. 2013. "International Law and Public Attitudes toward Torture: An Experimental Study." *International Organization* 67(1): 105–140.

[33] Bell, Andrew. 2021. "Combatant Socialization and Norms of Restraint: Examining Officer Training at the US Military Academy and Army ROTC." *Journal of Peace Research* 59(2): 180–196. Bell, Andrew M., Thomas Gift, and Jonathan Monten. 2022. "The Moral Foundations of Restraint: Partisanship, Military Training, and Norms of Civilian Protection." *Journal of Peace Research* 59(5): 694–709. Stephens, Dale. 2019. "Roots of Restraint in War: The Capacities and Limits of Law and the Critical Role of Social Agency in Ameliorating Violence in Armed Conflict." *Journal of International Humanitarian Legal Studies* 10(1): 58–75.

[34] Feaver, Peter D. and Richard H. Kohn, eds. 2001. *Soldiers and Civilians: The Civil-Military Gap and American National Security*. Cambridge, MA: MIT Press. Holsti, Ole. 2001–2002. "Politicization of the United States Military: Crisis or Tempest in a Teapot?" *International Journal* 57(1): 1–18. Liebert, Hugh, and James Golby. 2017. "Midlife Crisis? The All-Volunteer Force at 40." *Armed Forces and Society* 43(1): 115–138. Robinson, Michael A. 2023. *Dangerous Instrument: Political Polarization and US Civil-Military Relations*. Oxford: Oxford University Press. Urben, Heidi A. 2014. "Wearing Politics on Their Sleeves? Levels of Political Activism of Active Duty Army Officers." *Armed Forces and Society* 40(3): 568–591. Urben, Heidi A. 2021. *Party, Politics, and the Post-9/11 Army*. New York: Cambria Press.

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This book's thesis closely parallels a broader phenomenon ascribed to Trump, and increasingly, other Western leaders[35] – that of assaulting seemingly sacrosanct laws and norms not "in the shadows," but "in the daylight."[36] In the past, allegations of U.S. military violations of IHL tended to spotlight scandals like abuse at Central Intelligence Agency (CIA) "black sites"[37] or cover-ups of misdirected drone strikes.[38] However, a defining feature of Trump's reign has been that, in everything from trying to overturn an election[39] to explicit race-baiting,[40] Trump has made few attempts to conceal wrongdoing. In a comparable way, Trump has applied this method to attack IHL overtly. Even if most democratic leaders will not follow suit, Trump's tactics constitute a new, if potentially devastating, blueprint.

At the broadest level, this book underscores the centrality of a leader's professed values in upholding the law of war in advanced, Western democracies. It concludes that Trump's record should prompt, if not a reversal in how experts think about the proclivity of democracies to succumb to disrespect of IHL, at least greater awareness of the dangers. If Trump can openly challenge the law of war in the U.S., an unlikely case, other Western democracies may also be at risk. Trump may uniquely personify a democratic leader eager to prey on vulnerabilities that result in direct, sustained strains to IHL. However,

[35] Faiola, Anthony. May 19, 2016. "Meet the Donald Trumps of Europe." *Washington Post*. www.washingtonpost.com/news/worldviews/wp/2016/05/19/meet-the-donald-trumps-of-europe/

[36] Baker, Peter and Susan Glasser. 2022. *The Divider: Trump in the White House, 2017–2021*. New York: Doubleday. Frum, David. 2020. *Trumpocalypse: Restoring American Democracy*. New York: Harper. Klaas, Brian. Jan. 14, 2020. "After Three Years of Trump, We've Lost Our Ability to Be Shocked." *Washington Post*. www.washingtonpost.com/opinions/2020/01/14/after-three-years-trump-weve-lost-our-ability-be-shocked/

[37] Mudd, Philip. 2019. *Black Site: The CIA in the Post-9/11 World*. New York: Liveright.

[38] Khan, Azmat. Dec. 18, 2021. "Hidden Pentagon Records Reveal Patterns of Failure in Deadly Airstrikes." *New York Times*. www.nytimes.com/interactive/2021/12/18/us/airstrikes-pentagon-records-civilian-deaths.html

[39] Bump, Philip. Aug. 2, 2023. "The Alleged Trump Crime That We All Saw." *Washington Post*. www.washingtonpost.com/politics/2023/08/02/trump-indictment-doj-jan6/

[40] Cassidy, John. July 15, 2019. "Trump's Overt Racism Is Uniting Democrats and Unnerving Some Republicans." *New Yorker*. www.newyorker.com/news/our-columnists/trumps-overt-racism-is-uniting-democrats-and-unnerving-some-republicans

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assuming that similar conditions will not emerge elsewhere clings too strongly to the hope that the post-1949 Geneva Conventions world is "different" from the past.

1.1 Why It Matters for Research

Trump's overt disrespect for IHL "matters." It matters for scholarship because the central topic of when leaders publicly uphold or reject IHL speaks to a largely understudied question in international politics and law. While a rich literature exists on what binds regimes to IHL, the bulk of this research centers on the related, but separate, question of compliance: whether nations refuse to torture, intentionally kill civilians, or commit other heinous acts in war.[41] Studies mostly take for granted that leaders will uphold "parchment guarantees," basic declarations of rights and protections intended to engender dignity amid political violence. These aspirations set the norms, or "rules of the game," within which militaries operate, deploy force, and project power.[42]

The lack of systematic research into how Western leaders publicly treat the law of war may be partially attributable to the difficulty of operationalization. Public statements and acts that severely breach norms are subjective, rare, and difficult to quantify in large-N, cross-country analyses. However, likely more significant is the prevailing belief that major international arrangements such as the law of war exhibit inertia. Political scientists and legal scholars often assume "path dependency," where global actors and institutions "lock in"

[41] Kriger, Heikie. 2015. *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*. Cambridge: Cambridge University Press. Simmons, Beth. 2010. "Treaty Compliance and Violation." *Annual Review of Political Science* 13(1): 273–296. Stubbins-Bates, Elizabeth. 2025. *A Framework for Compliance in International Humanitarian Law*. London: Bloomsbury. Watkin Kenneth. 2016. *Fighting at the Legal Boundaries: Controlling the Use of Force in Contemporary Conflicts*. New York: Oxford University Press.

[42] Hayashi, Nobuo. *Military Necessity: The Art, Morality, and Law of War*. Cambridge: Cambridge University Press. Lazar, Seth and Helen Frowe, eds. 2018. *The Oxford Handbook of Ethics of War*. New York: Oxford University Press. Lucas, Jr. George R. 2016. *Military Ethics: What Everyone Needs to Know*. New York: Oxford University Press. North, Douglass A. 1990. *Institutions, Institutional Change and Economic Performance*. New York: Cambridge University Press.

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over time.[43] For example, legal academic Mark A. Pollack summarizes that the "dominant view of most IR and legal scholars" is that "international institutions enjoy substantial robustness."[44] This consensus has largely extended to the Geneva Conventions.

Since at least the signing of the Geneva Conventions in 1949, scholars have broadly expressed confidence that party states would not stray too far, at least publicly, from their formal commitments to embrace IHL. For instance, researchers Matthew Evangelista and Nina Tannewald are hardly alone in referring to the "widespread acceptance of the Geneva Conventions norms in principle."[45] Sociologist Sidney Tarrow has likewise observed the phenomenon of global leaders feeling the need to "pay … lip service to the Geneva Conventions" even when violating the rules in private.[46] Gerald Draper wrote decades ago that "[t]here can be seen the strong impression that it is a bad thing to be discovered, *flagrante delicto*, violating the Law of War."[47]

Even among experts who are skeptical that Western leaders will publicly commit to IHL, the presumption has been that any deviation would be short-lived. Legal scholar Harold Koh, for instance, has suggested that "bold public acts of resistance" and "high opportunity costs, and international realpolitik realities" rein in leaders from ignoring international law.[48] The expectation is that efforts to upend IHL would be met with the same self-correcting mechanisms that have fortified the Geneva Conventions for more than a half-century. Because global compacts are harder to create than to maintain, once created, they are likely to prove robust.[49] The conjecture has been that

[43] Pierson, Paul. 2000. "Increasing Returns, Path Dependence, and the Study of Politics." *American Political Science Review* 94(2): 251–267.

