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CONSTRUCTING THE NATION IN OPPOSITION: HUMAN RIGHTS AS STRATEGIC BUILDING BLOCKS

A Comparative Analysis of Sinn Féin and the IRA, the Egyptian Muslim Brotherhood, and Hamas

A dissertation

by

Kimberly Jones

Submitted to

The Department of Political Science

In partial fulfillment of the requirements for the degree of the Doctor of Philosophy in Public and International Affairs

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December 2010

Constructing the Nation in Opposition:
Human Rights as Strategic Building Blocks

A Comparative Analysis of Sinn Féin and the IRA,
the Egyptian Muslim Brotherhood, and Hamas

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Kimberly Jones

ABSTRACT OF DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Public and International Affairs in the Graduate School of Arts and Sciences of Northeastern University, December 2010

ABSTRACT

Scholars of nationalism contend the nation or national identity is an artificial construction and they acknowledge one cannot create something from nothing — a kind of "building block" is required. For some socio-political movements, including those that use violence, human rights violations become building blocks. The power of violations as a building block is grounded in their real and perceived importance in both the domestic and international political and legal arenas.

This study examines Sinn Féin and the Irish Republic Army (Northern Ireland); the Muslim Brotherhood (Egypt); and Hamas (Israel and the occupied territories), and finds that all are examples of "nationalist" entrepreneurs. These movements strategically use human rights abuses as building blocks in their support-seeking narratives, defining and reinforcing in-group and out-group boundaries (i.e. the oppressed vs. the oppressors) in the domestic arena, justifying their actions — from civil protest to violence — and demonizing their opponents on the international stage.

Part of the theoretical underpinnings of this study are founded in the fact that the opposition and resistance groups herein are rational support maximizers that tap into the emotion-based preferences of their target populations. Groups strategically utilize grievances and emphasize their simultaneous roles of being oppressed and resisting the oppressor on behalf of the nation, whether it is Irish, Egyptian, or Palestinian. This both reinforces the ties between the organization and the larger community and serves as a vehicle of *othering*.

Othering relates to the other major theoretical girder of this study — nationalism. Herein, the focus is on the process and formation of national identities. Human rights violations, as evidenced in the forthcoming case studies, are a tool used to cultivate group identity as the

project of "nation" building requires attention to an underlying precept of nationalism: in order to have *us* you must also have *them*. In the discourse that follows, the *us* are the violated or the oppressed and the *them* are the violators and the oppressors.

If, as Benedict Anderson states, nations are imagined communities, there exists an opportunity to influence those who are doing the imagining. The nationalist entrepreneurs studied herein are rational actors who make choices and those choices exist in a context. Human rights building blocks can be used to create sustainable communities that embrace diversity or they can be used to craft narratives in opposition that enhance discordance and can encourage violence. Those who are concerned about ending state violations of human rights and resistance movement violence have an opportunity to influence that context.

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Although I take full responsibility for the contents of this dissertation, it could not have been written without the support and inspiration of several people. Amílcar Antonio Barreto, my committee chair, has been an invaluable intellectual guide through this process. I am grateful for his steadfast and kind support as well as his exceptionally constructive responses to my many queries and chapter drafts along the way. Dissertation committee members Denis Sullivan and Nikos Passas have provided critical insights and encouragement; they have also been wonderful mentors. I am privileged to have had the pleasure to work with all three of them.

I also want to acknowledge two intellectual inspirations who, to my great sadness, are no longer of this earth. Prof. Dwight J. Simpson of San Francisco State University spurred my interest in the Middle East and "terrorism" and taught me to question the conventional wisdom. Prof. Rhonda Copleon taught at the CUNY School of Law and was a legal genius whose dedication to advancing women's rights around the globe knew no bounds. Her passion, commitment and work ethic are a daily inspiration. I am a better person for having had the honor of knowing and learning from both of them.

Words are insufficient for the gratitude I feel for my husband Christopher. He is my partner in all my life's adventures and this accomplishment, in many ways, is as much his as it is mine.

Finally, during the writing of this dissertation, I have been fortunate to have lived a very full life. However, thousands of people have suffered and died in the conflicts in Northern Ireland, Israel and the occupied Palestinian territories, as well as Egypt. I want to acknowledge those individuals. As political scientists we study people in conflict and their environments.

However, it is important to remember their lives are every bit as full and rich is ours – they are much more than subjects of research. There is far more that binds us as humans than divides us as enemies.

TABLE OF CONTENTS

Abstract.....2

Acknowledgements 5

Table of Contents 7

Chapter 1: Introduction 8

Chapter 2: Constructing the Nation in Opposition: The Rational Use of Human Rights Building Blocks 20

Chapter 3: Sinn Féin and the IRA's "Imaginative" Transformation: From Sunday to Friday 50

Chapter 4: **The Muslim Brotherhood: Building a "Nation" in Opposition**.....98

Chapter 5: Hamas: "Constructive" Resistance.....133

Chapter 6: One Person's "Terrorist" Is Another's "Nationalist" Entrepreneur....170

Bibliography 182

CHAPTER 1

INTRODUCTION

> From the terrorists' point of view terrorism is a rational problem solving strategy.[1]
>
> Senses of belonging correspond to contested issues of territoriality that are the basis of essentialised group identities and the potent focus of national mobilization.[2]

OVERVIEW

Since the attacks on the United States on September 11, 2001 (9/11) a tremendous amount of attention has been paid to the phenomena of "terrorism," particularly "Islamist terrorism." However, nonstate acts of violence designed to compel particular state responses through inciting fear and raising the costs of noncompliance existed long before that tragic day. Hamas' attacks on Israeli civilians, which amount to "resisting" the Israeli occupation, are one example. Moreover, such acts have long taken place outside of the Muslim world. Northern Ireland's Irish Republican Army, which opposes British rule in that province, is one example.

After 9/11, U.S. President George W. Bush famously said, "You're either with us or you're against us," and a global war on terrorism had new momentum.[3] An "axis of evil" was also identified, which included state-sponsors of terrorism such as Iran.[4] Terrorists were not people to be negotiated with, for they were irrational actors bent on death and destruction.

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1 Fathali M. Moghaddam, *From the Terrorists' Point of View* (Westport, CT: Praeger Security International, 2006), 2.
2 Peter Shirlow and Kieran McEvoy, *Beyond the Wire* (Ann Arbor: Pluto Press, 2009) 7.
3 See: BBC News, "Bush Urges Anti-terror Allies to Act," November 6, 2001, http://news.bbc.co.uk/2/hi/europe/1642130.stm. Last accessed November 26, 2010; and E.J. Dionne, "A Just Struggle…," *Washington Post,* September 26, 2001, LexisNexis.
4 Karen DeYoung, "Bush Lays Down A Marker for 3 'Evil' States," *Washington Post*, January 30, 2002, LexisNexis.

Organizations that had nary anything to do with al-Qaeda, the networked organization responsible for the 9/11 attacks, were caught up in the demonizing rhetorical melee that ensued. Egypt's Muslim Brotherhood, the most powerful, and nonviolent opposition movement, is one example.[5]

The result is a conflation of actors, motivations and goals obscuring the individual contexts in which certain social, political, and militant groups operate. This lack of understanding hinders the ability to discern what groups want and thus, how to open windows of opportunity and transform these state/non-state actor conflicts.[6] To continue with the metaphor, it is critical to understand that these windows are not sealed – there are an array of "tools" that can be used to open them. One of those tools relates to human rights.

Since the founding of the United Nations more than six decades ago, states have wielded human rights as real and rhetorical props on the international stage. Some states have attempted to enhance their own standing through extolling (honestly or not) their virtuous commitments and actions and by demonizing or marginalizing others through spotlighting violations. States, however, are not the only actors to use human rights strategically. Nonstate actors, including opposition and resistance movements, also utilize human rights rhetoric to improve their position.

Scholars of nationalism contend the nation or national identity is an artificial construction and they acknowledge one cannot create something from nothing — a kind of "building block"

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5 See, for example, Stefan Thiel, "Tolerating the Intolerable," *Newsweek,* November 5, 2001, LexisNexis; and, Tony Blankley, "Who Are the Enemies?; Fundamentalism Is No Longer Marginal," *Washington Times*, October 3, 2001, LexisNexis.
6 John Paul Lederach, *The Little Book of Conflict Transformation* (Intercourse, PA: Good Books, 2003).

is required. For some socio-political movements, including those that use violence, human rights violations become building blocks. This study examines Sinn Féin and the Irish Republic Army (Northern Ireland); the Muslim Brotherhood (Egypt); and Hamas (Israel and the occupied territories), and finds that all are examples of "nationalist" entrepreneurs. These movements strategically use human rights abuses as building blocks in their support-seeking narratives, defining and reinforcing in-group and out-group boundaries (i.e. the oppressed vs. the oppressors) in the domestic arena, justifying their actions — from civil protest to violence — and demonizing their opponents on the international stage. Moreover, these groups operate along a non-static continuum of opposition and resistance and have engaged in a range of activities - from social and political organizing to varying levels of strategically targeted violence.

These case studies were chosen because of the objective and comparative value of learning how each group uses human rights as building blocks. However, more importantly, the first two, Sinn Féin and the IRA and the Muslim Brotherhood are subjects of inquiry because of the learnable lessons applicable to Hamas. The Muslim Brotherhood is the Islamist organizational womb from which Hamas sprung to life. It is also embroiled in its own battle with the state — Egypt — through political and social opposition, and it lends real and rhetorical support to its neighbor and offspring, Hamas. Sinn Féin, the political face of the Irish Republican movement, has transformed itself from a movement and party that supported republicanism's violent manifestation – the Irish Republican Army (IRA) – to one fully engaged in and committed to a peace process. Hamas, meanwhile, is battling on the political and militant fronts, within Palestinian society and against Israel, not to mention many neighboring Arab regimes. It

has indicated a willingness to engage in a limited truce (*hudna)* with Israel, which carries with it the implication of creating space for a real peace process.

Investigating how Hamas uses human rights violations to garner support is interesting and analytically valuable in its own right. However, the Muslim Brotherhood as well as Sinn Féin and the IRA offer comparative opportunities to lay the groundwork to think about how Hamas might one day engage in its own brand of transformative entrepreneurial politics – moving from an organization whose charter calls for the destruction of Israel to one which could constructively engage Palestinians within and outside of the occupied territories to find a peaceful solution to the conflict. Sinn Féin has been through this process; the Muslim Brotherhood offers a window into how a related, Islamist movement uses human rights rhetoric to separate itself from the state, while maintaining its connection to the Egyptian, Muslim nation.

THE RATIONAL CONSTRUCTION OF "NATIONS"

Part of the theoretical underpinnings of this study are founded in the fact that the opposition and resistance groups herein are rational support maximizers that tap into the emotion-based preferences of their target populations. This is grounded in rational choice and related literature, which highlights value-maximizing choices from a set of ordered preferences that place pleasurable outcomes over painful ones, finding value in the role of emotion in decision-making.[7] Some opposition and resistance groups strategically utilize grievances and emphasize their simultaneous roles of being oppressed and resisting the oppressor on behalf of

7 Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957); Jeremy Bentham, *The Utilitarians* (Garden City, NY: Anchor Press, 1973); and, Antonio Damasio, *Emotion, Reason, and the Human Brain (*New York: Quill, 2000).

the nation, whether it is Irish, Egyptian, or Palestinian. This both reinforces the ties between the organization and the larger community and serves as a vehicle of *othering*.

Othering relates to the other major theoretical girder of this study — nationalism. Herein, the focus is on the process and formation of national identities. Peering into the nationalist constructivist toolbox, one can use historical, anthropological, and political insights, and focus on symbols, traditions, and cultural traits to examine the formation and nurturing of national identities. However, human rights violations, as evidenced in the forthcoming case studies, are another tool used to cultivate group identity. The project of "nation" building also requires an understanding of an underlying precept of nationalism: in order to have *us* you must also have *them*. In the discourse that follows, the *us* are the violated or the oppressed and the *them* are the violators and the oppressors.

