STRIKE AND DESTROY: A COMPARISON AND CONTRAST OF THE SIEGE OF VUKOVAR AND RECENT AMERICAN WAR CRIMES



In this study, I will draw upon my experiences as an expert witness in sociology at some of the most infamous American military courts-martial in the current war on terror: three Abu Ghraib trials, the Baghdad Canal killings, the Operation Iron Triangle killings, the Maywand District killings, and the courts-martial pertaining to the bullying, hazing, and suicide of Chinese-American soldier Danny Chen (see Mestrovic 2007, 2008, 2009, 2012). I will also draw upon my experiences as an expert witness in the Dario Kordić case at the Hague. For the purposes of this study, I will focus on the common strands that the American cases exhibit from the year 2003, when victory was declared in the war in Iraq, up to the present, as the war is winding down in Afghanistan – and the lessons to be learned from these cases. Far from just being cases about individual "monsters" (Ressler & Schachtman, 1993) or lone-wolf criminals, the internal reports and data used in the courts-martial offer a rare look into the inside workings of the US military and its philosophies and doctrines. One common theme is that ever since military victory was declared in Iraq in 2003, the US has been fighting "insurgents" with a "strike and destroy" philosophy that has been coupled with an ambiguous "counter-insurgency" (COIN) doctrine. In plain language, the US has been using rules of engagement (ROE) that allow for arresting, detaining, and killing suspected "insurgents" on sight at the same time that it has tried to build goodwill through a philosophy the soldiers call "having tea with the village elders", and their military commanders call the philosophy of "winning hearts and minds". These two war philosophies are incompatible with each other. Another common theme has been that of "cross-leveling" or the switching of individual soldiers, platoons, companies, and battalions as if they were chess pieces or lifeless items on a power-point slide as opposed to the traditional military doctrine of preserving unit cohesion as far as possible. The result has been the erosion and near-destruction of the very idea that a military unit (from platoon to brigade level) is a "society". Soldiers no longer experience the group cohesion or what sociologists call "social integration" that was the traditional focus of both the US military and classical sociology since the writings of the founding father of sociology, Emile Durkheim (1893). The predictable result of this increase in what Durkheim (1893, 1897) called anomie or "social disorganization" has been an increase in war crimes, suicide rates, drug use, bullying, PTSD, and other social problems within the military (Meštrović & Brown, 1985).

The Kordić case is typical of ICTY indictments and verdicts which aim to punish individuals who are high up in the chain of command, and they follow the logic of command responsibility. It is important to note that the Kordić case also allows one a glimpse into the chaos, social disorganization, and lack of social cohesion in the brutal wars in the former Yugoslavia in the 1990s. But these social and

cultural dimensions of war crimes in the former Yugoslavia are in the background of the stories of those war crimes, much like these similar dimensions remain the background of American accounts of American war crimes. As a sociologist, I will focus on the cultural and social dimensions of war crimes, not the legal aspects. Finally, I will draw some tentative connections with the Vukovar massacre. My goal is more to point to the direction for further research and reflection regarding the war crimes committed at Vukovar than to offer anything like closure. Far from offering or seeking closure, I hope to open doors to new ways of perceiving war crimes from a sociological perspective.

During and following World War II, a host of illustrious sociologists and anthropologists studied US soldiers and the war, including but not limited to Ruth Benedict, Talcott Parsons, Erik Erikson, Samuel Stouffer, and Samuel Marshall. Stouffer's *The American Soldier* (1949) has become a classic, albeit, it is currently out of print and its lessons about the importance of group cohesion have not been followed in the current war. In the current war on terror and also with regard to the brutal wars in the former Yugoslavia in the 1990s, journalists have written and continue to write most of what we think we know about these wars. Sociologists and anthropologists, for the most part (but with some notable exceptions), have remained silent on these wars. It is important to open the door again to the sociological and anthropological dimensions of war and war crimes.