[44] Pollack, Mark A. 2023. "Trump as a Change Agent in International Law: Ends, Means, and Legacies." In Krisch, Nico and Ezgi Yildiz, eds. *The Many Paths of Change in International Law*. Oxford: Oxford University Press.

[45] Tannenwald, Nina. 2017. "Assessing the Effects and Effectiveness of the Geneva Conventions." In Evangelista, Matthew and Nina Tannenwald, eds. *Do the Geneva Conventions Matter?* New York: Oxford University Press.

[46] Tarrow, Sidney. 2015. "War and Social Movements." *Emerging Trends in the Social and Behavioral Sciences*.

[47] Draper, Gerald I.A. 1965. "Rules Governing the Conduct of Hostilities – The Law of War and Their Enforcement." *International Law Issue* 18(3): 22–45.

[48] Koh, Harold. 2017. "The Trump Administration and International Law." *Washburn Law Journal* 56: 413–469.

[49] Keohane, Robert O. 1984. *After Hegemony*. Princeton: Princeton University Press.

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outward respect for IHL would be especially durable where leaders are subject to democratic constraints.

Like extensive research linking democracies to an international "zone of law" generally,[50] the idea that democracies are in fact more embracing of IHL has elicited considerable attention.[51] Many studies point to democracies having better IHL adherence records, such as being more apt to ratify IHL principles,[52] to support the International Criminal Court (ICC),[53] to take fewer civilian casualties,[54] and to perpetrate fewer mass killings in counterinsurgencies.[55] Other scholarship, however, has disputed this claim.[56] Yet according to most scholars, democracies always revert to holding the law of war in high regard publicly. As political scientist James Morrow has explained,

[50] Simmons, Beth A. 1998. "Compliance with International Agreements." *Annual Review of Political Science* 1: 75–93.

[51] Ginsburg, Tom. 2021. *Democracies and International Law*. Cambridge: Cambridge University Press. Ginsburg, Tom. 2022. "Democracies and International Law: An Update." *Chicago Journal of International Law* 23(1): 1–26. Tannenwald, Nina. 2017. "Assessing the Effects and Effectiveness of the Geneva Conventions." In Evangelista, Matthew and Nina Tannenwald, eds. *Do the Geneva Conventions Matter?* New York: Oxford University Press.

[52] Morrow, James D. 2007. "Why Do States Follow the Laws of War." *American Political Science Review* 101(3): 559–572.

[53] Chapman, Terrence L. and Stephen Chaudoin. 2013. "Ratification Patterns and the International Criminal Court." *International Studies Quarterly* 57(2): 400–409. Meernik, James and Jamie Shairick. 2011. "Promoting International Humanitarian Law: Strong States and the Ratification of the ICC Treaty." *International Area Studies Review* 14(2): 23–48. Simmons, Beth and Allison Danner. 2010. "Credible Commitments and the International Criminal Court." *International Organization* 64(2): 225–256.

[54] Valentino, Benjamin A., Paul K. Huth, and Sarah E. Croco. "Bear Any Burden? How Democracies Minimize the Costs of War." *Journal of Politics* 72(2): 528–544.

[55] Valentino, Benjamin, Paul Huth, and Dylan Balch-Lindsay. 2004. "'Draining the Sea': Mass Killing and Guerrilla Warfare." *International Organization* 58(2): 375–407.

[56] Conrad, Courtenay R., Daniel W. Hill, Jr., and Will H. Moore. 2018. "Torture and the Limits of Democratic Institutions." *Journal of Peace Research* 55(1): 3–17. Downes, Alexander. 2007. "Restraint or Propellant? Democracy and Civilian Fatalities in Interstate Wars." *Journal of Conflict Resolution* 51(6): 872–904. Downes, Alexander. 2008. *Targeting Civilians in War*. Ithaca: Cornell University Press. Valentino, Benjamin, Paul Huth, and Sarah Croco. 2011. "Covenants without the Sword International Law and the Protection of Civilians in Times of War." *World Politics* 58(3): 339–377. Rejali, Darius. 2009. *Torture and Democracy*. Princeton: Princeton University Press.

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even when democratic leaders breach IHL, "they do not do so in clear violation of their legal obligations and commonly offer a legal justification to cover their acts."[57]

The Trump case, however, deviates sharply from this pattern. No other modern Western leader has so clearly and consistently displayed contempt for IHL publicly. Democracies are not free from leaders who violate the Geneva Conventions in secret, or under the guise of compliance. Yet as political scientist David Forsyth has written, appeals to the universal values of the law of war have long been heralded as a symbol of "responsible statehood."[58] At a minimum, Trump's failure to respect IHL in public raises the questions of why and how Trump disrupted a steady-state that had lasted for more than seventy years since the establishment of the Geneva Conventions. It equally prompts reflection about whether other Western democracies will endure similar breakdowns.

1.2 Why It Matters for Policy and Governance

Beyond the scholarly literature, this volume sheds light on crucial policy and governance challenges regarding IHL. This is because Trump's refusal to pay even lip service to IHL is not just a continuation, or gradual ramping up, of past efforts to ignore the law of war. It is something new. When prior democratic executives have overstepped the limits or spirit of IHL, they have rarely, if ever, failed to rationalize their behavior as legal. What Trump did – openly and directly flout the law of armed conflict – constituted a different threat to its foundations. If even advanced democracies cannot agree to protect dignity in war, then the architecture on which the global system of governing conflict is built loses purpose. It makes noncompliance more likely and gives others license to dismiss its values.

Since Trump first entered office in 2017, major global conflicts have already pointed to potential signs of weakening public deference

[57] Morrow, James D. 2016. "Atrocity, Policy, and the Laws of War: What Does Political Science Have to Say to Law?" In Kontorovich, Eugene and Francesco Parisi, eds. *Economic Analysis of International Law*. Cheltenham, UK: Edward Elgar.

[58] Forsythe, David. 1999. "1949 and 1999: Making the Geneva Conventions Relevant after the Cold War." *Revue Internationale de la Croix-Rouge/ International Review of the Red Cross* 81(834): 265–276.

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to IHL, albeit outside the West. In Israel's war against Hamas, for example, several high-ranking Israeli state officials, including Prime Minister Benjamin Netanyahu,[59] have made pronouncements explicitly downplaying IHL's importance.[60] In Ukraine, Russian President Vladimir Putin has openly declared his contempt for laws governing state sovereignty and military norms of restraint.[61] The same year that Trump issued his first war crime clemencies in 2019, an analysis by a major humanitarian organization called the global rise of war crimes "the new normal."[62] At the end of Trump's first administration, the United Nations (UN) High Commissioner for Human Rights warned of "a heightened risk of atrocity crimes" escalating across the world.[63]

Even off the battlefield, Trump's military impunity agenda has manifested in indelible, if often underappreciated ways. Within America, it was reflected, at least tangentially, on January 6, 2023, when disproportionate numbers of the military community along with other Trump supporters ransacked the U.S. Capitol.[64] This included some

[59] Egan, Lauren. Dec. 12, 2023. "Biden Says Netanyahu 'Has to Change,' Accuses Israel of 'Indiscriminate Bombing.'" *POLITICO*. www.politico.com/news/2023/12/12/biden-says-netanyahu-has-to-change-00131399