According to Anderson, nationalism is a modern concept of an imagined, limited, sovereign community.[8] Motyl theoretically concurs with this notion of imagined community and posits that we cannot create something from nothing. He believes nationalist entrepreneurs use purposeful building blocks, herein, human rights violations, to invent group identity.[9] In the example of the Middle East, in which two of the case studies find their geographic locus, there has long been a *perceived* battle — á la Huntington's "Clash of Civilizations" — between Islam and the West.[10] However Said tells us we ought not to think of things in those meta abstractions but rather conceive of them more practically as the powerful and powerless framed by issues of

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8 Ben Anderson, *Imagined Communities* (London, Verso, 1983).
9 Alexander J. Motyl, "Inventing Invention: The Limits of National Identity Formation," in *Intellectuals and the Articulation of the Nation*, eds. Ronald Suny Grigor and Michael D. Kennedy (Ann Arbor: University of Michigan Press, 1999).
10 Samuel Huntington, *The Clash of Civilizations* (New York: Simon and Schuster, 1996).

justice and injustice.[11] Kecmanovic provides a tidy list of justifications for nationalism as well as social circumstances in which such movements are born and thrive; these include sovereignty and revenge for the former to individual and collective memories of human rights abuses for the latter.[12]

It is important, however, not to confuse the argument herein, that state violations of human rights can be used by opposition and resistance movements as an effective tool to generate "national" support, with a causal one, that human rights violations cause particular types of behavior.[13] Moreover, the violations of human rights that contextualize these situations and materialize as grievances and building blocks can be different – they can range from self-determination to political participation to illegal detentions to education and extrajudicial killings. The resultant desire for positive identity and the frustration of related needs can manifest as individual and group issues – the latter key for the entrepreneurial nationalist.[14]

The link between emotion and human rights abuses plays a role. For example, Palestinians have been forced to endure gross violations of human rights, spotlighted on the world stage, relatively helpless in the face of tanks and superior armaments.[15] Stern, looking at religion and "terrorism" addresses the plight of the Palestinians and focuses on humiliation, which has led to desperation and rage. She notes that militant leaders use these feelings to

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11 Edward Said, "The Clash of Ignorance," *The Nation*, October 22 2001, http://www.thenation.com/doc/20011022/said. Last accessed November 26, 2010.
12 Dusan Kecmanovic, *The Mass Psychology of Ethnonationalism* (New York: Plenum Press, 1996).
13 See: Martha Crenshaw, *Terrorism in Context* (University Park, PA: Penn State U.P., 1995).
14 See: Ervin Staub et al, "Healing Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing: an Intervention and Its Experimental Evaluation in Rwanda," *Journal of Social and Clinical Psychology,* 24.3(2005), 297-334, p. 305..
15 Shibley Telhami, *The Stakes – America in the Middle East* (Boulder, CO: Westview, 2002).

encourage reciprocal attacks.[16]

The consequences of state failure to create environments that hinder rather than fuel militancy are obvious. Societies that lack or eliminate legitimizing factors for militant actions and permit them to choose alternative positive paths provide a more constructive setting for ending conflict and nurturing peace.[17]

UNPACKING THE CASES

Sinn Féin and the Irish Republican Army are the "face" of Irish republicanism in Northern Ireland. In their current manifestations, both have been around for approximately four decades, although their historic roots go back much farther. Sinn Féin is a legitimate political party in Northern Ireland and the Republic of Ireland. Members of Sinn Féin have been elected to the British parliament, the Irish parliament, and the relatively new Northern Ireland Assembly. The Irish Republican Army, at its height of operations was a relatively well-armed and organized paramilitary group. Sinn Féin and the IRA have opposed Northern Ireland's union with Great Britain to form the United Kingdom. Opposition activities have been directed at the state itself as well as those in Northern Ireland who seek to maintain the union.[18]

Sinn Féin and the IRA have used British state violations of human rights in Northern Ireland to justify acts of violence like bombings and shootings as well as political resistance through tactics such as refusing to take political oaths and parliamentary seats at Westminster. They have highlighted a range of state human rights violations – from the British military's

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16 Jessica Stern, *Terror in the Mind of God – Why Religious Militants Kill* (New York: Harper Collins, 2003).
17 Crenshaw, *Terrorism in Context*.

killing of fourteen unarmed protestors in 1972 known as "Bloody Sunday," to prison conditions in the infamous H.M. Prison, the Maze (commonly known as Long Kesh), to a lack of fair judicial proceedings in the juryless "Diplock" trails, to discriminatory policing by the notorious Royal Ulster Constabulary (RUC), members of whom have stood accused of colluding with paramilitary groups loyal to Great Britain (loyalists) to kill Irish nationalists.[19]

The IRA and Sinn Féin have used these human rights violations as part of their support-seeking narrative. However, Sinn Féin and the IRA have also used compromise over human rights issues to justify making peace – ending violence and embracing constructive political engagement. This involved shepherding the movement into and through the negotiations that culminated in the Good Friday Agreement in 1998, the political referendum thereon and maintaining cohesion in the years that have followed.

By contrast, the Muslim Brotherhood has primarily existed at the social and political end of the continuum in Egypt. Members are elected to the Egyptian parliament as independents. The Islamist organization also provides social services to a population that has had little faith in the state's ability to deliver. In decades past, Brotherhood members engaged in militant acts of "resistance," but they long ago renounced violence. Although the Brotherhood survived phases of overt illegality in Egypt, they have been considered "banned but tolerated," by the Egyptian government. That changed in 2005.

In 2005, President Hosni Mubarak's government enacted constitutional and political changes that initially raised and then seriously frustrated expectations. Since then, the Muslim

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18 See, for example: Tim Pat Coogan, *The IRA – A History (*Niwot, CO: Rhinehart, 1994).
19 On the latter, controversial point of collusion, see: Bill Rolston, *Unfinished Business: State Killings and the Quest for Truth* (Belfast, UK: Beyond the Pale Press, 2000).

Brotherhood has taken a much more overt role organizing social and political opposition to state policies. They have paid a heavy price as evidenced by mass arrests of members and supporters, torture, unjust trials and the state's strategic infringement upon political rights.

Hamas is an Islamist organization based in the Gaza Strip and the West Bank, also known the Israeli Occupied Palestinian Territories (OPT). Israel has occupied these lands since the 1967 War when it seized control of them from Egypt and Jordan, respectively. Hamas evolved out of the Muslim Brotherhood in the late 1980s, during the first Palestinian uprising, the *intifada*. It has utilized both the bullet and the ballot box in its struggle against the Israeli state (and other Palestinian factions). It is infamously known for using "suicide bombers" also known as *martyrs* to target and kill Israeli civilians. In 2006, Hamas won democratic parliamentary elections in the Palestinian territories, defeating their main political rival Fateh, the central organization in the Palestinian Liberation Organization (PLO). Hamas is also known for being an organization open to internal debate and consultation, as well as one that eschews corruption, both key criticisms of Fateh and the PLO. It also provides social services to the beleaguered Palestinians.

Hamas has highlighted Israeli violations of human rights intrinsic to the occupation of Gaza and the West Bank as part of their support seeking narrative. These include arbitrary arrests and detention, extrajudicial killings, torture and the right to self-determination.

RESEARCH METHODOLOGY

This study examines some of the ways opposition and resistance movements utilize human rights in building "the nation" by reviewing select events and related rhetoric. The approach is illustrative rather than exhaustive. The point is that the groups in focus do use human

rights violations as building blocks; this is neither an effort to show that human rights are their only tool nor is it an evaluation of the strategic decision making that goes into choosing human rights over other motivating options, such as religion.

Militant grievances were collected from established websites, published statements and interviews. The findings of academic and journalistic experts about group motivations and context will also be considered. This study uses a variety of reports from international and local NGOs (non-governmental organizations), as well as official government documents to determine state behavior. Because two of the case studies are situated in the Arab world, reliably translated sources are employed.

In terms of case selection, Przeworski and Teune highlight the distinctions between "most different" and "most similar" research strategies. By looking at most similar systems, countries sharing economic, cultural and other characteristics, they conclude there is limited generalizable applicability.[20] The goal of the research and findings that follow is to develop an explanation that is general and parsimonious as well as applicable to opposition and resistance groups beyond the limitations of this study. Thus, the cases under investigation, Sinn Féin and the IRA, the Muslim Brotherhood and Hamas, were chosen in part because of their differences.

The IRA, a paramilitary organization and its political party counterpart, Sinn Féin, have operated within Northern Ireland, part of the legitimate, recognized international borders of the United Kingdom. The IRA and Sinn Féin represent the primarily Catholic minority but their overarching goal is secular – the political and legal reunification of Ireland. The Muslim Brotherhood is an Islamist opposition movement that has espoused nonviolence for decades and

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20 Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry* (Malabar, FL:

opposes the current political hegemony of Egypt's ruling party, the National Democratic Party (NDP). Hamas also espouses an Islamist agenda, but it is divided into military and political units. It seeks to create a Palestinian state, and end Israel's illegal occupation the West Bank and Gaza Strip.

These descriptions of differences, however, also spotlight some areas of common ground that make the case studies interesting points of comparison. Two cases involve Islamist movements — the Muslim Brotherhood and Hamas, while the IRA is nominally Catholic. Religion plays a role in all three conflicts, but in very different ways. In Northern Ireland, it is a cleavage along which people divide, but it is not per se a conflict about religion. In Egypt, the Muslim Brotherhood are very much an Islamist organization, while, Egypt might be labeled a Muslim state — both in terms of the constitution and the majority of the population. In the occupied Palestinian territories, Hamas is also an Islamist group, however, it is battling an occupying state whose foremost definitional character is its Jewishness.

All three states are in varying stages of democratic, political development. The United Kingdom has long been considered an established democracy. Israel is often referenced as the Middle East's only democracy; however, there is widespread discrimination within the state's borders, which, for some, undermines this claim.[21] Egypt, is the least democratic of the three, in terms of free and fair elections, but claims it is "deepening" its democratic development.[22]

Krieger, 1970).

21 See, for example, Jordan Kessel and Pierre Klochendler, "The Only Democracy in the Middle East?" May 19, 2010, http://ipsnews.net/news.asp?idnews=51491. Last accessed November 27, 2010.

22 Egyptian State Information Service, "Political Reform in Egypt," http://www.sis.gov.eg/En/LastPage.aspx?Category_ID=204. Last accessed November 27, 2010.

Investigating the hypothesis that militant actors perform as "nationalist" entrepreneurs and use state violations of human rights as building blocks in their construction of group support requires a layered methodological approach: examining state human rights abuses, and assessing the groups' usage of those violations.

THE ROAD AHEAD

The pages that follow unfold along the lines of the preceding introduction. Chapter 2 provides a more in-depth examination of the theoretical foundation for this study that was previewed. Chapter 3 examines the IRA and Sinn Féin to look at their use of human rights as nationalist building blocks over a thirty-year time span, honing in on key periods, from the rebirth in the early 1970s to the Good Friday Agreement. Chapter 4 focuses on Egypt's Muslim Brotherhood, using a narrow time frame, from 2005 through 2009, that coincides with their reinvigorated role as a very activist-oriented opposition movement. This four-year period allows for a rights-based approach rather than a chronological one as is exhibited in the other two case studies. Chapter 5 looks at Hamas from its founding in the 1980s through Israel's Operation Cast Lead in 2008-9, which targeted the Islamic Resistance in the Gaza Strip. Chapter 6 concludes this effort and pulls together lessons learned and assays some of the implications of this study and also poses questions for future research.

CHAPTER 2

CONSTRUCTING THE NATION IN OPPOSITION: THE RATIONAL USE OF HUMAN RIGHTS BUILDING BLOCKS

> Bin Laden's deep and general sense of cultural and religious humiliation does not drive all, or even most, of his followers. The Israeli—Palestinian conflict, U.S. occupation of Iraq, American support for authoritarian Arab regimes, and relative economic deprivation (more in Asia than in the Arab world) are more proximate spurs to jihadist recruitment and activity.[1]

> Each of them, man and woman, child and Elder, stood tall at times of great danger and greater sacrifice, with no expectation of any personal fame or reward. Not because it had to be done, because there was no one else to do it.[2]

INTRODUCTION

The path through the murky world of militant and opposition group motivations, grievances, and actions is full of theoretical stumbling blocks and other academic pitfalls. Thus, this chapter serves as practical road map for the case studies that follow. The first notion explored is rationality, as it applies to these movements and their expressed motivations. This analysis delves into the realm of state responsibility for human rights violations under international law, contextualizing and validating, in the eyes of resistance groups and their supporters, *the* struggle with and battle against the state. Concluding is an examination of groups' use of human rights violations as building blocks in their narratives of victimization, justifying actions, and garnering support in constructing their respective "nations."