The conceptualization of responsibility as a "storm"

Most laypersons and professionals alike seem to subscribe to the incorrect theoretical understanding that responsibility is strictly a legal matter, and that it fits the crime for the most part: Given adequate scientific and forensic investigation, and given a "fair" trial, guilty individuals (but not groups, organizations, and societies) are punished while the innocent are not. Nothing in the history of my experiences as an expert witness supports this naïve view. The more adequate and cultural – theoretical understanding of responsibility is offered by Durkheim's follower, Paul Fauconnet, in a book entitled La Responsabilité (1928). Fauconnet depicts responsibility as a "cloud" that hovers over several different sanctionees (a sanctionee is one selected to bear punishment and responsibility), and it is never entirely predictable upon whom (an individual or group) the "cloud" will settle. I prefer my own metaphor as an extension of Fauconnet's metaphor of the cloud, namely: responsibility is like a *storm* that will strike someone or some group as the sanctionee. Somebody must be punished in response to crime – but whom, where, what, and how the storm of responsibility strikes seems arbitrary. For the purposes of the present discussion, the decisive issue this: does the storm of responsibility travel up the chain of command and strike high-ranking leaders, or does it travel down the chain of command and strike low-ranking soldiers? Either way, is the court process the end of responsibility, or are there other alternatives for who or what should be or is responsible for war crimes?

To be sure, there are some pre-set directions that will channel the storm of responsibility into certain, specific directions. In Europe, at least since the Nu-

remberg trials, and throughout the ICTY trials, the direction seems to be one of pursuing high-ranking civilian and military leaders. This is the doctrine of command responsibility, namely, that high-ranking officials are responsible for war crimes whether or not they participated directly and whether or not they knew about the crimes. Following this Nuremberg tradition, judges at the Hague routinely pronounce judgments that if the leaders did not know of the crimes their subordinates committed, the leaders should have known – and either way (whether they knew or did not know), the leaders are guilty for what their subordinates did. The doctrine of command responsibility exists in law books in the United States as well, but is not followed. Instead, the rule followed in all the cases I have examined (and in general) is that individuals are responsible for their acts regardless of who gave the unlawful orders, because every individual has the duty to disobey an unlawful order. (We shall not pursue here the lengthy discussion here of how a low-ranking soldier could possibly match the legal knowledge of a judge or attorney in determining whether an order or policy is lawful or not.) Thus, American courts-martial have ruled in a way that is the opposite of the European model: low--ranking soldiers are prosecuted and punished for war crimes, while high-ranking civilian and military officials seem to be immune from responsibility. This is an astounding sociological fact that points to profoundly different cultural rules in implementing responsibility. I am not taking sides with the European or American model of responsibility, but merely noting the profound differences between them.

For example, in the Abu Ghraib courts-martial, seven so-called "rotten apples" (corrupt soldiers) were punished for the torture and abuse committed there by the US Army as well as by OGA "other government agencies" (CIA, FBI, and others) and civilian contractors. Numerous government reports and expert witness testimony has determined conclusively that the torture techniques came to Abu Ghraib from Guantanamo Bay and Bagram Air Force Base in Afghanistan via high-ranking officers, intelligence agencies, and civilian contractors (Gibney, 2008, Kennedy, 2007, Mestrovic, 2007, Morris, 2008, Strasser 2004). There is simply no way that seven soldiers could have dreamed up techniques on their own that were in operation at Guantanamo and Bagram. The important point is that two high-ranking colonels who were the commanders at Abu Ghraib received letters of reprimand; seven low-ranking soldiers went to military prisons – while the OGA, Secretary of Defense, high-ranking generals and others who dreamed up, planned, and implemented the torture techniques remained and will forever remain immune from responsibility for the crimes at Abu Ghraib.

The abuse at Abu Ghraib occurred in 2003, resulting in the conviction of seven low-ranking soldiers in the years 2004 and 2005. The Levin-McCain Report was issued by the U.S. Senate Armed Services Committee in 2008. This report established and documented at least two uncontestable facts, among others: First, that the torture and abuse at Abu Ghraib had been planned and orchestrated from the White House and traveled down the chain of command to the lowest-ranking US soldiers at Abu Ghraib. Second, that the torture and abuse at Abu Ghraib were part of a widespread policy that included similar "techniques" at Guantanamo, in Afghanistan, other sites in Iraq, and black hole rendition sites. Metaphorically speaking, the Levin-McCain report is like a giant, dangling participle in history

that makes no difference in comprehending, expiating, or correcting America's cultural turn toward "the dark side".