[60] Brawn, Steph. Jan. 4, 2024. "LBC: Israeli Ambassador to UK Says EVERY Gaza Building Is a Target." *The National*. www.thenational.scot/news/24026946.lbc-israeli-ambassador-uk-says-every-gaza-building-target/ / Goldenberg, Tia. Jan. 18, 2023. "Harsh Israeli Rhetoric against Palestinians Becomes Central to South Africa's Genocide Case." *Associated Press*. apnews.com/article/israel-palestinians-south-africa-genocide-hate-speech-97a9e4a84a3a6bebeddfb80f8a030724 / McGreal, Chris. Oct. 16, 2023. "The Language Being Used to Describe Palestinians Is Genocidal." *Guardian*. www.theguardian.com/commentisfree/2023/oct/16/the-language-being-used-to-describe-palestinians-is-genocidal / Da Silva, Chantal. 2023. Nov. 13. "'Nakba 2023': Israel Right-wing Ministers' Comments Add Fuel to Palestinian Fears." *NBC News*. www.nbcnews.com/news/world/gaza-nakba-israels-far-right-palestinian-fears-hamas-war-rcna123909

[61] Kramer, Andrew E. and Marc Santora. Oct. 20, 2022. "At Mass Grave Site in Ukraine's Northeast, a Sign of Occupation's Toll." *New York Times*. www.nytimes.com/2022/09/16/world/europe/ukraine-graves-russia.html

[62] Stauffer, Brian. 2019. "Atrocities as the New Normal." Human Rights Watch. www.hrw.org/world-report/2019/country-chapters/global-2

[63] Borger, Julian. Dec. 8, 2023. "World Faces 'Heightened Risk' of Mass Atrocities Due to Global Inaction." *Guardian*. www.theguardian.com/law/2023/dec/08/un-and-us-efforts-to-stop-mass-atrocities-have-waned-activists-warn

[64] Sidner, Sara, Anna-Maja Rappard, and Marshall Cohen. Feb. 4, 2021. "Disproportionate Number of Current and Former Military Personnel Arrested in Capitol Attack, CNN Analysis Shows." *CNN*. https://edition.cnn.com/2021/01/31/us/capitol-riot-arrests-active-military-veterans-soh/index.html

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of the most notorious figures from the carnage, such as Navy veteran Jacob Anthony Chansley, the "QAnon shaman,"[65] and Air Force veteran Ashley Babbit, who was shot and killed by police.[66] As Trump whipped up his supporters for combat,[67] current and ex-servicemembers responded to his "marching orders" by attacking the seat of U.S. democracy. The crisis confirmed Trump's ability to provoke unconstrained violence among a military population.

Such examples mark what could be a turning point. The developing world has always been rife with blatant breaches IHL. In recent years, endorsements of gross human rights violations have continued unabated in states such as Myanmar,[68] Burkina Faso,[69] Syria,[70] and Sudan.[71] However, in the Trump era, what has the potential to be different is leaders of major powers overtly disregarding commitments to IHL. This is most concerning for nations that purport to be part of the global community, where standards for upholding IHL have traditionally been higher, and which bear primary responsibility for enforcing international laws. Maintaining respect for the law of war is not automatic. It requires sustaining the conditions that uphold its principles.

[65] Ziezulewicz, Geoff. Jan. 11, 2021. "'QAnon Shaman' Charged with Storming the Capitol Is a Navy Veteran." *Navy Times*. www.navytimes.com/news/your-navy/2021/01/12/qanon-shaman-charged-with-storming-the-capitol-is-a-navy-veteran/

[66] Barry, Ellen, Nicholas Bogel-Burroughs, and Dave Philipps. Jan. 7, 2021. "Woman Killed in Capitol Embraced Trump and QAnon." *New York Times*. www.nytimes.com/2021/01/08/us/who-was-ashli-babbitt.html

[67] Savage, Charlie. Jan. 10, 2021. "Incitement to Riot? What Trump Told Supporters Before Mob Stormed Capitol." *New York Times*. www.nytimes.com/2021/01/10/us/trump-speech-riot.html

[68] Aug. 8, 2023. "'Dramatic Increase' in Myanmar War Crimes, UN Probe Finds." *Al Jazeera*. www.aljazeera.com/news/2023/8/8/dramatic-increase-in-myanmar-war-crimes-un-probe-finds

[69] Ahmed, Kaamil. Jun 20, 2023. "War Crimes Surge in Burkina Faso, the World's 'Most Neglected Crisis." *Guardian*. www.theguardian.com/global-development/2023/jun/30/war-crimes-surge-army-islamist-militants-burkina-faso-worlds-most-neglected-crisis

[70] Simons, Marlise. Nov. 15, 2023. "French Judges Issue Warrant for Assad in Syria War Crimes Case." *New York Times*. www.nytimes.com/2023/11/15/world/middleeast/bashar-al-assad-syria-war-crimes.html

[71] Nichols, Michelle. Jan. 29, 2024. "ICC Prosecutor Believes Warring Parties Committing War Crimes in Darfur." *Reuters*. www.reuters.com/world/africa/icc-prosecutor-believes-warring-parties-committing-war-crimes-darfur-2024-01-29/

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For policymakers and practitioners, countering an agenda outwardly hostile to IHL involves mitigating its downstream consequences. Western militaries, civilian governments, and humanitarian organizations engaged in security reform all have a role to play. However, for defenders of the Geneva Conventions, the Trump case also highlights the need to stop maliciousness at its source. This requires broader strategies to raise the political costs for Western leaders who openly challenge IHL and to deter or punish bad behavior. As Trump's impunity agenda shows, both domestic and international accountability mechanisms are currently lacking. Understanding why and what can or cannot be done about it is a theme to which this book will return.

1.3 But Is Trump a "War Criminal"?

It is worth clarifying that this book focuses predominantly on the politics of Western leaders publicly challenging IHL – the combination of interests and institutions that enables Trump's norm-breaking behavior. While it delves into international law, and specifically war crimes, it does not adjudicate whether Trump is technically a "war criminal." Much prior work has been done on when challenges to the law of war cross over into clear-cut violations, how courts judge the illegality of military conduct, and the extent to which U.S. presidents are bound by international law generally, and the law of war specifically.[72] Although legal experts have addressed these questions in relation to both Trump and other U.S. commanders-in-chief,[73] resolving them is beyond the scope here.

[72] Bradley, Curtis A. and Jack L. Goldsmith. 1997. "Customary International Law as Federal Common Law: A Critique of the Modern Position." *Harvard Law Review* 110(4): 815–876. Breyer, Stephen. 2015. *The Court and the World: American Law and the New Global Realities*. New York: Penguin. Koh, Harold Hongju. 2017. "International Law as Part of Our Law." *American Journal of International Law* 98(1): 43–57.

[73] Bellinger III, John B. 2019. "The Trump Administration's Approach to International Law and Courts: Are We Seeing a Turn for the Worse?" *Case Western Reserve Journal of International Law* 51(1): 7–27. Goldsmith, Jack Landman and Mercer, Shannon. 2019. "International Law and Institutions in the Trump Era." German Yearbook of International Law, 2019, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3324582. Koh, Harold Hongju. 2019. *The Trump Administration and International Law*. Oxford: Oxford University Press.

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This distinction is important because it speaks to the crux of the thesis. Trump's public indignation at the legitimacy of IHL is important irrespective of whether he has technically committed "war crimes." This mirrors assessments of the unprecedented nature of Trump's attacks on U.S. institutions, including core tenets of democracy, such as electoral integrity and peaceful leadership transitions.[74] While the strict legality of Trump's undermining of these tenets is debatable, his dismantling of executive norms within the U.S. is indisputable. The outcome of the 2024 election and the vacating of federal charges against him do not change the fact that Trump is unique in publicly attacking the norms of the presidency. The same is true for Trump's public attacks on the law of war.