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1 Jonathan Stevenson, "An Update on the 'War on Terror,'" *Toronto Star*, January 3, 2005, LexisNexis.
2 Leonard Peltier, *Prison Writings* (New York: St. Martin's Press, 1999), 98.

WANTING TO BELONG: A RATIONAL CHOICE

Rationality is the process of making "consistent, value-maximizing choice[s] within specified constraints."[3] Essentially, individuals develop goals that are partially determined by "values or preferences," and work to realize them.[4] Some scholars further posit a reordering of preferences may take place "when an open public sphere permits the *appearance* of public deliberation oriented toward the questioning of consensus norms."[5]

With its roots in the ideas and words of Adam Smith, John Stuart Mill and Jeremy Bentham, the rational choice approach focuses on an individual or a particular set of individuals who share the same ordered preferences, their preferred needs and wants. Centuries ago, Smith observed: "It is not from the benevolence for the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interest."[6] Smith entitled his book *The Wealth of Nations* and was clearly talking about physical, material gain. However, as shown below, humans also seek out and need emotional benefits. Bentham, Smith's contemporary, fleshed out nuances of the approach and advanced the "principle of utility" - that individuals are ruled by pain and pleasure, with the latter obviously preferred. Each action undertaken results in the enhancement or diminution of one's discomfort or happiness. Thus, humans act based on the incremental enrichment of pleasure and the minimization of pain.[7] Moreover, "Culture and individual history may change the threshold at which it [pain and pleasure] begins to be triggered

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3 Graham Allison, *Essence of Decision* (Boston: Little Brown and Co., 1971), 27.
4 James Coleman, *Foundations of Social Theory* (Cambridge, MA: Belknap, 2000), 13.
5 Marc Lynch, *State Interests and Public Spheres* (New York: Columbia U.P., 1999), 255. Emphasis added.
6 Adam Smith, *The Wealth of Nations* (New York: Penguin Classics, 1986), 119.
7 Jeremy Bentham, *The Utilitarians* (Garden City, NY: Anchor Press, 1973), 17-8.

or its intensity, or provide us with means to dampen it."[8]

Applying these criteria to the case studies explored herein nets the following supposition: A member of the IRA, the Muslim Brotherhood or Hamas should choose a pleasurable outcome over a result that is painful. One is then led to a particularly troubling conundrum: How does individual engagement in acts of violence - either through placing oneself at risk or through infliction on others - become a positive, "pleasurable" choice? The answer lies in the context.

Anthony Downs takes rational choice one step further and associates roles with the maximization of certain tangibles.[9] Thus, in Downsian terms, politicians are vote maximizers; herein, members of resistance movements are viewed as support maximizers. Downs did not believe in parsing out all the variables that went into individual actions; rather he focused on the prototype, what he termed the *homo politicus*. To paraphrase Downs, for purposes herein, s/he is the average individual in the resistance world, the rational resistor.

From an analytic perspective, the general, distinguishing features of rational choice are methodological individualism, explicit identification of actors and their goals or preferences, recognition of institutions and other features that determine the options available, as well as costs and benefits.[10] However, the parameters of traditional rational choice analysis have been somewhat narrow. Graham Allison, citing James Rosenau, notes the international system has focused on the actions of states, insentient entities, and the need for analytic shorthand allows the ascription of decisions to them.[11] In the cases that follow, opposition and militant group leadership is spotlighted to examine how they garner support from society at large and within the

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8 Antonio Damasio, *Emotion, Reason, and the Human Brain (*New York: Quill, 2000), 264.
9 Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957).
10 Barbara Geddes, *Paradigms and Sandcastles* (Ann Arbor: U. Mich. P, 2003), 21.

organizational rank and file, as well as to examine the roles played by material gain and positive emotional maximization.

Present-day observers of resistance movements and militant groups fall into the all-too common trap of placing rationality and emotions at odds. One sage reporter on the conflicts in the Middle East its environs writing about the construction of Al Qaeda's narrative discussed how the group came to define *us* and *them*, and noted, "More contemporary allusions to objects of widespread hatred and fear were added too, so Zionists and Jews, seen as synonymous by bin Laden and many others in the Islamic world, became a key enemy. All these references and visual images were intended to allow [al Qaeda leader Osama] bin Laden's slogans *to bypass rational thought and plug straight into the emotional and the unconscious*…"[12] Such disconnect is not new as Descartes did not believe emotions played a constructive role in the reasoned actions of men. Key to this proposition was the Cartesian idea about the separation of mind and body.[13] In "Meditation 1," Descartes clearly saw passion or emotion as a hindrance: "To-day, then, … I have opportunely freed my mind from all cares (*and am happily disturbed by no passions*)…"[14] He believed that the senses misled, and the perception that something causes pain was distinct from the consciousness of the sadness resultant from the perception.

Machiavelli, nearly a hundred years prior, acknowledged the role of positive and negative emotions, and commented "It is a truly natural and ordinary thing to desire gain and when those

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11 Id.
12 Jason Burke, *On the Road to Kandahar* (Scarborough, Ontario; Doubleday Canada, 2006), 66. Emphasis added.
13 See the fourth section of: Rene Descartes' "The Discourse on Method*,"* in *The Rationalists* (New York: Random House, 1974).
14 Id at "Meditation 1." Emphasis added.

who can succeed attempt it, they will always be praised and not blamed."[15] He went on to say that one "will find things which, though seeming good, will lead to his ruin if pursued, and others which, though seeming evil will result in his safety and well-being."[16] More important for purposes herein, he also made the link between material gain and emotional benefits. Spinoza (Descartes' contemporary) then linked emotions with value: "We do not desire a thing because we adjudge it to be good, but, on the contrary, we call it good because we desire it, and consequently everything to which we are averse we call evil. Each person, therefore, according to his affect judges or estimates what is good and what is evil, what is better and what is worse, and what is the best and what is the worst. … The ambitious man desires nothing like glory, and on the other hand dreads nothing like shame."[17] Spinoza perceived emotions as self-checking. Perfection was linked to one's knowledge of God, with pleasure, a utilitarian preference, à la Bentham, a resultant active emotion. Ensuing was a human better able to control their passions.[18] La Rochefoucauld, meanwhile, found utility in using emotions to sway the opinions of others: "The passions are the only orators who always convince. They have a kind of natural art with infallible rules; and the most untutored man filled with passion is more persuasive than the most eloquent without."[19] Thus, La Rochefoucauld effectively agreed with his relative contemporary Spinoza that emotions have value, and their pursuit is meritorious, particularly as a check or balance on other emotions. This is, of course, in contrast to Descartes who saw man's passions as irrational and deterministic.

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15 Niccolo Machiaveli, *The Prince* (New York: Bantam, 1981), 20.
16 Id at 57.
17 See: Benedict Spinoza, Part III, Proposition XXXIX – Note, "The Ethics," in *The Rationalists* (New York: Random House, 1974), 291.
18 Id at Part IV.

Musings about rationality and the role of emotion are clearly not limited to the seventeenth century. Indeed, Descartes finds a supporter in twentieth century economist Mancur Olson who addressed the free rider paradox. Olson looked at individuals unwillingness to act on behalf of a larger group because of the lack of incentive to contribute or forgo something for group gain when one's individualized efforts might be not be appreciable and one gets the benefit whether or not they participate in the group action.[20]

The free rider paradox is also embodied in two oft-discussed scenarios known as the "prisoner's dilemma" and "the tragedy of the commons." Both deal with the incentive, or lack thereof, for collective action. The tragedy of the commons is a story of how a public good, such as a communal space, is exploited until it is no longer usable. In such a tale, everyone seeks to maximize his or her own utility, and there is no apparent incentive to cooperate in ensuring the long-term durability of the public good. In the prisoner's dilemma, each detainee is faced with the choice of "sticking to their story," cooperating and trusting each other, so that all face a reduced period of detention. Alternatively, one may lay blame on another and minimize their own time of incarceration at the other's expense. They implicitly ask: how much does one risk or pay for varying levels of guaranteed return? The paradox says that if one can get away with, or "free ride" on the efforts of others, while paying little, they will.

The problem with both scenarios, and Olson, is they narrowly focus on economic or material gain as *the* motivation for individual action. The difficulty it presents for resistance and militant movement studies is that while some leaders may be motivated by the material gain that comes with power, money, and territorial control, those in the rank and file are not similarly

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19 Francois La Rochefoucauld, *Maxims* (New York: Penguin Books: 1959), Maxim no. 8.

situated to receive such material benefits. This is particularly true for those perpetrating "suicide bombings," sometimes termed *martyrdom operations* by those who engage in them. *Martyrs,* by virtue of the nature of the operation, permanently forgo material benefits in their death. Thus, if one travels the path as laid out by Descartes and Olson, they are left with little understanding and a false conclusion about foot soldier irrationality.

Others, however, have shed light on a new way to understanding individual and collective action, applicable to resistance groups. For example, Chong posits, "One pursues some interests on an individualistic basis, but many interests are pursued in collectivities and depend on cooperation with other group members. … People embrace the norms and values of a group in exchange for the esteem of other group members; they coordinate with other individuals around a social identification when there are benefits to holding common affiliations."[21]

For some groups, violence can be a type of cultural performance. For example, one anthropological analysis of *martyrdom* bombings notes, "Through its cultural conception the concentration of the *istishhadi* [martyr-bomber] becomes a sacrificial offering from the Palestinian people. Hence, the Palestinian people gain the benefits of sacrifice and undergo its effects."[22] In a quite different example, Burke said a Taliban directed execution showed him the impact of violence on an audience, "particularly those who have even the smallest sense that what they are watching can be justified in some way. This was the effect that [Osama] bin Laden and [Ayman] al-Zawahiri had so crucially understood. If you do not act to stop something happening, if you do not wholeheartedly condemn it, then you feel yourself aligned with the

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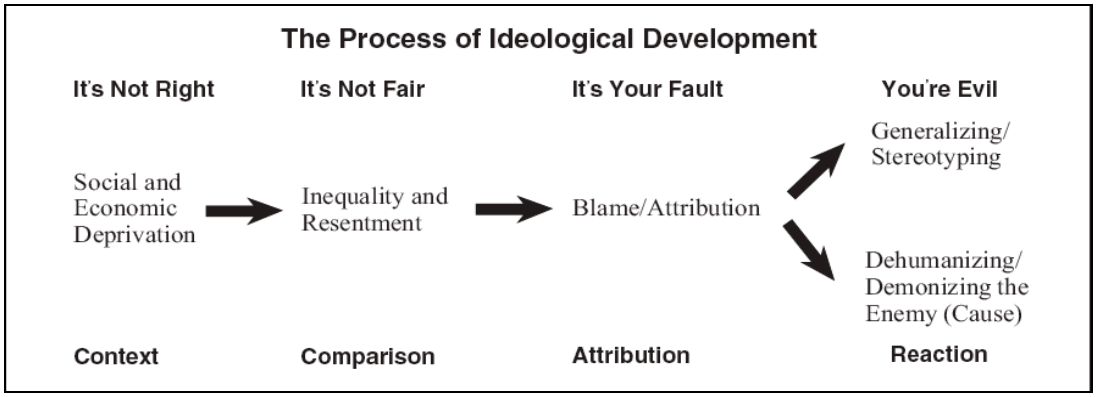
20 Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard U.P, 1971), 166.
21 Denis Chong, *Rational Lives* (Chicago, IL: University of Chicago Press, 2000), 213-14.
22 Neil L. Whitehead and Nasser Abufarha, "Suicide, Violence and Cultural Conceptions of

executioners."[23]

HUMAN RIGHTS VIOLATIONS AS BUILDING BLOCKS

Grievance is a term often used to describe the complaints of opposition and militant movements. Motivations are different than grievances, although both are applicable herein. Key is that "Modern theories of motivation focus more specifically on the relation of beliefs, values, and goals with action."[24] Thus, there is a connection: one perceives they were mistreated, a grievance, and that mistreatment is their reason for choosing a particular action. In cases of social injustice, this could range from publicly protesting to seeking legal redress to physically destroying or injuring that which caused the harm.