This is because the government's and culture media's success in scapegoating the "few bad apples" at Abu Ghraib as sadists and as being solely responsible for the abuse makes it difficult for most people to digest the import of the Levin--McCain report. It is a fact, established in sworn testimony by experts in psychology at the courts-martial, that not a single convicted soldier suffered from any form of personality disorder. It is also a fact, established in open court, that the command, social, and work climates at Abu Ghraib were "poisoned" or in more scientific language, "dysfunctional". In fact, this same pattern of finding nonsadistic, low-ranking soldiers convicted in the context of egregiously disorganized and dysfunctional social climates is found in other American sites of war crimes in the current war on terror, including Operation Iron Triangle, the Baghdad Canal killings, and the Afghanistan "kill team" murders.¹ Space does not permit anything like a full explication of these claims, which are documented in Mestrovic (2007, 2008, 2009, 2012), by other authors, and by several film documentaries.² At least since the publication of Whoever Hunts Monsters (Ressler and Schactman 1993), the dominant approach in explaining heinous crimes has been to focus on the individual sociopath. But this route is blocked in the American war crimes cases: the convicted soldiers were not sociopaths. The command climate established throughout the chain of command from the White House to the lowest--ranking soldier was seriously dysfunctional. In general, in every war crimes case in which I participated as an expert witness, the individuals who were tried were not sociopaths but the command climate was always dysfunctional. However, the conceptual apparatus for comprehending the import of dysfunctional command climates in war crimes is problematic. The law is not able to assess responsibility for creating the monstrous social climates that lead to monstrous acts - the law judges individuals as if they were asocial creatures, as if the social context for their crimes does not matter.

In the Operation Iron Triangle murders, the brigade commander, Colonel Michael Steele, issued an unlawful ROE (rule of engagement) to kill every military-aged Iraqi male on sight. I detail the evidence for this fact in my book, *The Good Soldier on Trial*. Three low-ranking soldiers were found guilty of premeditated murder and sent to Ft. Leavenworth prison while Colonel Steele received a letter of reprimand. More importantly, evidence of numerous, other instances of murder based upon this unlawful ROE committed by an entirely different company and different platoons was kept out of the trials, and the other soldiers who followed this unlawful ROE were never prosecuted. Again, the two important points are that the "storm" of responsibility never traveled high up the chain of command, to Colonel Steele or his superiors who approved his unlawful ROE, and the "storm" of responsibility never struck the many others in the brigade who followed this unlawful ROE. It found, descended upon, and struck only three low-ranking soldiers along the pre-sent American cultural emphasis upon individual responsibility. To

For documentation concerning the dysfunctional social climates at these other sites of abuse, see the trial transcripts and videotaped lectures from my course on war crimes at Texas A&M University found at http://itunes.apple.com/WebObjects/MZStore.woa/wa/viewiTunesUCollection?id=394384077.

² For documentation concerning these films (especially Gibney, 2008, Kennedy, 2007, and Morris, 2008).

repeat, in the American cultural way of thinking, if Colonel Steele (or any other high-ranking officer) had issued an unlawful order, the low-ranking soldier has the duty and responsibility to disobey it. In this American cultural logic, the low-ranking soldier is always responsible, and the commander is not.