This is not to imply that no compelling case can be made that Trump is guilty of war crimes. Accusations that Trump has violated the law of war have been forcefully levied by a number of human rights lawyers, academics, national security experts, public officials, and policy analysts. Moreover, countless popular accounts have detailed Trump's aggressive affronts to IHL and labeled him a literal war criminal. For instance, journalist Adam Serwer has denounced Trump as a "war-crimes enthusiast," insisting that "[t]his is not an exaggeration, a mischaracterization, or a misrepresentation."[75] Writer Andrew Sullivan has chastised Trump as "the war crime president."[76] A prominent war historian has accused Trump of lording over a "war-crimes presidency."[77]

Many popular indictments of Trump use the term "war criminal" in a nontechnical way. However, such assessments may not be unfounded, particularly in the case of his military clemencies.

[74] Howell, William G., and Terry M. Moe. 2020. *Presidents, Populism, and the Crisis of Democracy*. Chicago: University of Chicago Press. Jacobs, Lawrence R. 2002. *Democracy under Fire: Donald Trump and the Breaking of American History*. New York: Oxford University Press. Peters, Jeremy W. 2022. *How Republicans Lost Their Party and Got Everything They Ever Wanted*. New York: Penguin Random House.

[75] Serwer, Adam. Nov. 27, 2019. "The War-Crimes President." *Atlantic*. www.theatlantic.com/ideas/archive/2019/11/trump-war-crimes/602731/

[76] Sullivan, Andrew. Jan. 10, 2020. "Donald Trump Is the War Crimes President." *New York Magazine*. https://nymag.com/intelligencer/2020/01/andrew-sullivan-donald-trump-is-the-war-crimes-president.html

[77] Beorn, Waitman Wade. Nov. 27, 2019. "The War-Crimes Presidency." *The New Republic*. https://newrepublic.com/article/155857/war-crimes-presidency

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While most analysts agree that Trump's interventions did not breach U.S. law,[78] considerable attention has focused on whether they violated the IHL principle of "command responsibility."[79] The legal precept, embodied in the Geneva Conventions, requires military heads to ensure accountability in preventing or penalizing war crimes. It stipulates that even if leaders do not personally "pull the trigger," they can still be held criminally culpable. Liability requires that leaders have authority over an armed group, know about a future or past criminal act, and neglect to stop it or to exact punishment.

Many experts contend that one or more of Trump's war crime clemencies meet these thresholds for guilt. For example, Jelena Aparac of the UN has stated categorically that several of Trump's pardons "violate U.S. obligations under international law."[80] Gabor Rona, former international legal director of Human Rights First, has claimed that some of Trump's pardons "may, in fact, themselves constitute war crimes."[81] Yet there is no consensus on the issue. Although in most cases the application of the command responsibility principle tends to be clear, the unique fact patterns of Trump's clemencies are not conducive to a blanket verdict. As law professor Stuart Ford has concluded, "Trump … probably committed at least one war crime and possibly several."[82] However, multiple questions emerge.

One is whether Trump's commutations actually prevented reasonable punishment for the offenders. Although Trump did preempt Mathew Golsteyn's trial, others had already served substantial

[78] Maurer, Dan. "War Crime Clemency: The President's Self-(Defeating) Pardon." *Maryland Law Review* 82(3): 581–669.

[79] Finucane, Brian. 2021. "U.S. Recognition of a Commander's Duty to Punish War Crimes." Stockholm Center for International Law. Rona, Gabor. Dec. 24, 2020. "Can a Pardon Be a War Crime?: When Pardons Themselves Violate the Laws of War." *Just Security*. www.justsecurity.org/64288/can-a-pardon-be-a-war-crime-when-pardons-themselves-violate-the-laws-of-war/

[80] Ernst, Jonathan. Dec. 30, 2020. "Trump's Pardon of Blackwater Iraq Contractors Violates International Law, UN Says." *CNBC*. www.cnbc.com/2020/12/30/trumps-pardon-of-blackwater-iraq-contractors-violates-international-law-un-says.html

[81] Rona, Gabor. Dec. 24, 2020. "Can a Pardon Be a War Crime?: When Pardons Themselves Violate the Laws of War." *Just Security*. www.justsecurity.org/64288/can-a-pardon-be-a-war-crime-when-pardons-themselves-violate-the-laws-of-war/

[82] Ford, Stuart. 2020. "Has President Trump Committed a War Crime by Pardoning War Criminals?" *American University International Law Review* 35(4): 757–820.

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time behind bars. Another issue is whether the command responsibility principle extends to leadership successions. This is relevant because several of the crimes took place before Trump entered office the first time in 2017. Judges have differed on this question at the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the International Criminal Tribunal for the Former Yugoslavia. A final issue is whether the severity of the underlying offenses constituted "war crimes." Eddie Gallagher, in particular, was acquitted of murder and exclusively found guilty of posing with a dead victim.

Pragmatically, also at stake is whether an international court would adjudge some or any of Trump's clemencies to fall under its jurisdiction. Law professor Maj. Gen. Charles J. Dunlap (Ret.), for example, has argued that several of Trump's clemencies applied to cases that would not have met the ICC's standards for prosecuting war crimes. This is because, according to the ICC's governing Rome Statute, its war crimes jurisdiction only takes effect when acts occur "as part of a plan or policy" or "a large-scale commission of such crimes."[83] At the very least, it can be said that global prosecution of Trump's alleged crimes is unlikely to the point of implausible. One analysis, for instance, found no prior executive being tried for war crimes as a result of pardoning combatants.[84]

Discerning the legality of Trump's war crime clemencies is important. The intense scrutiny elicited by the cases in international law circles underscores their complexity. Yet resolving the issue is not essential for the purposes here. Regardless of whether Trump has technically violated the Geneva Conventions, Trump's main impact stems from his unabashed criticism of the validity of the law of war. His brazen defiance of military justice, evident in his public statements and actions, sets him apart from other Western leaders. Unlike previous U.S. presidents, Trump has not just pressed the boundaries of IHL. He has questioned the necessity of having the law of war at all. This aspect of his time as commander-in-chief, more than anything else, makes Trump distinctive.

[83] Dunlap, Charles J. 2019. "Reasonable People Can Differ on Trump's Military Justice Actions." *Small Wars Journal*.

[84] Ford, Stuart. 2020. "Has President Trump Committed a War Crime by Pardoning War Criminals?" *American University International Law Review* 35(4): 757–820.

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1.4 A Challenge to the IHL Consensus

If there is one consensus to emerge from the literature on regime type and IHL, it is that Western democratic leaders tend to give public deference to the law of war, even if they do not always comply. This book challenges that consensus, but it is important to understand. It implies that if democratic leaders will breach IHL in private but not public, then expressed commitments are not just about internalizing normative principles. Rather, external constraints force public declarations. Although deference to IHL may be partially a function of norm diffusion, the consensus surrounding the strength of the Geneva Conventions has rarely presumed that democratic leaders would never be enticed to derogate from IHL. Instead, it has been based on more realist assumptions that underlie path dependency.

First, "structuralist" scholarship points to democratic leaders generally lacking the *means* to publicly challenge IHL. The logic is that, unlike in totalitarian regimes, they face a raft of veto players that threaten to block blatant violations of international law.[85] Structural accounts suggest that democratic forces both inside and outside of government tie the hands of leaders publicly.[86] Checks by bureaucrats and civil society actors – including media, NGOs, and other interest groups – may be strongest when democracies absorb international laws into their own body of national rules and customs.[87] Research

[85] Konig, Thomas, George Tsebelis, and Marc Debus, eds. 2010. *Reform Processes and Policy Change: Veto Players and Decision-Making in Modern Democracies*. New York: Springer. Tsebelis, George. 1999. "Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis." *American Political Science Review* 93(3): 591–608. Tsebelis, George. 2002. *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press.

[86] Finnemore, Martha and Kathryn Sikkink. 1998. "International Norms Dynamics and Political Change." *International Organization* 52(4): 887–917. Goldstein, Judith and Robert O. Keohane, eds. 1993. *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca: Cornell University Press. Ginsburg, Tom. 2006. "Locking in Democracy: Constitutions, Commitment, and International Law." *New York University Journal of International Law and Politics* 38: 707–759. Simmons, Beth A. 1998. "Compliance with International Agreements." *Annual Review of Political Science* 1: 75–93. Tacsan, Joaquín. 1992. *The Dynamics of International Law in Conflict Resolution*. Dordrecht: Martinus Nijhoff.