In applying this understanding of motivations to terrorism, Borum offers the following typology:[25]



Martyrdom in Palestine," *Social Research* 75.2 (2008), 401.
23 Burke, *On the Road to Kandahar*, 77.
24 Jacquelynne S. Eccles and Allan Wigfield, "Motivational Beliefs, Values and Goals," *Annual Review of Psychology*, 53 (2002), 110.
25 Original diagram in: Randy Borum, "Understanding the Terrorist Mind-Set," *FBI Law Enforcement Bulletin*, July 2003, 9.

Borum advises unpacking the distinctions between ideological and other motivations noting ideology may be the factor, a factor, or a justification.[26] Additionally, for the purposes of this study, it may also be an organizing tool – the social or religious glue holding groups and their supporters together.

Others see the contextually dependent role for grievances as leading to different paths a group may take, which relates to the idea of a continuum of resistance. Ross states:

> Grievances unheeded can lead to the development of a social movement, interest group, political party, or in extreme cases an individual, cell, group or organization that engages in terrorist actions. Alternatively, in a non-violent organization, the intensification of grievances or lack of success in obtaining the group's objectives may lead to organizational splits, and the development of different organizational levels that engage in terrorism. Finally, grievances can lead to support of terrorism.[27]

It is important not to conflate the argument herein, that state violations of human rights can become group grievances that are subsequently used as an effective tool to generate "national" support, with a causal one, that human rights violations cause a particular response, such as militancy. Crenshaw aptly notes that there may indeed be a relationship between violence and context; however, deterministic explanations should be avoided.[28] Moreover, within the understood framework of rationality, circumstance cannot generate terrorism, as it

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26 Id.
27 Jeffrey Ian Ross, "Structural Causes of Oppositional Terrorism: Towards a Causal Model," *Journal of Peace Research,* 30 no. 3 (1993), 326.

undermines the fundamental principle of individual agency, the determination of one's preferences.[29]

Context, however, does create an environment in which choices are made, and state violations of international law, in addition to being illegal and egregious in their own right, can serve as building blocks for opposition and militant movement growth and mobilization. The power of violations as a building block is grounded in their real and perceived importance in both the domestic and international political and legal arenas. In international law, "the primary holder of rights and obligations is the state. States are the primary subject, and quite often the object of international law."[30] Thus, opposition groups can justify their grievances using allegations of states' illegitimate actions, lending credence to their complaints. Indeed, Bentham, in discussing the utility of international law found one "may frame according to it, the expectations that he ought to entertain, the demands he ought to make upon other nations."[31]

International law is a vast field, comprised of public and private spheres that address an array of issues, including humanitarian and human rights law. To understand why groups cite human rights and call upon the international community to protect aggrieved individuals, it is important to understand the nature and breadth of this legal regime. By definition, international law "consists of rules and principles of general application dealing with the conduct of states and

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28 Martha Crenshaw, Terrorism in Context (University Park, PA: Penn State U.P., 1995).
29 Brien Hallett, "Dishonest Crimes, Dishonest Language: An Argument about Terrorism," in *Understanding Terrorism – Psychosocial Roots, Consequences, and Interventions*, eds. Fathali M. Moghaddam and Anthony J. Marsella (Washington, DC: American Psychological Association, 2004).
30 David Caron, "If Afghanistan Has Failed, Then Afghanistan Is Dead: 'Failed States' and the Inappropriate Substitution of Legal Conclusion for Political Description," in *The Torture Debate in America*, ed. Karen J. Greenberg (New York: Cambridge University Press, 2006).
31 Jeremy Bentham, "The Principles of International Law," In The Works of Jeremy Bentham.

of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or juridical."[32] Cassese affirms there are two traditional sources of international law: treaties and custom.[33] Article 38 of the statute of the International Court of Justice (ICJ), validates two more sources of international law: general principles and the writings of jurists.[34]

Using the ICJ statute for initial guidance, treaties are "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states."[35] The Vienna Convention on the Law of Treaties defines treaties as written agreements between states that are "governed by international law."[36] According to Steiner and Alston, "The maxim *pacta sunt servanda* is at the core of treaty law. It embodies a widespread recognition that commitments publicly, formally and (more or less) voluntarily made by a nation should be honored."[37]

State legal commitments to treaties can vary.[38] A state may sign a treaty or ratify, accede

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Edinburgh, Scotland: William Tait, 1843.

32 American Law Institute (ALI), *Restatement of the Law (Third) Foreign Relations Law of the United States* (Philadelphia: ALI, 1987), §101.

33 Antonio Cassese, *International Law in a Divided World* (New York: Oxford University Press, 1986).

34 International Court of Justice (ICJ), Statue of the International Court of Justice, 1945, http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0. Last accessed October 17, 2010.

35 Id at article 38.

36 Vienna Convention on the Law of Treaties, 1969, article 2, http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf. Last accessed October 17, 2010.

37 Henry J. Steiner and Philip Alston, *International Human Rights in Context* (New York: Oxford University Press, 1996), 31-2.

38 For the purposes herein, treaties exist at the international level, such as the four Geneva Conventions of 1949 (codifying the core of international humanitarian law) and the United Nations covenants— i.e., the Convention on the Elimination of All Forms of Discrimination

or accept it. When a state signs a treaty, but has not yet ratified it, the signature serves as "a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. ... It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty."[39] Ratification (as well as acceptance or accession) means the state consents to be bound by the terms of the treaty.[40] States may also make declarations and reservations, the former expressing their understanding of a certain provision, the latter asserts a modification of a state's specific obligations under the treaty.[41] According to one source, the two key human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social and Cultural Rights (ICESCR) do not explicitly address reservation content, "so the question is one of compatibility with the object and purpose of the treaties."[42]

Thus, international law is a well-defined field and states have a range of optional commitments, which they may choose to abide by. Moreover, those commitments may be modified. Therefore, opposition and resistance groups are not necessarily asking states to undertake novel or new responsibilities but rather, to comport with their existing obligations.[43]

As noted above, according to the statute of the ICJ, custom is a source of international

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against Women (CEDAW). They are also manifest at the regional level; for example, the Arab Charter on Human Rights (League of Arab States) and the European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment.

39 United Nations, "United Nations Treaty Collection – Treaty Reference Guide," 1999, 9, http://untreaty.un.org/English/guide.pdf. Last accessed November 10, 2010.

40 Vienna Convention, article 2.

41 Id.

42 Dinah Shelton, "International Law," in *International Human Rights: Law, Policy and Process* eds. Frank Newman and David Weissbrodt (Cincinnati: Anderson, 1996), 33.

43 Groups may, of course, ask states to undertake new obligations such as the ratification of a treaty.

law. Customary international law exists where there is a general practice indicating its acceptance as law.[44] The International Committee for the Red Cross (ICRC) elaborates: "Unlike treaty law (for ex[ample]: the four Geneva Conventions), customary international law is not written. A rule is customary if it reflects state practice and when there exists a conviction in the international community that such practice is required as a matter of law. While treaties only bind those States which have ratified them, customary law norms are binding on all States."[45] Jurist Meron notes, however, that today's standards are understood as more relaxed, and rely "principally on loosely defined *opinio juris* and/or inference from the widespread ratification of treaties or support for resolutions and other 'soft law' instruments; thus, it is more flexible and open to the relatively rapid acceptance of new norms."[46]

Jus cogens is a preemptory norm of international law, one which "is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."[47] Shelton sums up the possible sources for *jus cogens*: "state consent, natural law, necessity, international public order, and the development of constitutional principles. The different theories lead to considerably different content for *jus cogens* norms and consequences for their breach."[48] The prohibitions against torture and racial

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44 Newman and Weissbrodt, *International Human Rights.*
45 International Committee for the Red Cross (ICRC),"Treaties and Customary International Humanitarian Law," http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList2/Humanitarian_law:Treaties_and_customary_law. Last accessed October 17, 2010.
46 Thedor Meron, "Revival of Customary Humanitarian Law," *American Journal of International Law*, Editorial comment, 9 (2005), 817.
47 Vienna Convention, article 53.
48 Dinah Shelton, "A Normative Hierarchy in International Law," *American Journal of*

discrimination are considered *jus cogens* norms.

International human rights law is generally divided into two broad categories: civil and political rights on the one hand, economic, social, and cultural rights on the other. The Universal Declaration of Human Rights, encompassing both of these groupings, was created in the wake of World War II and spawned the two aforementioned human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.[49] Other key treaties include the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention against All Forms of Racial Discrimination (CERD), and the Convention on the Rights of the Child (CRC).[50] The UK, Egypt and Israel are all states-parties to all five of these treaties.[51]

Each UN human rights convention has a corresponding treaty body that examines state

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International Law, 100 (2006), 302.

49 Louis Henkin, *The International Bill of Rights.* (New York: Columbia University Press, 1981). Also see: The Universal Declaration of Human Rights (UDHR). 1948. United Nations General Assembly. Resolution 217A (III). UN doc. A/810 at 71. The International Covenant on Economic, Social and Cultural Rights (ICESCR). United Nations General Assembly resolution 2200A (XXI). U.N. Doc. A/6316. 1966. 993 U.N.T.S. 3. Entered into force January 3, 1976. The International Covenant on Civil and Political Rights (ICCPR). United Nations General Assembly resolution 2200A (XXI). UN Doc. A/6316 (1966). 999 U.N.T.S. 171. Entered into force March 23, 1976.

50 See: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), December 10, 1984, http://www2.ohchr.org/english/law/cat.htm; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), December 21, 1965, http://www2.ohchr.org/english/law/cerd.htm; Convention on the Rights of the Child, November 20,1989. http://www2.ohchr.org/english/law/crc.htm. Last accessed December 13, 2010.

51 See UN HRC state-based websites: the United Kingdom - http://www.ohchr.org/EN/countries/ENACARegion/Pages/GBIndex.aspx; Egypt - http://www.ohchr.org/EN/countries/MENARegion/Pages/EGIndex.aspx; and, Israel - http://www.ohchr.org/EN/countries/MENARegion/Pages/ILIndex.aspx;

reports, complaints, and related submissions from groups or individuals.[52] The relevant UN bodies are: the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee against Torture; and the Committee on the Rights of the Child. The United Kingdom, Egypt and Israel all regularly report to many of these bodies. Moreover, NGOs that monitor the situations in these countries, such as British-Irish Rights Watch, the Egyptian Organization for Human Rights and the Palestinian Organization for Human Rights, may produce "shadow reports" that are also provided to the committees.

Human rights are also monitored through: the Human Rights Council (HRC), which replaced the Commission on Human Rights; and the special procedures established by the HRC. The HRC is a subsidiary organ of the United Nations General Assembly (UNGA) and is responsible for promoting human rights, effecting coordination thereof, and periodically monitoring states' fulfillment of their obligations.[53] The HRC oversees special procedure mechanisms including those of an investigatory and fact-finding nature. These may be related to a human rights theme, such as extrajudicial, summary, or arbitrary executions, or related to a country-situation like the Occupied Territories.[54] Special procedures are carried out at the direction of an expert individual, such as a Special Rapporteur, or a working group. For example,

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52 In addition to the aforementioned five treaties, two other conventions, the Committee on Migrant Workers and the Committee on the Elimination of Discrimination against Women have corresponding bodies.

53 United Nations General Assembly, "Human Rights Council," General Assembly Resolution 60/251, April 3, 2006, http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf. Last accessed October 17, 2010.

54 Office of the United Nations High Commissioner for Human Rights, "Special Procedures Assumed by the Human Rights Council," http://www2.ohchr.org/english/bodies/chr/special/index.htm. Last accessed October 17, 2010.

in the wake of Israel's attack on the Gaza Strip, the HRC convened and produced an expert committee that produced a final report that critiqued Israeli and Palestinian human rights violations and breeches of humanitarian law.[55]

Human rights complaints which may be alleged by opposition or resistance groups are too numerous to list herein relative to their basis in actual law. A few points, however, merit mentioning. Notably there is a repetition of human rights across treaties, which goes towards showing an expectation of treatment and recourse. Such rights violations give rise to group complaints including summary detentions and extrajudicial killings such as those carried out by Israel against Hamas or the United Kingdom against the IRA. The United States has generated similar protests as part of the "war on terror," and its related treatment of detainees in Abu Ghraib, the Guantanamo Bay detention center and the so-called secret detention facilities, particularly those in Europe. The United Kingdom, Egypt, Israel have also tortured prisoners and have come under varying degrees of scrutiny. A general lack of access to justice systems and unequal treatment when access is present have been frequent complaints of Irish Republicans, the Muslim Brotherhood, and Hamas. For example, Israeli restrictions on freedom of movement have been imposed through curfews, the separation barrier and border checkpoints, which are frequently closed to Palestinians, without adequate redress.