Similarly, in the Baghdad Canal killings, three sergeants were convicted and sent to Ft. Leavenworth for killing four unarmed, Iraqi prisoners. There were no letters of reprimand issued for any of the high-ranking commanders. Evidence of other, similar killings in the brigade was completely suppressed. In the Maywand District killings (see Mestrovic, 2012), four low-ranking soldiers were convicted and sent to Ft. Leavenworth for killing three unarmed, Afghan males in three separate instances. The convicted soldiers were all from Alpha Company in Battalion 2-1. But similar "questionable kills" of unarmed Afghan males occurred in several companies in an entirely different battalion, 1-17. None of the murders committed by soldiers in 1-17 were ever charged or prosecuted. The brigade commander of Stryker Brigade, Colonel Harry Tunnell, received a "letter of admonition" as punishment (which is one shade less severe than the letter of reprimand). This is because his commanders determined that his "strike and destroy" brigade motto and philosophy was overly aggressive and laid the stage for the war crimes, even though he did not order them and did not know about them.

Theoretically speaking, each of the American cases I have summarized above would have been tried differently had these cases gone to the Hague instead of an American court-martial. Presumably, judges at the Hague would have applied the doctrine of command responsibility to the cases. But abstract logic and theory fail to explain the cultural logic of how the storm of responsibility truly works.

In cases before the ICTY regarding the Vukovar massacre, the storm of responsibility seemed to travel high up the chain of command, but disappointed many in Croatia in whom it struck and how it struck them with "justice." Slobodan Milošević was charged, in part, for the Vukovar massacre – but died of a heart attack during his trial. In his case, justice was literally not served. Slavko Dokmanović was charged, but committed suicide. His suicide prevented the storm of justice from striking him. Major Veselin Śljivančanin was found guilty of murder and torture, but not of crimes against humanity, and the end result of his complicated challenges to his sentence resulted in a sentence of ten years. General Mile Mrkšić was sentenced to twenty years. Miroslav Radić was acquitted. The disappointment in Croatia stems from the fact that the Vukovar massacre did not result in any convictions for crimes against humanity, and that the sentences were not in proportion to the nature of the crimes committed (Spoljar Vržina, 2011). The disappointment also stems from the fact that the highest ranking civilian and military leaders who were responsible (under the doctrine of command responsibility) died before the storm of responsibility could get to them.

Again, it is useful to conduct the thought-experiment of how the Vukovar war crime trials would have been handled differently in American courts-martial. It is obvious that none of the high-ranking civilian and military leaders who were charged at the Hague would have been charged in the American model. The responsibility would have fallen upon the lowest-ranking soldiers who actually carried out the executions at Vukovar.

To sum up the argument so far. There is no such thing as "the law" that exists to connect a given crime to an appropriate responsibility. Instead, the law is a social phenomenon that is subject to cultural principles and processes that one finds in all of society. Crime, punishment, and responsibility are all cultural constructions of reality. Thus, the "storm" of responsibility can and does frequently "ricochet" and "hit" individuals who are objectively least guilty while failing to strike individuals who are objectively more guilty – regardless of whether this storm of responsibility travels up the chain of command (via the doctrine of command responsibility) or down the chain of command toward low-ranking soldiers and officials. Fauconnet puts the matter well. "Directed initially towards the crime, punishment ricochets all around it. Nothing in the nature of punishment constrains it to strike one point rather than another" (Fauconnet, 1928, p. 36). Fauconnet adds that it is not sufficient that the sanctionee be in a factual relationship with the crime. Rather, the responsible one is the one who should by law serve as sanctionee" (p. 37). The legal verdicts of the ICTY and courts-martial in the United States are perceived by "the law" as legitimate - but the public conscience or public opinion does not necessarily see their verdicts or punishments as legitimate. Fauconnet writes, "In what direction, and upon whom, does the transfer [of responsibility] occur? This is the whole question of responsibility" (p. 38). Indeed.