[87] Clark, Ann Marie. 2001. *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*. Princeton: Princeton University Press.

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shows that as domestic laws and constitutions become "enmeshed" with international law, leaders grow bound to a complex latticework of barriers that militate against obvious IHL misconduct.[88]

Second, the "domestic audience cost" theory indicates that democratic leaders have limited *motive* to overtly challenge IHL. The reason is that public opinion serves as a hard check on office-seeking politicians in making military and foreign policy decisions.[89] Scholars argue that democratic citizenries pressure elected leaders to act within certain normative parameters. Because voters hold underlying values that align with principles embodied in international law – such as reverence for rules, human rights, and minority protections – politicians expect to face electoral penalties for violating these tenets.[90]

DeMars, William E. 2005. *NGOs and Transnational Networks: Wild Cards in World Politics*. London: Pluto Press. Fisher, Roger. 1981. *Improving Compliance with International Law*. Charlottesville: University of Virginia Press. Garrett, Geoffrey and Barry R. Weingast. 1993. "Ideas, Interests, and Institutions: Constructing the EC's Internal Market." In Goldstein, Judith and Robert O. Keohane, eds. *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca: Cornell University Press. Ginsburg, Tom, Svitlana Chernykh, and Zachary Elkins. 2008. "Commitment and Diffusion: How and Why National Constitutions Incorporate International Law." *University of Illinois Law Review* 201(1): 201–237. Keck, Margaret E. and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press.

[88] Keohane, Robert O. 1992. "Compliance with International Commitments: Politics within a Framework of Law." *Proceedings of the Annual Meeting (American Society of International Law)* 86: 176–180.

[89] Fearon, James D. 1994. "Domestic Political Audiences and the Escalation of International Disputes." *American Political Science Review* 88(3): 577–592. Kertzer, Joshua D. and Ryan Brutger. 2016. "Decomposing Audience Costs: Bringing the Audience Back into Audience Cost Theory." *American Journal of Political Science* 60(1): 234–249. Tomz, Michael. 2007. "Domestic Audience Costs in International Relations: An Experimental Approach." *International Organization* 61(4): 821–840. Tomz, Michael, Jessica L.P. Weeks, and Keren Yarhi-Milo. 2020. "Public Opinion and Decisions about Military Force in Democracies." *International Organization* 74(1): 119–143.

[90] Chilton, Adam. 2014. "The Influence of International Human Rights Agreements on Public Opinion: An Experimental Study." *Chicago Journal of International Law* 15: 110–137. Dai, Xinyuan. 2005. "Why Comply? The Domestic Constituency Mechanism." *International Organization* 59(2): 363–398. Morse, Julie C. and Tyler Pratt. 2022. "Strategies of Contestation: International Law, Domestic Audiences, and Image Management." *Journal of Politics* 84(4): 2080–2093. Simmons, Beth A. 2009. *Mobilizing for Human Rights*. Cambridge: Cambridge University Press. Zartner, Dana. 2014. *Courts, Codes, and Custom: Legal Tradition and State Policy toward International*

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Studies show that the ratification of international laws can serve as an ethical and political impetus encouraging citizens to demand observance of global legal obligations.[91]

Third, "socialization" theory suggests that democratic leaders should be prevented from publicly challenging IHL because of the limited *opportunity* to affect the culture of professionalized militaries. Across the West, militaries have developed extensive socialization processes designed to instill in members key principles of battlefield ethics. A central goal is to forge new military identities steeped in restraint and respect for the law of war.[92] Scholars assert that as official training initiatives have proliferated, norms against openly challenging IHL have become ingrained into the organizational ethos of militaries.[93] Consequently, defying these dominant military cultures should be difficult because of deeply instilled mindsets defining the chains of command.

Taken collectively, the consensus is not that Western democratic leaders will never be tempted to break IHL. Instead, it is that Western leaders lack the "means, motive, and opportunity" to defy IHL openly. This book's thesis, however, is that these constraints may be more perceived than actual. Unader certain conditions, democratic leaders may have more reason and ability to publicly reject IHL than is often

Human Rights and Environmental Law. Oxford: Oxford University Press. Zartner, Dana. 2020. "Internalization of International Law." *International Studies Association and Oxford University Press*.

[91] Kreps, Sarah E. and Geoffrey P.R. Wallace. 2016. "International Law, Military Effectiveness, and Public Support for Drone Strikes." *Journal of Peace Research* 53(6): 830–844. Wallace, Geoffrey. 2013. "International Law and Public Attitudes Toward Torture: An Experimental Study." *International Organization* 67(1): 105–140.

[92] International Committee of the Red Cross. 2018. *The Roots of Restraint in War*. Geneva: ICRC. www.icrc.org/en/publication/4352-roots-restraint-war / McQuinn, Brian, Fiona Terry, Oliver Kaplan, and Francisco Gutiérrez-Sanin. 2021. "Introduction: Promoting Restraint in War." *International Interactions* 47: 795–824.

[93] Checkel, Jeffrey T. 2017. "Socialization and Violence: Introduction and Framework." *Journal of Peace Research* 54(5): 592–605. Franke, Volker C. 2000. "Duty, Honor, Country: The Social Identity of West Point Cadets." *Armed Forces and Society* 26(2): 175–202. Jenks, Chris. 2020. "The Efficacy of the U.S. Army's Law of War Training Program." Lieber Institute West Point. Stubbins Bates, Elizabeth. 2014. "Towards Effective Military Training in International Humanitarian Law." *International Review of the Red Cross* 96(895–896): 795–816.

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supposed. To make this argument, this book examines the case of Trump, whose direct tests of IHL have not just been the result of incidental words and deeds but part of a coherent, deliberate strategy. Later, the case selection of Trump is explained, followed by a preview of what has given Trump the means, motive, and opportunity to openly challenge IHL.

1.5 Case Selection: Trump

This book focuses on Trump not only because his defiance of the law of war has been so explicit but also because his infractions have occurred in such an unlikely context. As commander-in-chief of the world's most powerful military, Trump has not only pressed the boundaries of proper conduct in combat. He has openly questioned the relevance of having boundaries. Moreover, Trump has not done so in a pariah or rogue state, but in an advanced, Western democracy. For decades, American leaders have at least given public deference to the Geneva Conventions, both formally via official government policy and informally via expressed commitments. The U.S. military itself, as enshrined in its Law of War Manual, has also long championed principles consistent with rules-based fighting.[94]

One could argue that Trump's overt challenges to IHL are just a natural extension of his tumultuous leadership. To say that Trump's raison d'être is torching "the system," governing with lawlessness, and never apologizing is not to make a new point.[95] Neither is to observe Trump's well-known disdain for the "rules-based international order,"[96] which saw his first administration withdraw from

[94] Office of the General Counsel. 2015. *Department of Defense Law of War Manual*. Department of Defense. https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF

[95] Campbell, John L. 2022. *Institutions Under Siege: Donald Trump's Attack on the Deep State*. Cambridge: Cambridge University Press. Greenberg, Karen J. 2021. *Subtle Tools: The Dismantling of Democracy from the War on Terror to Donald Trump*. Princeton: Princeton University Press. Hart, Roderick P. 2020. *Trump and Us: What He Says and Why People Listen*. Cambridge: Cambridge University Press.

[96] Nye, Jr. Joseph S. 2019. "The Rise and Fall of American Hegemony from Wilson to Trump." *International Affairs* 95(1): 63–80.

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the UN Human Rights Council,[97] terminate treaties like the Iran Nuclear Deal,[98] and threaten to abandon the North Atlantic Treaty Organization (NATO).[99] Yet compared to his predecessors, Trump's direct challenges to IHL are unique. His assaults on the validity law of war, aimed not just at attacking it, but at doing so overtly, are different from prior U.S. presidents. This is true despite several caveats.