Self-determination is another aspiration cited by militant and opposition groups. Indeed, it has been an ongoing part of Sinn Féin and the Irish Republican Army's messaging for decades. Self-determination is another right with the status of *jus cogens*, a law from which no derogation

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55 See, for example: United Nations Human Rights Council, "UN Fact Finding Mission on the Gaza Conflict," http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/factfindingmission.htm. Last

is permissible. However, the practical content and timing of the exercise of the right are issues that preoccupy jurists and practitioners.[56] In 1996 the Committee on the Elimination of All Forms of Discrimination issued a general recommendation, which stated in part:

> In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. … The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.[57]

Hannum rightly observes self-determination as a political creature of the nineteenth century that became identified with the nation-state.[58] However, as time passes and nations and states evolve, so too do our conceptions of them and self-determination. A modern scholar of nationalism points out that "The economy, institutions and polices of direct-rule states can affect the net benefit of

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accessed November 26, 2010.

56 See, for example: Maivân Lâm, *At the Edge of the State: Indigenous Peoples and Self-Determination* (Ardsley, NY: Transnational, 2000); Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: the Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990).

57 United Nations Commission on Human Rights, "General Recommendation No. 21: Right to Self-Determination, August 23, 1996, http://www.unhchr.ch/tbs/doc.nsf/0/dc598941c9e68a1a8025651e004d31d0?Opendocument. Last accessed October 17, 2010.

58 Hurst Hannum, "The Right to Autonomy: Chimera or Solution?" in Kumar Rupesinghe and Valery Tishkov, *Ethnicity and Power in the Contemporary World* (New York: UN University

sovereignty to peripheral nations and hence the demand for it."[59] Additionally, in today's world, the nation-state is a concept and reality at odds with the contemporary notions of globalization and integration. Self-determination is thus no simple matter and can run the gamut from limited internal sovereignty as with Native Americans in the United States, to those seeking a state of their own. Those falling into this latter category, include, for example, the Palestinians for whom issues of self-determination are particularly acute. They perceive the entirety of "their" land as being controlled by "foreign" forces and powers, which is quite different from a transnational movement such as al Qaeda, which focuses on global resistance against various state powers in the name of the Islamic community, the *ummah*. In Northern Ireland, Irish Republicans have sought the ability to sever their territorial ties with Great Britain and reunite with the Republic of Ireland.

States' so-called "wars on terrorism" also raise a bevy of concerns regarding the applicability of international humanitarian law. Historically, war was understood as a conflict between two states and humanitarian law acted as a check on the waging forces.[60] In recent decades, there has been a focus on intrastate conflicts. Wilde correctly notes that the question is not one of whether any law applies, but rather which legal regimes are relevant. He explains that while some posit humanitarian and human rights law are mutually exclusive, it is only humanitarian law that is truly situational – applying in times of internal and international armed conflict.[61]

Press, 1996).
59 Michael Hechter, *Containing Nationalism* (New York: Oxford University Press, 2000). 7.
60 Cassese, *International Law in a Divided World*.
61 Ralph Wilde, "From Guantánamo Bay to Abu Ghraib: the Application of International Human Rights Law to the Post-9/11 Extraterritorial Activities of States," in: *September 11, 2001: a Turning Point in International and Domestic Law* (Ardsley, NY : Transnational Publishers, 2005).

The four Geneva Conventions and their additional protocols are the heart of international humanitarian law. The ICRC, widely considered *the* international authority on humanitarian law, advises the following: International humanitarian law is applicable and thus offers protection in two situations: in international armed conflicts and in non-international armed conflicts. The Geneva Conventions and Protocol I apply to the former and what is known as Common Article III and Protocol II apply to the latter. Notably, as per article 1 of Protocol I, wars of "national liberation" are understood to be international armed conflicts.[62]

The first Geneva Convention is directed toward the protection of wounded soldiers; the second, wounded and shipwrecked at sea; the third, prisoners of war; and the fourth, civilians under enemy control. There are two additional protocols. One of the primary contributions of the first protocol is that it provides that peoples are fighting against colonial domination, alien occupation or racist regimes are participants in international conflicts.[63] The second protocol applies to non-international conflict and its fundamental guarantees (as they are termed) apply to non-participants or those who ceased participation and include prohibitions on collective punishment, humiliating and degrading treatment.[64] Additional provisions address restrictions of liberty and criminal prosecution. Key to civilian protection are prohibitions on targeting civilians, agricultural areas, drinking water installations and irrigation systems, as well as power generation facilities and dams.

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62 International Committee for the Red Cross (ICRC), "International Humanitarian Law – Answers to Your Questions," (Geneva: ICRC, 2002), 16.
63 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977. 1125 U.N.T.S. 3, entered into force Dec. 7, 1978.
64 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125

The United Kingdom and Egypt are states-parties to the Geneva Conventions as well as the first and second protocols.[65] Israel is also a state-party to all four Geneva Conventions but not the second protocol.[66] In 1989, the Palestinians (represented by the Permanent Observer of Palestine to the United Nations Office at Geneva) informed the Government of Switzerland "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto."[67]

Israeli statements about human rights and humanitarian law are often oriented toward justification of its action in relation to defense of the nation, rather than couched in language related to the pursuit of democratic or human rights. In example, regarding their summer 2006 actions in Lebanon, they stress that they do not target civilians and aim to strike facilities directly aiding terrorist organizations in their attacks against Israel.[68] Their national "Guidelines for the 31st Government" state "Israel will complete the security fence as quickly as possible, in order to provide maximum security to its citizens and residents, taking into consideration the

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U.N.T.S. 609, entered into force Dec. 7, 1978.

65 ICRC, "Treaties by Country," http://www.icrc.org/ihl.nsf/Pays?ReadForm. Last accessed October 17, 2010.

66 See: ICRC. "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977," http://www.cicr.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P. Last accessed October 17, 2010.

67 ICRC. "International Humanitarian Law – State Parties," http://www.cicr.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P. Last accessed October 17, 2010.

68 Israeli Ministry of Foreign Affairs, "Behind the Headlines: Israel's Counter Terrorist Campaign," August 15, 2006, http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Israels+counter+terrori

humanitarian needs of the Palestinian civilian population, and trying to prevent unnecessary suffering."[69]

Egypt also frequently couches their security force actions in terms of what they view as their domestic "war on terror." Egypt's Emergency Law is the overarching umbrella under which many state abuses take place. The Emergency Law has been in place since 1981, passed in the wake of President Sadat's assassination. In their 2007 petition to the United Nations for a seat on the Human Rights Council, the Government of Egypt stated they remained "committed to lifting the current state of emergency upon the completion and adoption of a new anti-terrorism legislation, the objective of which is to achieve the delicate balance between protecting the security of the society and the respect of human rights."[70] That same year the state of emergency was effectively constitutionalized with amendments.

In stark contrast, the support-seeking rhetoric of opposition and resistance groups such as the Muslim Brotherhood and Hamas are rife with allegations of human rights and humanitarian law violations. As indicated above, these groups have a large repository of rights from which they can choose, adding legal validity and international standing to their complaints. Egypt and Israel regularly fuel the fire by engaging in rhetorical efforts to shore up their public images as respectful of those rights, the former in global pursuit of recognition for their "democratization" efforts, the latter viewed as the Middle East's only real democracy which perceives itself under

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st+campaign+-+FAQ+18-Jul-2006.htm. Last accessed October 17, 2010.

69 Israeli Prime Minister's Office, "The Guidelines of the 31st Government of Israel," May 2006, http://www.pmo.gov.il/PMOEng/Government/Policy/. Last accessed October 17, 2010.

70 Permanent Mission of the Arab Republic of Egypt to the United Nations, "Annex to the note verbale dated 18 April 2007 from the Permanent Mission of Egypt to the United Nations addressed to the President of the General Assembly," UN doc. no. A/61/878, April 23, 2007, http://www.un.org/ga/61/elect/hrc/. Last accessed October 17, 2010.

constant threat and thereby acting in defense of the nation.

One need not look as far as the Middle East, however, to find human rights violations cited as a motive. For example, in Russia, an infamous theater siege in Moscow was undertaken to draw attention to Moscow's actions in Chechnya, which caused the death of innocents, including children. Although a just solution was sought, there was a lack of awareness about the dire nature of the situation.[71] Thus the Chechen militants sought support for their cause, literally seizing the stage. The Irish Republican Army (IRA), while on ceasefire in 1998, continued to hold the British responsible for the conflict in Northern Ireland when they stated:

> We reiterate our belief that the root cause of conflict in Ireland is the British military and political occupation of part of our country. Eight centuries of history stand as irrefutable testimony to the belief that a united independent Ireland, free from British interference, and ruled by and for the people of this island, offers the best guarantee of the establishment of a just and lasting peace in Ireland. Equally 75 years of Unionist misrule and its accompanying suppression of democracy stand as a stark reminder that no internal settlement can deliver justice, equality or peace.[72]

CONSTRUCTING THE NATION IN OPPOSITION

Contextually, opposition groups, even those who use violence, may believe they are

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71 CNN, *Insight,* October 24 2002. http://transcripts.cnn.com/TRANSCRIPTS/0210/24/i_ins.01.html. Last accessed December 13, 2010.

72 Irish Republic Army, "New Year Statement, 8 January 1998," January 8, 1998, http://cain.ulst.ac.uk/events/peace/docs/ira080198.htm. Last accessed October 17, 2010.

doing the right thing: serving a greater good, representing their interests and mobilizing supporters.[73] The types of support needed include money, safe havens, transit routes, political backing, military assistance, training, recruits, as well as popular encouragement and cooperation.[74] Such situational popular support, or a perceived need to offer it, can manifest as approval for broadly positive actions, such as running candidates for elections as well as the most inflammatory militant actions including *martyrdom* attacks.[75]

Although the contextualized violations of human rights materializing as group grievances can be different, there are also some common threads. The desire for positive identity compounded by a frustration of needs and expectations, whether material or psychological, can be an important factor.[76] Key to the concept of frustration of needs is that a group may share the sentiment or experience. Moreover, "frustration arises not from unconscious forces…but from the failure to receive an expected gratification. Individuals learn to expect a reward to result from a given action; frustration stems not from general deprivation, but rather deprivation of an expected reward."[77] This certainly describes the experience of the nonviolent Muslim Brotherhood in its relations with the Egyptian state (not to mention much of the international community) as well as Hamas with its successful forays into democratic politics.

Frustration as well as resentment, revenge, humiliation are all-powerful triggers. In

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73 Bruce Hoffman, *Inside Terrorism,* (New York: Columbia U.P, 1998).
74 Daniel Byman, et al, *Trends in Outside Support for Insurgent Movements,* (Santa Monica, CA: Rand, 2001).
75 Robert Pape, *Dying to Win* (New York: Random House, 2005).
76 Ervin Staub et al, "Healing Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing: an Intervention and Its Experimental Evaluation in Rwanda," *Journal of Social and Clinical Psychology,* 24 no. 3(2005).
77 Roger Peterson, *Understanding Ethnic Violence,* (New York: Cambridge University Press, 2002), 78.

addition to the aforementioned value of positive and negative emotions in shaping individual preferences, emotions can also serve as a switch between desires and motivate an individual to act on behalf of group-based concerns such as security, status and retribution.[78] For example, some observers (including those with an agenda to paint the Brotherhood with a radical brush) cautioned that Israel's assassination of Sheikh Ahmed Yassin in 2004 would lead to increased recruitment for the Brotherhood, heightened Islamic "extremism," and calls for retaliation. Yassin started out as a member of the Muslim Brotherhood, and Hamas as a Palestinian chapter or branch of the organization. After Yassin's murder, a few thousand students at Tanta University (in Egypt) staged a demonstration that included a phone call with exiled (to Syria) Hamas leader Khaled Mishaal. According to one report, "students chanted anti- American slogans, and claimed that Yassin had a million followers who will seek out his revenge."[79]

In another example, just up the Mediterranean seacoast, Hezbollah has long held Israel (and others) responsible for much of the oppression inflicted upon the Muslim world. In an early document, termed their "Open Letter," published in 1985, they state:

> As for Israel, we consider it the American spearhead in our Islamic world... The enemy poses a great danger to our future generations and to the destiny of our nation, especially since it embraces a settlement-oriented and expansionist idea which it has already begun to apply in occupied Palestine and it is extending and expanding to build Greater Israel … Therefore our confrontation with this enemy must end with its obliteration from existence… We consider this a betrayal of the

78 Id.
79 Gamma Essam El-Din, "An Even More Active Brotherhood?" *Al-Ahram Weekly On-line,*

Muslim Palestinian people's blood and of the sacred Palestinian curse.[80]

Notably, this was not intended as a doctrinal recitation, but rather a letter of appeal.[81] Hezbollah has of course moderated their rhetoric, and arguably their actual position in the intervening years; however, these few sentences contain a lot of emotional and organizational punch. They express hatred, fear, and a desire for revenge. It also is a cross-national appeal to Palestinians, Egyptians, and, of course the Lebanese, as well as a cross-religious effort targeting Shi'a and Sunni.