In the cases I have mentioned above, the storm of responsibility struck at some individuals who do not seem guilty in any manner that would satisfy the public consciousness. For example, in the Abu Ghraib cases, Private Jeremy Sivits was convicted of maltreatment, conspiracy, and dereliction of duty for the "crime" of taking one photo and no more than one photo during one instance of abuse – but he did not strike, torture, or abuse anyone. Legally, he was found guilty of serious crimes, but objectively speaking, the storm of responsibility should have struck at persons who were far more guilty of committing actual torture, and ordering torture, and it should have bypassed Sivits. Similarly, in the Baghdad Canal killings case, Private Ramos was found guilty of conspiracy to commit premeditated murder even though he stayed in his humvee during the entire killing and did not know anything about it. I have detailed dozens of similar cases of "ricochet" justice by the "storm" of responsibility in my published works, and it is beyond the scope of the present study to go into the all the details. No doubt the discerning reader will know of similar questionable executions of justice and responsibility, from personal experience or consuming the news. The important point is that responsibility is a cultural phenomenon, and this becomes evident when one performs cross-cultural comparisons in how it is implemented.

The philosophies of "strike and destroy" versus "winning hearts and minds"

I will summarize briefly the findings in my most recent book, *Strike and Destroy*, as they pertain to common themes since the year 2003 in the American war on terror, but I will also connect them to the wars in the former Yugoslavia in the 1990s. In plain language, U.S. military manuals since 2003 exhibit a Dr. Jekyll

and Mr. Hyde split in advocating two contrary philosophies for winning the war: The strike and destroy philosophy, which the military traces back to the American Civil War (Southerners were perceived as the "insurgents") and its destruction of "insurgent" Native Americans, advocates rules of engagement for destroying insurgents on sight, whether or not they exhibit hostile intent. In other words, the "strike and destroy" philosophy is a strong, cultural tradition in the US military. It is directed at combatants as well as "insurgents", namely, anyone who opposes the military following victory. The other, opposing philosophy is that of "winning hearts and minds" through meetings with village elders and the building of schools, roads, and infrastructure. The two doctrines are incompatible with each other. Sworn testimony at several courts-martial pertaining to this case showed how high-ranking military commanders attacked each other on the issue of how to follow the impossible orders to blend these two doctrines.

The result of this fundamental confusion as to how to wage war was predictable from Durkheim's and sociological perspectives – war crimes and all sorts of deviance, from rampant drug abuse to hazing and bullying. Without the sociological perspective, war crimes seem like "spontaneous combustion". One cannot understand how in the world any modern army, in the context of numerous Geneva Conventions, Conventions against torture, and the Laws of Armed Conflict could resort to the torture and murder of civilians. The sociological answer seems to be that a military unit must be destroyed internally first, as a society, before it can strike and destroy others. U.S. Government reports as well as testimony suggest that soldiers were hopelessly confused as to which ROE to follow (traditional or the strike and destroy variety), which code of ethics applied, to whom, and at what point; whether and how to report violations of specific ethical codes; and whether it was more of a duty and honor to obey orders or to disobey. The internal army reports refer specifically to a "poisoned social atmospheres" and "poisoned command climates" that resulted from this confusion. Sworn testimony as well as internal reports reveal severe problems of rampant drug use, rising suicide rates, low morale, PTSD, lack of trust among soldiers and toward commanders, and other issues that I have called a "dysfunctional social climate" in my sworn testimonies as an expert witness. Soldiers were not certain to which chain of command they belonged because of extensive cross-leveling. Cross-leveling has become so routine and extensive that soldiers are no longer certain to which unit they belong: in a sort of Kafkaesque, hybrid social world, they belong to a new unit at the same time that they are listed and receive their mail in a different unit. Officers do not "circulate" (meet with, check on, interact with) soldiers, even though they are required to do so by traditional army doctrine. The Danny Chen case uncovered more than the fact that Chen was hazed, bullied, and abused by his comrades mercilessly, to the point that they drove him to suicide. The trials revealed that Chen's cruel platoon murdered several Afghan civilians at the same time that they were hazing him, and those murders were never prosecuted.