First, to be clear, pointing out Trump's uniqueness is not to suggest that his predecessors in the White House had always led the maintenance and execution of IHL. The opposite might even be true. Historically, for example, the U.S. did not ratify the main Geneva Conventions of 1949 until 1955, following the armistice of the Korean War.[100] It has still never ratified the 1977 Additional Protocol I, which places the protection of civilians at the center of its provisions.[101] Furthermore, America has refused to be party to several major humanitarian global efforts, such as the Ottawa Convention to promote land mine bans[102] and various high-profile initiatives to restrict cluster munitions.[103] Detractors have routinely criticized U.S. leaders for trying to interpret IHL in ways that align with their own geopolitical ambitions.

Additionally, the point is not that American leaders before Trump had never run afoul of IHL. Modern U.S. presidents have regularly bent IHL strictures, and, in practice, a case can be made that several did so more severely than Trump. Political scientist John Tirman, for

[97] 2018. "US Quits 'Biased' UN Human Rights Council." *BBC*. www.bbc.co.uk/news/44537372

[98] Beauchamp, May 8, 2018. "Trump's Withdrawal from the Iran Nuclear Deal, Explained." *Vox*. www.vox.com/world/2018/5/8/17328520/iran-nuclear-deal-trump-withdraw

[99] Barnes, Julian E. and Helene Cooper. Jan. 14, 2019. "Trump Discussed Pulling U.S. From NATO, Aides Say amid New Concerns over Russia." *New York Times*. www.nytimes.com/2019/01/14/us/politics/nato-president-trump.html

[100] https://treaties.un.org/pages/showDetails.aspx?objid=0800000280158b1a

[101] Wahal, Anya. Jan. 7, 2022. "On International Treaties, the United States Refuses to Play Ball." Council on Foreign Relations. www.cfr.org/blog/international-treaties-united-states-refuses-play-ball

[102] Apr. 5, 2012. "Why Hasn't the U.S. Signed an International Ban on Land Mines?" *Los Angeles Times*. www.latimes.com/archives/blogs/world-now/story/2012-04-05/why-hasnt-the-u-s-signed-an-international-ban-on-land-mines

[103] Crook, John R. 2008. "United States Opposes Ban on Cluster Munitions, Supports Alternative CCW Negotiations." *American Journal of International Law* 102(4): 889–892.

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instance, in summing up its record on IHL, has observed that America has traditionally upheld "a two-tiered system of a policy" that "avows to uphold the Geneva Conventions" but with an "unacknowledged practice" of violating them.[104] From missile strikes bloodying civilians to CIA torture cells, recent U.S. presidents have routinely pressed the bounds of legality. Scores of texts with titles such as *Civilizing Torture: An American Tradition* and *American Immunity: War Crimes and the Limits of International Law* speak to the ubiquity of these controversies.[105]

Finally, it is not the case that American leaders prior to Trump had always zealously pursued justice for war crimes. For instance, foreign policy expert James Palmer has acknowledged that "while the violence of Trump's rhetoric is new, effective impunity for U.S. soldiers in foreign lands is not."[106] Perhaps the closest parallel to Trump's clemencies comes from the 1968 "My Lai Massacre" in Vietnam, in which Army Lt. William Calley, Jr., after being convicted in the murder of twenty-two civilians, had his sentence commuted to house arrest by President Richard Nixon.[107] The fraught relations between American leaders and military justice have also been reflected in consistently skeptical postures toward the ICC, with presidents from George W. Bush to Joe Biden finding themselves at odds with the court's operations.[108]

[104] Tirman, John. 2011. *The Death of Others: The Fate of Civilians in America's Wars*. Oxford: Oxford University Press.

[105] Brundage, W. Fitzhugh. 2018. *Civilizing Torture: An American Tradition*. Cambridge, MA: Belknap Press. Hagopian, Patrick. 2013. *American Immunity: War Crimes and the Limits of International Law*. Amherst: University of Massachusetts Press.

[106] Palmer, James. May 21, 2019. "America Loves Excusing Its War Criminals." *Foreign Policy*. https://foreignpolicy.com/2019/05/21/america-loves-excusing-its-war-criminals-trump-pardons/

[107] Jones, Howard. 2017. *My Lai: Vietnam, 1968, and the Descent into Darkness*. Oxford: Oxford University Press. Lane, Charles. May 20, 2019. "Trump's War-crime Pardons Could Be His Most Nixonian Moment Yet." *Washington Post*. www.washingtonpost.com/opinions/trumps-war-crime-pardons-could-be-his-most-nixonian-moment-yet/2019/05/20/c212d954-7b19-11e9-8bb7-0fc796cf2ec0_story.html

[108] Goldsmith, Jack. 2003. The Self-Defeating Criminal Court. *University of Chicago Law Review* 70(1): 89–104. "The U.S. Does Not Recognize the Jurisdiction of the International Criminal Court." Taylor, Adam. Mar. 16, 2023. "The United States and ICC Have an Awkward History." *Washington Post*. www.washingtonpost.com/world/2023/03/16/icc-us-cooperation-international-criminal-court-history/

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Trump's overt challenges to IHL, however, are distinct. Other American presidents have sworn a commitment to IHL. This includes both Democrats and Republicans, in wartime and peacetime. U.S. leaders have not just claimed to operate within the limits of the law of war. They have professed to revere IHL and frequently to exceed the rules and regulations imposed by the Geneva Conventions. While critics often charge that such statements brim with double standards,[109] U.S. presidents have outwardly kept intact the aim of conforming to the law of war. What distinguishes Trump is not just that he has pressed the boundaries of IHL. It is that he has failed to pay homage to even its most basic pillars. Furthermore, he frames his behavior not as a necessary evil, but as worthy of praise.

With some notable exceptions,[110] this distinctiveness is not always recognized. Many observers treat Trump as following in the footsteps of other U.S. presidents who have plausibly violated IHL. The reasoning is that just as prior commanders-in-chief have sidestepped the Geneva Conventions, Trump has done the same, but no worse. The most obvious foil is George W. Bush, who more than any contemporary president was accused of riding roughshod over IHL. Following 9/11, opponents regularly attacked Bush's "war on terror" for violating the Geneva Conventions.[111] Some have made the case that Bush's transgressions on issues such as detentions, torture, the stripping of habeas corpus, and violating Iraq's sovereignty far outweigh Trump's infractions in their severity.

Yet while Trump and Bush have both challenged IHL, the crucial distinction is that Trump has done so overtly. Bush did not. While Bush was accused of breaching the Geneva Conventions, it was rarely for ignoring IHL altogether. Most experts observe that Bush routinely engaged in

[109] O'Toole, Fintan. May 26, 2022. "Our Hypocrisy on War Crimes." *New York Review*. www.nybooks.com/articles/2022/05/26/our-hypocrisy-on-war-crimes-fintan-otoole/

[110] Ford, Stuart. 2021. "Don Quixote or Darth Vader? President Trump's Views on Views on International Humanitarian Law." *Washington University Global Studies Law Review* 20(1): 45–98.

[111] Brody, Reed. 2011. *Getting Away with Torture the Bush Administration and Mistreatment of Detainees*. New York: Human Rights Watch. Haas, Michael. 2009. *George W. Bush: War Criminal? The Bush Administration's Liability for 269 War Crimes*. Westport, CT: Greenwood. Mayer, Jane. 2008. *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*. New York: Anchor Books.