Indeed, it is critical that these shared grievances and emotions can also be the building blocks of cross-movement cooperation and support, in a variety of forms. This is manifest in the Muslim Brotherhood's often-referenced position as the proverbial "grandfather of all Islamist groups," in addition to broad Arab and Muslim solidarity with the Palestinians' struggle against Israel. Libya's Moamar Khadaffi is widely understood to have armed the IRA, not because he had an emotional attachment to the Irish but rather because he had less than positive feelings for the British.

Hezbollah's letter of appeal and the more recent demonstrations in Egypt against Yassin's assassination also demonstrate that emotions need not be restricted to the active members of a group, but might affect an entire society or community and thus impact the potential for support at large. For example, moving out of the Middle East, increased repression of leftist, Italian radical groups (largely in the 1970s) was shown to have led to a corresponding increase in the recruitment of terrorist group members and personal connections played a big part

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April 1-7, 2004, http://weekly.ahram.org.eg/2004/684/eg2.htm. Last accessed October 17, 2010.
80 Foreign Broadcast Information Service, "Lebanon: Hizballah Issues 'Open Letter' on Goals, Principles ," *Near East/South Asia Report,* April 19, 1985, http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA351867. Last accessed November 10, 2010.

in conscription as neighbors, coworkers and relatives joined the cause. [82] This comports with the notion that political action is motivated more by group interest rather than personal interest. In essence, people do not necessarily join movements because they feel personally aggrieved, but rather because of their feelings about the treatment of the group to which they belong.[83]

Social identity theory advances the idea that to the extent to which people think about the groups they belong to "(their 'social' self), they interpret experiences as reflecting treatment as a member of groups and think about justice in group terms."[84] Political psychology adds "political action, including protest and confrontation is motivated more by identification with group interest than by self-interest."[85] One key group to which people belong that affects identity perception and construction is the nation. Although all three groups examined herein are frequently referred to in religious terms – the IRA as Catholic, and the Muslim Brotherhood and Hamas as Islamist, they clearly operate at the national level, in relation to the state or the state they seek to create or re-imagine and that which they oppose.

Contemporary nationalist discourse is peppered with ideas about the formation of identities and the process of their creation. While this analysis focuses on the role of human rights violations in nation building, an examination focused on the same groups could alternatively concentrate on the function of language (Arabic or Hebrew), symbols (British red,

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81 Ahmad Nizar Hamzeh, *In the Path of Hizbullah,* Syracuse, (NY: Syracuse U.P, 2004), 27.
82 Donatella Della Porta, "Left-Wing Terrorism in Italy," in: Martha Crenshaw, *Terrorism in Context*, (University Park, PA: Penn State U.P., 1995).
83 Clark McCauley, "Psychological Issues in Understanding Terrorism and the Response to Terrorism," in *Psychology of Terrorism – Coping with the Continuing Threat,* ed. Charles Stout (Westport, CT: Praeger, 2004).
84 T. Tyler, "Social Movements: Psychological Perspectives," in *International Encyclopedia of the Social and Behavioral Sciences*, eds. Neil J. Smelser and Paul B. Baltes, Science Direct online, 2004.

white and blue street curbs vs. Irish orange, white and green ones), and/or other varying traditions. All of these group-based distinctions speak to an underlying precept of nationalism: in order to have *us*, you must have *them*. This process of otherification involves the creation of permeable boundaries marking cultural and ethnic territory. The otherification manifest in this study is juxtaposition of three groups of victims or survivors – the Irish Republican Army, the Muslim Brotherhood, and Hamas in contrast to three state oppressors, the United Kingdom, Egypt and Israel (in addition to other secondary but significant players such as the United States).

There are many definitions of nationalism and this study does not purport to include all or even most of them; rather this exploration uses the ideas of Hobsbawm, Gellner, Anderson and Hechter to inform the analysis. Hechter provided a tidy but thorough description of nationalism, which echoes and expands on Hobsbawm and Gellner, as: "collective action designed to render the boundaries of the nation congruent with those of its governance unit."[86] In *Imagined Communities,* Anderson took a very nuanced approach and found nationalism to be a modern concept of an imagined, limited, sovereign community.[87] The community is limited because its boundaries, although flexible, do exist. Moreover, outside of those boundaries are other nations that may exist either peacefully or in conflict. The nation is imagined as sovereign because recognized sovereignty implies freedom. Increased sovereignty correlates with increased freedoms. The nation is also a community because its members exhibit a comradeship amongst each other, whose extreme expression may be a willingness to kill or be killed for the greater

85 McCauley, "Psychological Issues in Understanding Terrorism," citing Richard Kinder.
86 Hechter, *Containing Nationalism*, 7.
87 Ben Anderson, *Imagined Communities,* (London: Verso, 1983), 6-7.

good of other members. The crux of Anderson's argument is that the nation is imagined because it is artificial: most members do not share the same space in time. Thus, national identity allows the individual to view his/herself as belonging or occupying a rightful place.

Motyl concurs with Anderson's notion of imagined community in theory, and posits that we cannot create something from nothing. He believes nationalist entrepreneurs use purposeful building blocks, herein, human rights violations, to invent group identity.[88] Hobsbawm notes that this invention of tradition is expected to occur more frequently when a rapid transformation of society weakens or destroys the social patterns for which old traditions had been designed, producing new ones to which they were not applicable or when such old traditions and their institutional carriers and promulgators no longer prove sufficiently adaptable and flexible or are otherwise eliminated.[89]

The role of myth as crucial to the formation and durability of the nation is also emphasized in contemporary nationalist discourse. Gellner and Hobsbawm advance that "Nations as a natural, God-given way of classifying men, as an inherent ... political destiny, are a myth; nationalism, which sometimes takes preexisting cultures and turns them into nations, sometimes invents them, and often obliterates preexisting cultures: *that* is a reality, for better or worse an inescapable one."[90] A regional observer of the Middle East said myth can be understood as "the deliberate or accidental distortion of historical fact in determining how individuals see their world and how leaders make decisions that have extraordinarily significant

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88 Alexander J. Motyl, "Inventing Invention: The Limits of National Identity Formation," in *Intellectuals and the Articulation of the Nation*, eds. Ronald Suny Grigor and Michael D. Kennedy (Ann Arbor: University of Michigan Press, 1999).
89 Id.
90 Ernest Gellner, *Nations and Nationalism since 1780,* (Ithaca, NY, Cornell U.P., 1983), 48-9.

consequences."[91] Putting theory to practice, he noted that when studying the statements of Islamist militants, he "saw again how history could be made to serve the ends and means of men."[92]

THE RATIONAL USE OF HUMAN RIGHTS AS NATIONALIST BUILDING BLOCKS

This chapter started out with a discussion of rationality and ended up with another about nationalism. In between, a variety of theoretical and other analytic tools were explored that create the framework for the analyses of the Irish Republican Army, the Muslim Brotherhood, and Hamas that follow. Herein, we find that opposition and resistance groups are rational support maximizers that tap into the emotion-based preferences of their target populations. They play upon their status as victims, emphasizing shared grievances manifest as motivations, elevating their dual roles of the oppressed and *the* resistance group *par excellence*, to a near- mythical status to create intergroup cohesion and, simultaneously, serve as a vehicle of otherification.

This analysis of resistance groups' grievances neither panders to the movements nor invalidates their claims of human rights violations by focusing on the exploitation of their status. The consequences of state failure to create environments hindering rather than fueling militancy are obvious. Societies that lack or eliminate legitimizing factors for resistance groups' violent actions and instead permit them to choose alternative positive paths, provide a more constructive environment for ending conflict and nurturing peace.[93] Indeed, "States whose policies foreordain

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Emphasis in original.
91 Burke, *On the Road*, 17.
92 Id.
93 Crenshaw, *Terrorism in Context.*

the members of a nation to being peripheral losers in the competition for state-provided goods lay themselves open to nationalist violence."[94]

94 Hechter, *Containing Nationalism*, 133.

CHAPTER 3

SINN FÉIN AND THE IRA'S "IMAGINATIVE" TRANSFORMATION: FROM SUNDAY TO FRIDAY

> We accepted the myth that we could not live together in peace partly because we knew no better and partly because we were afraid to contradict the mythmakers. … The myth was expressed so often that we seldom thought of questioning it or contradicting it. If we had done so we would have been accused of being mad or subversive – mad to question those who taught us the myth and subversive for revealing the real reasons why good people in Belfast were so successfully persuaded to fight each other.[1]

> *Tiocfaidh ár lá.*
> Irish republican expression meaning "Our day will come."

INTRODUCTION

The province of Northern Ireland is one of the four constituent territories that comprise the United Kingdom. Many people are familiar with Northern Ireland because of the "Troubles," a conflict between peoples with competing ideologies and goals — key amongst them, different political visions for their collective futures.[2] This divide is often characterized along religious lines (Catholic and Protestant) although actual disagreements are more about land, politics and power than differing theologies. Unionists and loyalists, who are predominantly Protestant, seek to maintain the provincial relationship with Great Britain while nationalists (mostly Catholic), including republicans, seek unification with the Republic of Ireland.[3]

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1 Desmond Wilson, *Democracy Denied* (Dublin, Ireland: Mercier Press, 1997), 9.
2 The United Kingdom of Great Britain and Northern is comprised of England, Scotland, Wales, and Northern Ireland.
3 There are distinctions made between unionism and loyalism as well as Irish nationalism and republicanism in Northern Ireland. For purposes herein, it is understood that class and type of involvement with the conflict are key distinctions for the former. Loyalists are more working

Neither unionism nor nationalism is a homogenous movement. Throughout the last several decades, both ideologies have been represented by a range of political parties and notable actors on the domestic and international stages. Additionally, they have been linked to militant groups who have used violence to advance their goals. Republicanism as represented by the Irish Republican Army and Sinn Féin, the political party with whom they are allied, is the focus of the analysis herein.

Sinn Féin is a prime example of a nationalist entrepreneur: They have successfully used human rights issues to build movement support and justify a range of activities — civil, political and violent — during key phases of struggle with the state. This strengthened group cohesion and defined the boundaries of *us* and *them*. This chapter will analyze this demarcation and movement building in three phases. In the first phase, from the early 1970s through the early 1980s, Sinn Féin used human rights violations to support its outsider status and the actions of the IRA. It also defined the movement's relationship with the British state and its supporters: the oppressed and the oppressors, the occupied and occupiers. From the early 1980 through the mid-1990s, Sinn Féin showed organizational flexibility, responded to changing circumstances, and participated in the political process while the IRA continued its campaign of violence and also sent some positive signals to the British state. During this phase, the republican movement used and benefitted from human rights issues to build support for its new "insider" role and its

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class, lived in communities which backed on nationalist ones, and were more known for engaging in paramilitary activity. Meanwhile, Sinn Féin has been at the forefront of republicanism, advocating a republican form of government through more aggressive approach, including paramilitary tactics, while the SDLP is considered a nationalist party and is opposed to violence. See Aaron Edwards and Stephen Bloomer, eds, *Transforming the Peace Process in Northern Ireland* (Dublin: Irish Academic Press, 2010); and Richard English, *Irish Freedom* (London: Pan Books, 2006).

inclusion in the peace process. The third phase, encompasses the negotiation of the Good Friday Agreement (GFA) and the immediate aftermath.