It is important to connect these details and facts across American and former Yugoslav war crimes. Hardly anyone could believe that American soldiers could, or did, torture Iraqi civilians at Abu Ghraib. But in a sense, Abu Ghraib was like the concentration camps established by Serbian military and paramilitary units in the

1990s. There was no purely, cohesive military unit at Abu Ghraib – it was tainted with "paramilitary units" (although they are not called as such in the US) that included civilian contractors and OGA. The American military units that committed atrocities in Iraq and Afghanistan were mostly strangers to each other, not a "band of brothers", not cohesive, military units. But we know that paramilitary units were similarly involved in the massacre at Vukovar. We know from journalist accounts and testimony at the Hague that paramilitary units "worked" with bona fide military units throughout the former Yugoslavia in the 1990s. The question is rarely asked: what is the effect on command, control, and discipline of military units when the very social structure of these units as "societies" is dissolved? The question ought to be addressed. While I know the details of who was who and transferred from what unit to another one with regard to the American war crimes cases I have studied, I do not know these details with regard to the Vukovar massacre.

Strike and destroy philosophy as punishment or the Storm of responsibility

We are now in a position to make the most important connection between ideas of responsibility and war crimes. Fauconnet alerts us to the fact that responsibility is not the exclusive domain of religious and legal institutions. Public opinion, too, serves as a "jury of one's peers", and it renders its own verdicts and punishments, even if the storm of responsibility ricochets upon the innocent. For example, testimony revealed that soldiers at Abu Ghraib believed that they had arrested and were torturing "terrorists" who were somehow connected to the trauma of 9/11. Logically, this was not true, but became true in that poisoned social climate. The US soldiers were "punishing" those who were responsible for 9/11 even though the sanctionees they were torturing had nothing to do with 9/11. Similarly, prior to Operation Iron Triangle, Iraq, Colonel Steele gave a series of motivational speeches in which he brought out the American flag and linked it to 9/11. His soldiers believed that they were avenging 9/11 during Operation Iron Triangle, even though Iraq had no logical connection to 9/11. In the Maywand District killings, the brigade commander, Colonel Tunnell, also saw no difference between Iraq and Afghanistan. In his speeches, he urged a strike and destroy mentality against all "terrorists" and "insurgents" that in his mind were mysteriously linked to 9/11. There is no way to escape this conclusion: the war crimes committed across multiple incidents by US soldiers were a sort of "punishment" for 9/11 against persons who had no connection to 9/11. This connection is illogical, but Fauconnet argues that the logic of responsibility is not Euclidian or philosophical logic: it is the emotional logic of vendetta, which can be refined and controlled somewhat in a court of law, but which strikes and destroys any sanctionee who is imagined to be "connected" to the original crime.

In the former Yugoslav wars of the 1990s, the Belgrade regime and some Serbian intellectuals depicted their crimes as a sort of "punishment" or revenge for past historical crimes. In the case of Bosnia, Serbian leaders often made the argument that Serbs were the victims of the Battle of Kosovo, fought in the year 1389, in the 1990s. It is an amazingly illogical argument to connect a 600-year-old grievance to contemporary crimes. But again, the cultural, emotional logic of responsibility is not bounded by mathematical logic. With regard to Croats, the Serbs were seemingly punishing them for the crimes of the Ustase. The incomprehensible crimes committed at Vukovar become comprehensible – though not excusable – when one considers that the Serb military and paramilitary units were "punishing" the Croat civilians in that hospital and town for past crimes, real as well as imagined.

At what point does the storm of responsibility exhaust itself and ongoing cycles of revenge cease? Fauconnet does not address this question directly. I do not wish to attempt a quick and easy answer to this difficult question, in general, or with regard to the massacre at Vukovar. In this lecture, I have attempted to broaden the issue of responsibility to include its various directions of going up versus down the chain of command in a court of law, but also to include the work of the storm of responsibility in public opinion outside courts of law. Responsibility always aims at striking and destroying individual persons – whether it does so lawfully or outside the law seems less important than the fact that it seeks legitimacy in some sort of accepted opinion. In my experience with convicted war criminals, I have never come across "monsters" or evil persons, although I have interviewed many persons who have done very evil things. In all cases, the evil was connected to unbalanced, dysfunctional, poisoned social units and social climates. The opposing forces of cooperation, harmony, and "winning hearts and minds" seem to be least understood in warfare, but are an integral part of warfare.

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