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legal and intellectual contortions to prove, even if futilely, that his policies were lawful. For example, one account described Bush's "torture memos," which justified his "enhanced interrogation" program, as "81 pages of twisted legal reasoning."[112] Another said that the document read like "the advice of a mob lawyer to a mafia don on how to skirt the law and stay out of prison."[113] A liberal columnist conceded that Bush "made torture a matter of hair-splitting, legalistic debate."[114]

Experts across the political spectrum have made similar points. Bush's former U.S. Assistant Attorney General Jack Goldsmith, for example, has written that, in dealing with national security, Bush was "excessively legalistic."[115] Legal expert Curtis Bradley has contended that "in some respects … the [Bush] Administration was too focused on the law."[116] Law professor Rosa Brooks penned an op-ed expressly claiming that "Bush at least tried to cloak his administration's use of torture in legal sophistry, a backhanded testament to the strength of the norms his aides sought to circumvent…. In contrast to Bush, Trump makes no secret of his disdain for the laws of war."[117] In these ways, Bush's preoccupation with the law serves to reinforce Trump's uniqueness, rather than suggest an equivalence.

To put Trump in context, Table 1.1 highlights select quotes from U.S. presidents dating back to World War II. Unlike Trump, who has denigrated the Geneva Conventions as "the problem,"[118] other

[112] Editorial. Apr. 4, 2008. "There Were Orders to Follow." *New York Times*. www.nytimes.com/2008/04/04/opinion/04fri1.html

[113] Lewis, Anthony. July 15, 2004. "Making Torture Legal." *New York Review of Books*. www.nybooks.com/articles/2004/07/15/making-torture-legal/?pagination=false.

[114] Robinson, Eugene. July 30, 2008. "A Torture Paper Trail." *Real Clear Politics*. www.realclearpolitics.com/articles/2008/07/bushs_torture_logic_will_soon.html

[115] Goldsmith, Jack. 2007. *The Terror Presidency: Law and Judgment inside the Bush Administration*. New York. W.W. Norton

[116] Bradley, Curtis A. 2009. "The Bush Administration and International Law: Too Much Lawyering and Too Little Diplomacy." *Duke Journal of Constitutional Law and Public Policy* 4: 57–75.

[117] Brooks, Rosa. Jan. 8, 2020. "If Trump Orders War Crimes, the Military Will Face an Impossible Choice." *Washington Post*. www.washingtonpost.com/outlook/2020/01/08/if-trump-orders-war-crimes-military-will-face-an-impossible-choice/

[118] Schreckinger, Ben. Mar. 30, 2016. "Trump Calls Geneva Conventions 'The Problem.'" *POLITICO*. www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/donald-trump-geneva-conventions-221394

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Table 1.1 *Presidential quotes regarding the law of war*[119]

President	Quote	Years in office
Donald Trump	**Called the Geneva Conventions "the problem"**	**2017–2021**
Barack Obama	Declared that "the United States of America must remain a standard bearer in the conduct of war."	2009–2017
George W. Bush	Maintained that he "adher[ed] to the spirit of the Geneva Convention."	2001–2009

[119] Schreckinger, Ben. Mar. 30, 2016. "Trump Calls Geneva Conventions 'The Problem.'" *POLITICO*. www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/donald-trump-geneva-conventions-221394/ Obama, Barack. Dec. 9, 2009. "Remarks on Accepting the Nobel Peace Prize in Oslo." www.presidency.ucsb.edu/documents/remarks-accepting-the-nobel-peace-prize-oslo, Jan. 28, 2002. "Text: Bush with Afghan Chairman Hamid Karzai." *Washington Post*. www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushtext_012802.html/Clinton, William J. Aug. 21, 1996. "Statement on Signing the War Crimes Act of 1996." www.presidency.ucsb.edu/documents/statement-signing-the-war-crimes-act-1996/Bush, George. Dec. 2, 1989. "Letter to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on United States Military Assistance to the Philippines." www.presidency.ucsb.edu/documents/letter-the-speaker-the-house-representatives-and-the-president-pro-tempore-the-senate/Reagan, Ronald. Jan 29, 1987. "Message to the Senate Transmitting a Protocol to the 1949 Geneva Conventions." www.presidency.ucsb.edu/documents/message-the-senate-transmitting-protocol-the-1949-geneva-conventions, Carter, Jimmy. Nov. 28, 2016. "America Must Recognize Palestine." www.cartercenter.org/news/editorials_speeches/jimmy-carter-nyt-112816.html/Ford, Gerald R. Jan. 22, 1975. "Statement on the Geneva Protocol of 1925 and the Biological Weapons Convention." www.presidency.ucsb.edu/documents/statement-the-geneva-protocol-1925-and-the-biological-weapons-convention/Nixon, Richard. Mar. 19, 1971. "Proclamation 4038 – National Week of Concern for Americans Who are Prisoners of War or Missing in Action." www.presidency.ucsb.edu/documents/proclamation-4038-national-week-concern-for-americans-who-are-prisoners-war-or-missing/Johnson, Lyndon B. July 20, 1966. "The President's News Conference." www.presidency.ucsb.edu/documents/the-presidents-news-conference-1169/Kennedy, John F. Feb. 1, 1963. "Proclamation 3516—Red Cross Month, 1963." www.presidency.ucsb.edu/documents/proclamation-3516-red-cross-month-1963. Eisenhower, Dwight. Dec. 11, 1959. "Remarks upon Receiving an Honorary Degree of Doctor of Laws at Delhi University." www.presidency.ucsb.edu/documents/remarks-upon-receiving-honorary-degree-doctor-laws-delhi-university/Truman, Harry S. Feb. 5, 1947. "Message to the Congress Transmitting First Annual Report on U.S. Participation in the United Nations." www.presidency.ucsb.edu/documents/message-the-congress-transmitting-first-annual-report-us-participation-the-united-nations

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Table 1.1 (*cont.*)

President	Quote	Years in office
Bill Clinton	Expressed hope of achieving "further improvements in promoting respect for the laws of war."	1993–2001
George H.W. Bush	Insisted that he should act "in accordance with recognized principles of international law and pursuant to [his] constitutional authority … as Commander in Chief."	1989–1993
Ronald Reagan	Lauded "[t]he United States … [for] be[ing] in the forefront of efforts to codify and improve the international rules of humanitarian law in armed conflict."	1981–1989
Jimmy Carter	Advocated "that the Geneva Conventions and other human rights protections apply to all parties at all times."	1977–1981
Gerald Ford	Praised "the United States … [for] long support[ing] the principles and objectives of the Geneva Protocol."	1974–1977
Richard Nixon	Said that "all civilized peoples are subject to the basic humanitarian standards long established in international law and custom."	1969–1974
Lyndon Johnson	Stated that he wanted "the Geneva Conventions of 1949 … [to] be given fuller and more complete application."	1963–1969
John F. Kennedy	Praised the American Red Cross for "acting under the provisions of the Geneva Conventions," thereby "furnish[ing] volunteer aid to the sick and wounded of armies in time of war and … protect[ing] prisoners of war:"	1961–1963

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Table 1.1 (*cont.*)

President	Quote	Years in office
Dwight Eisenhower	Proclaimed that although for "centuries nations have sent their youth, armed for war, to oppose their neighbors … [t]he time has come for mankind to make the rule of law in international affairs as normal as it is now in domestic affairs."	1953–1961
Harry S. Truman	Praised the concept that "aggressive war is a crime against humanity for which individuals as well as states must be punished" and stated "[w]e cannot have lasting peace unless a genuine rule of world law is established and enforced."	1945–1953

past executives have all defended IHL. This again includes George W. Bush, who maintained that he always "adher[ed] to the spirit of the Geneva Convention"[120] and relentlessly couched his defenses in the language of IHL.[121] It also includes Richard Nixon, the other modern U.S. president most accused of trafficking in lawlessness, who affirmed that "all civilized peoples are subject to the basic humanitarian standards long established in international law and custom."[122] Other recent commanders-in-chief have made similarly aspirational statements.