In making this transition from war-making to peace-building, Sinn Féin's leadership brought the party and its followers out of the realm of the demonized and into the land of national and international legitimacy. However, this moment in Irish history raises serious questions for the student of nationalist theory and practice: How, in an era of peace, does a militant nationalist party maintain adherence to their version of revolutionary republicanism? How do they recruit new adherents, fortifying the nation for years to come? How do they avoid disillusionment within their ranks and allegations of selling-out? How do they attract new believers when the war (at least with weapons of violence) is over? The strategic use of human rights as building blocks provides, in part, an answer. However, before stepping into the analytic quagmire of contemporary nationalist politics in Northern Ireland, it is necessary to set the stage and then briefly examine the backdrop for the current scene, the implementation of the Good Friday Agreement.

SETTING THE STAGE

Ireland is an island of thirty-two counties, six of which, Antrim, Armagh, Down, Fermanagh, Derry, and Tyrone, are tethered legally and politically to the United Kingdom. To understand how this geopolitical division of came to pass, one must step back in time. According to Edmund Curtis, the late Irish historian, "The traditions of the Irish people are the oldest of any race in Europe north and west of the Alps, and they themselves are the longest settled on their

own soil."[4] Yet, for more than 800 years, the British have ruled some portion of the island of Ireland.

The United Irishmen, led by Theobald Wolfe Tone, a Protestant, is credited with creating the idea of an Irish nation-state and it was "the first to demand total separation from England."[5] Through the publication of the pamphlet "An Argument on Behalf of the Catholics in Ireland" and other subsequent efforts, Tone and his organization sought to convince fellow Protestants that an Ireland free from British rule would be good for Protestants as well as Catholics.[6]

Daniel O'Connell and others took up the mantle of Irish nationalism in the 1800s. O'Connell worked to repeal the Act of Union (which linked Ireland with Great Britain) and struggled for Home Rule (limited self-government).[7] Parnell became a revered nationalist leader, and was referred to as "'the Chief,' a name which recalled the Gaelic past."[8] Charles Parnell, a Protestant, worked with new breed of Irish nationalists, the Fenians, who looked to America for inspiration (as opposed to the United Irishman who had looked to France). The Fenians were dogmatic, Irish Catholic nationalists; but Catholicism was not a component of the movement *per se*. They believed that England was the source of all misery in Ireland, thus to rid itself of such misery, Ireland must rid itself of English rule. The Fenian movement pulled its members from the working class as well as the rural and urban elites – shopkeepers and teachers.[9]

By the late 1800s, dividing lines between the Protestants and Catholics, particularly in Northern Ireland, became entrenched. The north of Ireland developed a strong industrial base

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4 Edmund Curtis, *A History of Ireland* (New York: Routledge, 1988),1.
5 Sean Cronin, *Irish Nationalism (*New York: Continuum, 1980), 23.
6 Tim Pat Coogan, *The IRA – A History (*Niwot, CO: Rhinehart, 1994), 4-5.
7 Id at 5.
8 Curtis, *A History of Ireland*, 378.

and was commercially linked to Britain. Protestants in the north, who had witnessed decades of repeated Irish attempts to secure home rule and fearful for their own economic well-being, crafted their own brand of nationalism which included an identification based on their union with Great Britain. In addition, during the waning decades of the nineteenth century, nationalists attempted a revival of the Irish language embodied in the formation of the Gaelic League.[10]

The Easter Rising of 1916 had tremendous significance for the Irish nationalist movement: "As taught in the South [the Republic of Ireland], Irish history has tended to portray Irish revolutionary movements as occurring in cycles which always ended in disaster until the triumphant self-immolation of the 1916 leaders, whose sacrifice and courageous example put new heart into the Irish people, and gave rise to an independence movement from which came liberation and prosperity."[11] The era of the Rising produced seminal nationalist leaders such as Padraig Pearse, James Connolly, and Michael Collins. Pearse foreshadowed the decades of intermittent conflict that would follow and the role of the Republican martyr when he said: "Life springs from death, and from the graves of patriot men and women spring living nations. Ireland unfree shall never be at peace."[12] "Freedom," self-determination in particular, and related human rights have been at the core of nationalist rhetoric for decades.

The early half of the twentieth century bore witness to the births of Sinn Féin, the Irish Republican Army — IRA, the renamed Irish Volunteers after the establishment of the first Dáil, or parliament — and the Irish Free State, which became the Irish Republic in 1948. Along with the formation of the state of Ireland came partition of the north from the south. For much of this

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9 Cronin, *Irish Nationalism,* 88-91.
10 Id, 98.
11 Coogan, *The IRA*, 3.

time, from 1921 to 1972, Northern Ireland also had its own regional government, as part of the United Kingdom, based at Stormont, the seat of the current Northern Ireland Assembly (a unicameral, devolved parliament).

The beginning of the Troubles can be traced to the late 1960s and the time of the Northern Irish civil rights movement. The leading organization, NICRA (Northern Ireland Civil Rights Association), worked on behalf of the economically disenfranchised Catholic population that faced discrimination in housing, employment and criminal justice. At the time, the British state made some concessions and was said to be on the verge of making more. However, "in the Unionist mind, anything in the way of a fair share for a Catholic meant less of a share for a unionist – and a possible weakening of his privileged position derived, as he saw it, from and through his cherished link with England."[13]

NICRA called for a demonstration on Sunday, January 30, 1972 in Derry City to protest internment, incarceration without trial. Internment in the United Kingdom was a British policy that targeted the Irish Catholic population in an attempt to crush the Irish Republican Army.[14] During the NICRA protest, British soldiers opened fire on the largely peaceful demonstrators, killing a total of fourteen and wounding more. The day became known as Bloody Sunday; for nearly thirty years it served as a rallying cry for Irish nationalists who sought to establish accountability for the day's events. Cronin remarks that, "The Derry killings united nationalist Ireland."[15] From Bloody Sunday through 1998, a civil war raged in Northern Ireland, fought with

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12 Quoted in: Tom Hayden, *Irish on the Inside* (New York: Verson, 2001), 123.
13 Coogan, *The IRA: A History*, 263.
14 Derry is known formally as Londonderry. Nationalist Catholics often drop "London" while loyalist Protestants retain it.
15 Cronin, *Irish Nationalism*, 227.

weapons of violence and words of domination and rebellion.

The war ended with the conclusion of the Agreement Reached in the Multiparty Negotiations, informally referred to as the Good Friday Agreement, so named for the day of its conclusion, Friday, April 10, 1998. It is an all-Ireland accord, approved by citizens of Northern Ireland and the Republic of Ireland after long and hard fought negotiations between the governments of Ireland and the United Kingdom as well as key political parties. The key Northern Irish political parties critical to the negotiations were: Sinn Féin, the Social Democratic Labor Party SDLP), the, the Ulster Unionist Party (UUP), the Protestant Unionist Party (PUP), the Alliance Party of Northern Ireland and the Northern Ireland Women's Coalition. The Democratic Unionist Party (DUP), the largest and most virulent of the hard-line unionist parties, withdrew from talks as did the smaller United Kingdom Unionist Party (UKUP) after Sinn Féin moved to earn itself a seat at the table through concessions related to IRA disarmament.[16]

The agreement is a complex document creating the political space for new institutions, laws and relationships. However, the following brief highlights suffice for the purposes at hand:

Institutional Changes

A power-sharing assembly (the Northern Ireland Assembly) is created and elections to seats therein are by proportional representation. Key Assembly decisions are taken by parallel consent or weighted majority.

A North-South ministerial council is established to deal with all-Ireland issues. The council is deemed a creature of British and Irish domestic legislation.

A British-Irish Council (BIC) is constructed under a separate British-Irish agreement and includes British and Irish government representatives as well as those from the devolved governments of Wales and Scotland, and Northern Ireland.

Rights and Opportunities

Basic civil, political and cultural rights are affirmed. The European Convention on Human Rights is to be domestically incorporated and the creation of a Northern Ireland Human Rights Commission is mandated.

Constitutional and Sovereignty Changes

Articles 2 and 3 of the Irish Constitution were slated to changed, and although conferring the birthright of Irish citizenship to all born on the island, Irish political unification would only occur with majority consent, both north and south of the border.[17]

According to one observer, the Good Friday Agreement "is an example of elite intervention designed to resolve ethnonationalist conflict. For the first time in Northern Ireland's long and troubled history, representatives from the two religious communities came together to endorse one of the most difficult and far-reaching agreements that has even been proposed as a solution to the conflict."[18] It is important to note, however, that while the Good Friday Agreement ended the war, it did not create peace. Although a relative calm has taken hold in many communities,

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16 George Mitchell, *Making Peace* (Berkley: UC Press, 1999).
17 "Agreement Reached in the Multi-Party Negotiations," (Dublin, Ireland: Government of the Republic of Ireland, Department of Foreign Affairs, 1998), http://www.dfa.ie/home/index.aspx?id=335. Last accessed October 9, 2010. Hereinafter, the Good Friday Agreement.
18 Bernadette C. Hayes and Ian McAllister, "Ethnonationalism, Public Opinion, and the Good Friday Agreement," in *After the Good Friday Agreement – Analyzing Political Change in*

Northern Ireland still grapples with tremendous issues related to old divisions and new ones.

This history is, of course, a simplification, a glimpse at select events and issues that comprise the national narratives of the 1.7 million residents of six counties of northeast of the island of Ireland. However, this abbreviated history provides the backdrop to understand the discussion at hand: that of republicanism's ability to lead its adherents, as well as the larger community, into and during, an era of relative peace after decades of war.

DEFINING THE "BLOODY" BOUNDARIES OF THE NATION

The years between 1971 and 1996 were rife with violence and violations of human rights perpetrated by all parties to the conflict. However, a series of British criminal justice policies implemented from 1971 to 1981, in conjunction with Bloody Sunday, combined to provide the motivation for organized, republican civil and militant opposition to British rule in Northern Ireland. This was the beginning of the construction of the modern Republican nation. In 1981, the hunger strikes provided the impetus for Sinn Féin's political ascendancy with further defined boundaries. To understand the construction process from the ground-up, these policies and events are reviewed chronologically to show the layering of violations and their utilization as human rights building blocks.

Internment

Internment, the indefinite detention without trial, was introduced in August 1971. Northern Irish Home Office Minister Brian Faulkner stated Northern Ireland was "quite simply

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Northern Ireland, eds. Joseph Ruane and Jennifer Todd (Dublin: UC Dublin Press, 1999), 3.

at war with the terrorist."[19] While internment was intended to undermine the Irish Republican Army's nationalist support, Bew and Gillespie noted, "It is clear … the main winners from the introduction of internment were the Provisional IRA…"[20] The analysis of the republican "benefit" from internment focuses more on the public's response to having their rights violated rather than its explicit use of human rights as a recruitment tool. At the time of internment, Sinn Féin and the IRA were reeling from years of relative inaction and internal divisions. The republican movement responded through organizing at the militant and civil levels; politics came later.

The Compton Report, a British government review of the alleged abuses associated with internment, found 342 individuals were arrested on the first day it was implemented in 1971; by November 10 of that year, nearly 1,000 were arrested. Most were held at Long Kesh Prison Camp.[21] The Compton Report was largely considered a "whitewash." One veteran commentator said its many failings provided the impetus that led the Republic of Ireland to take the United Kingdom to the European Court of Human Rights.[22] Human rights concerns about internment included restrictions on liberty, the lack of a right to a timely or fair trial, and the treatment of the detainees. There were also serious objections about discriminatory implementation of the policy.

The European Court examined the United Kingdom's conduct under the European

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19 BBC News, "1971: NI Activates Internment Law," *On This Day 1950-2005*, http://news.bbc.co.uk/onthisday/hi/dates/stories/august/9/newsid_4071000/4071849.stm**.** Last accessed June 27, 2010.
20 Paul Bew and Gordon Gillespie, *Northern Ireland: A Chronology of the Troubles 1968-1999* (Dublin: Gill and Macmillan, 1999), 37.
21 United Kingdom Home Office, "Report of the Inquiry into Allegations against Events on the 9th of August 1971," (London: Her Majesty's Stationary Office, 1971), §9. Hereinafter, the Compton Report.
22 Tim Pat Coogan, *The Troubles (*Boulder, CO: Roberts Rhinehart, 1996).