Notably, Trump's overt challenges to IHL have come during a time of relative tranquility for the U.S. military abroad. Although American troops have remained engaged in conflict zones such as Afghanistan, Iraq, Libya, and Syria, the Trump era has in no way been marked by the heightened tensions faced by many of his predecessors. There has

[120] Jan. 28, 2002. "Text: Bush with Afghan Chairman Hamid Karzai." *Washington Post*. www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushtext_012802.html

[121] Bush, George W. 2010. *Decision Points*. New York: Crown.

[122] Nixon, Richard. Mar. 19, 1971. "Proclamation 4038 – National Week of Concern for Americans Who are Prisoners of War or Missing in Action." www.presidency.ucsb.edu/documents/proclamation-4038-national-week-concern-for-americans-who-are-prisoners-war-or-missing

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been, for example, no equivalent "discourse of fear"[123] that suffused American politics like in the post-9/11 moment. Nor has there been any comparable anxiety like in the 1970s when much of the U.S. public demanded a swift end to the Vietnam War. Nowhere has there been a sense of impending insecurity as during the aftermath of Japan's strike on Pearl Harbor. And yet, Trump chose this period to attack IHL, despite an apparent lack of military urgency.

Compounding this is Trump's selection of former Fox News host Pete Hegseth as Secretary of Defense, who endured a bruising confirmation hearing before the Senate Armed Services Committee, due to, among other reasons, his vehement criticism of the need for the law of war. Hegseth has dismissed international law as a "folly" and derided the "crazy maze of rules of engagement" that bind combatants. He has called for "unleash[ing]" "our boys" to become the "most ruthless," "most uncompromising," and "most overwhelmingly lethal" force in the world. Hegseth has said that the U.S. should abandon the Geneva Conventions and instead "fight by its own rules."[124] He has further lambasted IHL as "written by dudes in cloakrooms in Europe [who] thought they could fight polite wars."[125]

All of this evidence points to the clear outlier nature of Trump, who has both declined to pay outward deference to IHL and, through unprecedented acts such as granting war crime clemencies, attacked the military justice system. Trump is not the first U.S. leader to undermine the law of war. But he is the first to flout the Geneva Conventions so blatantly, and without remorse. Before Trump, American presidents had been willing to brush aside adherence and exploit gray areas. Yet none had neglected to publicly affirm a belief in the validity of the law of armed conflict. What has given Trump the *means*, *motive*, and *opportunity* to overtly challenge the law of war? The remainder of this chapter previews the answers to these puzzles that guide the rest of the book.

[123] Altheide, David L. 2014. "'Constructing Psychological Terror Post 9/11." In Sinclair, Samuel Justin and Daniel Antonius, eds. *The Political Psychology of Terrorism Fears*. New York: Oxford University Press.

[124] De Luce, Dan and Courtney Kube. "Some Military Officers Worry That Pete Hegseth Could Turn a Blind Eye to U.S. War Crimes." *NBC News*. www.nbcnews.com/politics/national-security/military-officers-worry-pete-hegseth-turn-blind-eye-us-war-crimes-rcna183732

[125] Nov. 13, 2024. "The Man Picked as Defence Secretary Wants to Purge the Pentagon." *Economist*. www.economist.com/united-states/2024/11/13/the-man-picked-as-defence-secretary-wants-to-purge-the-pentagon

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1.6 Preview of the Argument

The first puzzle this book will examine is how Trump has possessed the *means* to explicitly challenge IHL, and particularly, how he has cut through the multiple sources of influence, both within the federal government and civil society, that jealously guard its principles. As with most Western democracies, rules regulating U.S. military behavior have developed over generations and are the product of diverse actors. The law governing military conduct, the Uniform Code of Military Justice (UCMJ), is established by Congress, and while the commander-in-chief holds ultimate authority over the Department of Defense (DoD), an array of forces both inside and outside the military shape its operations. For these reasons, Trump's powers, both formal and political, to attack IHL would appear to be highly limited.

This book's answer, as explained in Chapter 2, is that Trump has not enacted his agenda alone. Instead, as a "political entrepreneur," he has done so by collectively mobilizing accomplices on America's political right. To explain how, the concept of the "impunity coalition" is developed, which consists of Trump himself, conservative media (especially Fox News), and Republican lawmakers on Capitol Hill. Drawing on original and secondary sources, case studies are presented of Trump's November 2019 and December 2020 war crime interventions to detail how Trump and his allies inspired and defended the impunity agenda. Additional illustrative examples, such as Trump's support for torture, depict how these acts are part of a broader strategy to push back against IHL.

The second puzzle this volume will address is Trump's *motive* to publicly challenge IHL. It is not obvious that a sizable constituency would support the impunity agenda, and especially not conservative voters who Trump has most aimed to court. Trump's strategy in every election has been to double down on mobilizing Republican turnout rather than trying to bridge partisan divides. But in domestic policy, conservatives are typically viewed as staunch law-and-order advocates. Indeed, Trump has spent considerable time expressly casting himself as the president of law and order and as an antidote to social unrest. To the extent that Trump has sought to galvanize the right-wing base, openly challenging IHL could be seen as inconsistent with what his constituents prioritize.

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This book's answer, as laid out in Chapter 3, is that the values that make conservatives prioritize law and order in domestic criminal justice can take on different meanings in war. Drawing on studies of moral reasoning, it claims that, domestically, conservatives tend to support the law because they view victims of crime as the in-group, police as the ultimate authority, and blackletter law as embodying purity. In war, by contrast, conservatives tend to think of U.S. servicemembers as the in-group, the commander-in-chief as the ultimate authority, and American ideals as embodying purity. To show the resonance of this agenda and the impact of elite messaging, results are presented from a series of national experiments in 2020 that link support for rejecting IHL to the moral values held by conservatives.

The last puzzle this book will analyze is why Trump has perceived the *opportunity* to upend longstanding commitments to IHL within the U.S. military. For Trump, ensuring military support has been critical to prevent the impunity agenda from backfiring among his core Republican constituency. Because conservative voters hold the military in high esteem, outspoken rejection of the agenda might imperil its political success. Like most Western militaries, however, the individual branches of the U.S. military, in conjunction with the DoD, operate under an edifice of self-governing norms and regulations. Because of the military's extensive training in the law of war, one might have expected the military's fidelity to IHL to appear impervious to strain.

This book's answer, discussed in Chapter 4, traces to the U.S. military's well-known conservative composition. Specifically, it argues that Trump perceived that he could keep the military's support while openly challenging IHL because of three factors. The first was his strong electoral showings among active-duty servicemembers and veterans. The second was his expectation that he could use *Fox News* to spread impunity messaging. Last was Trump's belief that GOP Congress members, particularly veterans, could grant his agenda credibility with the military. In addition to reviewing data on the conservative makeup of America's military, a case study is presented of January 6, documenting how the rise of far-right extremism has made its ranks predisposed to Trump's messaging on violence.

Turning next to the future of the impunity agenda, Chapter 5 highlights why overt challenges to the law of war are likely to be self-executing now that its political advantages are clear. Especially

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with Trump back in the White House, it describes how built-in features of America's conservative landscape, especially competition in the right-wing media space and polarization in Congress, encourage direct challenges to IHL. It also traces how powerful lobbying organizations and court-martialed U.S. servicemembers continue to leverage their notoriety and political muscle to advance the impunity agenda. The chapter shows that the dense social and professional networks that bind the "war crime lobby" help to create a combustible mix that could sustain the impunity agenda.

Last, Chapter 6 recaps the book's main contributions. It discusses practical takeaways for IHL policymakers and practitioners and explains why future efforts to counteract public challenges to the law of war will run into political barriers. Drawing on evidence from the recent Israel-Hamas and Russia-Ukraine wars, it shows how parallels to the impunity agenda are increasingly evident outside the West. The book ends by posing questions for future research and returning to the theme that, despite the progress that Western democracies have made to promote the Geneva Conventions, these gains cannot be taken for granted. It concludes that preventing militaries from violating widely agreed-upon principles for deploying force requires grasping multifaceted political conditions that induce their decay.

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