Convention on Human Rights and issued a decision after the end of internment. The Court found the Republic of Ireland did not establish that the United Kingdom's derogations from its legal obligations regarding extrajudicial detentions exceeded the exigencies of the situation in Northern Ireland.[23] Notably, the UK had filed notice of its intent to derogate from its convention obligations citing a public emergency. Brice Dickson reflected on the case and noted the EHCR's determination regarding internment as a policy was "greatly to be regretted."[24]

At the time of internment, groups such as the Association for Legal Justice and the Anti-Internment League actively investigated the practice and the range of attendant human rights abuses. Human rights campaigner Father Ray Murray, one of the more prominent individuals involved, stated: "We didn't have to do the job all the time of condemning the paramilitaries for everyone was doing that … But who was to do the other narrow focus job where people who were in charge of the law were breaking the law?"[25] The stage was being set for a much longer act that would unfold in the years to come: Sinn Féin at the political forefront and an array of domestic and international human rights groups charge the British government with violating nationalists' fundamental rights, implicitly shoring up the legitimacy of the republican nation.

Patricia Davidson, a Sinn Féin organizer in the early 1970s, said the group was busily engaged in civil activism – from leaflets to protest marches. She said nationalists of all stripes flocked to Sinn Féin because they were the ones organizing people.[26] Internment also garnered

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23 *Ireland v. United Kingdom*, European Court of Human Rights, Judgment, January 18, 1978, International Legal Materials, v. 17.3, May 1978, LexisNexis.
24 Brice Dickson, "The Detention of Suspected Terrorists in Northern Ireland and Great Britain," *University of Richmond Law Review,* 43 (March 2009), 927-966.
25 Bill Rolston, *Unfinished Business: State Killings and the Quest for Truth* (Belfast, UK: Beyond the Pale Press, 2000), 285.
26 Brian Feeney, *Sinn Féin, A Hundred Turbulent Years* (Madison, U. Wisconsin, 2002).

tremendous support for the IRA, in part because of its discriminatory application. Moloney noted, "its effect was to enormously increase nationalist alienation on both sides of the Border," leading to the creation of IRA safe havens in the Republic.[27] Because of faulty, dated intelligence, most of those interned had nothing to do with the IRA *before* they were locked up. This targeting increased the estrangement of nationalists from the state and the community perception of IRA violence as a reaction to state violence.[28] One woman who joined the IRA after bearing witness to internment said, "I felt I'd not other option but to join after that. That's when it became crystal clear to me that the Brits were here to suppress the Catholic minority, and for no other reason."[29] This discrimination helped reinforce the boundaries of the republican nation — defining *us* and *them* — the oppressors and the oppressed.

The human rights violations associated with internment went beyond discrimination; there were also widespread incidents of mistreatment and torture. Some prisoners endured the infamous "five techniques" as part of their interrogations: sleep deprivation; hooding; standing in stress positions at a wall; subjection to loud and ongoing noise; as well as deprivation of food and water. Father Murray interviewed numerous detainees in late 1971 and said: "A pattern emerged. They had been arrested under emergency laws… badly beaten, unashamedly brutalized… Numerous other stories emerged of use of electric shocks and simulated executions. … I made a dossier."[30] Although, as noted above, the European Court failed to find a violation regarding the actual act of internment (citing the UK's state of emergency), it found practices

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27 Ed Moloney, *A Secret History of the IRA* (New York: W.W. Norton, 2002), 101.
28 David McKittrick and David McVea, *Making Sense of the Troubles* (Chicago: New Amsterdam 2002), 70-1.
29 Richard English, *Armed Struggle* (New York: Oxford UP, 2003), 141.
30 Rolston, *Unfinished Business*, 288.

used during internment constituted "inhumane treatment" and violated the European Convention on Human Rights.[31]

Noraid, a U.S. based group ostensibly formed to support Irish republican prisoners' families, strategically used the situation in Northern Ireland to advance "the cause" in America. According to one observer, "One of the most important factors in the continued growth of Noraid was the introduction of internment."[32] Wilson examined media coverage of the situation and found some mainstream outlets became critical of the British. He also found the Irish American media provided a more scathing reporting of British actions and a greater depth of information. Wilson stated these accounts were "shocking" to Irish Americans, some of whom "capitalized on the heightened emotions" by organizing demonstrations as well as ex-internee tours.[33]

Four years after internment was introduced, it ended, and the IRA knew they "lost one of their prime recruiting and fund-raising trump cards. Particularly in the United States, imprisonment without trial became symbolic of what was seen as British repression in Northern Ireland. The dollars flowed in regularly to the Provisionals' coffers."[34] The Northern Ireland Secretary of State's goal was said 'to present the Provisionals [IRA] not as the serious political crusaders of Irish mythology but as the criminal thugs they are."[35] There were, however, other intervening events that were critical for the development of the republican nation, foremost amongst them, Bloody Sunday.

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31 *Ireland v. United Kingdom.*
32 Andrew J. Wilson, *Irish America and the Ulster Conflict 1968-1995* (Washington, D.C.: Catholic U.P., 1995), 51.
33 Wilson, *Irish America,* 52.
34 "Ulster; After Interment," *The Economist,* December 13, 1975, LexisNexis.

Bloody Sunday

On Sunday, January 30, 1972, British soldiers shot and killed thirteen people and wounded more than a dozen others who were participating in a demonstration against internment. The day, known as "Bloody Sunday," is the subject of books, documentaries, fictionalized movies, and a song by the rock band U2. Bloody Sunday occurred less than five months after internment began and it was a watershed moment for the republicanism. The British government response to the day's events, in part, was to issue two reports: The first, the Widgery Inquiry was largely considered another whitewashing of events.[36] The second, the Saville Report, was released in the summer of 2010, and it held the British government accountable for the deaths and injuries that resulted on that day. Britain's *Financial Times,* assessing the Saville Report, wrote, "Bloody Sunday became a recruiting sergeant for the IRA and persuaded thousands of young Catholics to join the armed struggle against British rule. It was also a political turning point, since it almost certainly extended the years of the Troubles by allowing the radical and militant IRA to displace the moderate leaders of the civil rights movement."[37]

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35 Id.
36 See, for example:; Peter Madden, "The Northern Ireland Experience," Remarks delivered at "October 2000: A Memory for Protest," held October 2, 2004, Nazareth published by Adalah, http://www.google.com/url?sa=t&source=web&cd=2&ved=0CBYQFjAB&url=http%3A%2F%2Fwww.adalah.org%2Fnewsletter%2Feng%2Foct04%2Fpeter.pdf&ei=fthATOrLNsL98Abnu4UR&usg=AFQjCNEqCSEh-SjLPnxRKfJOgEQs26K0fQ. Last accessed October 12, 2010 and British Irish Rights Watch, "Message of Support from British Irish Rights Watch the Bloody Sunday Families," press release, February 23, 2010, http://www.google.com/url?sa=t&source=web&cd=3&ved=0CBkQFjAC&url=http%3A%2F%2Fsetthetruthfree.org%2Fset-the-truth-free%2Fdocs%2FBIRW10Feb23.pdf&ei=fthATOrLNsL98Abnu4UR&usg=AFQjCNHEUKBo93_0t5ZQtsPPYt0V66ohbw. Last accessed October 12, 2010.
37 John Murray Brown, "Cameron Apologises for Bloody Sunday," *Financial Times*, June 15,

This analysis, which implicitly spotlights in-group/out-group dynamics and narratives of victimization and response, echoes repeatedly throughout much of the literature about the IRA. After Bloody Sunday, in Derry's nationalist heartland, the Bogside, recruits lined up by the hundreds to join the IRA.[38] O'Doherty found that those who joined the armed struggle did so because the British state's legitimacy was called into question.[39] An interview with an ex-IRA man revealed people enlisted because of security force behavior towards nationalists.[40] Feeny stated "people who had no previous association with republicanism joined the IRA and Sinn Féin in the days after Bloody Sunday. Others became tacit sympathizers."[41] Another IRA veteran (from the 1920s) who became active with Noraid in the US stated, "After Bloody Sunday [in 1972], things perked up quickly…When the blood is not flowing freely, people forget."[42] This latter statement is shocking in both its candor and accuracy. It brightly spotlights the role of role of violence and victimization (in other words, human rights violations), as insiders perceive them, in promoting the "struggle."

Overall, British paratroopers' actions upped the human rights ante – internment was discriminatory jailing based on your identity as a nationalist; Bloody Sunday was extrajudicial killing based on that same identity. The line dividing *us* and *them* was being reinforced. John Hume of the SDLP said, "Many people down there [in the Bogside] feel now that it is a United

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2010, http://www.ft.com/cms/s/0/2ee8a932-7890-11df-a312-00144feabdc0.html. Last accessed June 19, 2010.
38 Moloney, *A Secret History.*
39 Malachi O'Doherty, *The Trouble with Guns,* (Belfast, UK: Blackstaff Press), 1998.
40 Interview cited in English, *Irish Freedom*, 370.
41 Feeny, *Sinn Féin*, 271.
42 Angus Deming, Stephan Lesher, and Richard Manning, "The American Connection," *Newsweek*, December 1, 1975, LexisNexis.

Ireland or nothing."[43] At the same time, the IRA strategically sought to capitalize on its newfound position – it wanted negotiations, the instatement of special category status for "political" prisoners, and the release of Gerry Adams, who was interned.[44] Its demands were largely met and the IRA went on a brief ceasefire.

Hunger Strikes

Bloody Sunday was important because of the grievances it created amongst the nationalist population — it led many to join the IRA and further increased Sinn Féin's activism. The hunger strikes of 1981, during which ten men died protesting conditions of their imprisonment, transformed Sinn Féin into a formidable political actor and elevated the status of the IRA.

Hunger strikes have historic resonance within the Irish revolutionary tradition. The Easter Rising of 1916, a rebellion against the British presence in Ireland, was a watershed moment in Irish nationalist history, and is commemorated annually by Republicans. The rebellion, which unfolded in Dublin, involved the reading of the Proclamation of the Irish Republic, which asserted self-determination for the Irish people and guaranteed basic human rights for all its citizens. In the wake of rebellion, Thomas Ashe, who was incarcerated and sought political prisoner status, went on hunger strike and died during an attempted force-feeding. Tens of thousands attended Ashe's funeral – this outpouring encapsulated the mood at

43 Coogan, *The Troubles*, 136.
44 Liam Clarke, *Broadening the Battlefield -The H-Blocks and the Rise of Sinn Féin* (Dublin, Ireland: Gill and Macmillan, 1987).

that time.[45] One of the more famous subsequent hunger strikers was Terrence MacSwinney who died in 1920 after more than two months without food. MacSwinney, the mayor or the Irish city of Cork and an IRA "volunteer," said, "It is not those who inflict the most, but those who will suffer the most who will conquer."[46] Other hunger strikes followed in the subsequent six decades including an infamous "failed" effort in 1980. The protest ended after the British misled the IRA into thinking they would meet certain conditions, which set the stage for the events of 1981.

Bobby Sands, the most famous Irish hunger striker (republicans would say martyr), was an officer commanding (OC) in the IRA, imprisoned by the British in the H-Blocks, also known as Long Kesh. He began his hunger strike on March 1, 1981 and died May 5, 1981. While imprisoned and refusing food, he was elected to Britain's parliament. For many of those who seek a united Ireland, Sands' ultimate sacrifice serves as inspiration. An IRA statement issued at the initiation of the hunger strike with Sands (entry onto the hunger strike was staggered) said:

> We have asserted that we are political prisoners and everything about our country, our interrogation, trials and prison conditions show that we are politically motivated … As further demonstration of … the justice of our cause, a number of our comrades… will hunger-strike to the death unless the British Government abandons its criminalization policy and meets our demands.[47]

The hunger strikers articulated five demands: to the right to wear their own clothes, have a choice of work, engage in free association, the right to education and recreation, and the ability

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45 English, *Irish Freedom*.
46 David Berersford, *Ten Men Dead*, (New York: Atlantic Monthly Press, 1987), 10-11.
47 Berersford, *Ten Men Dead*, 61.

to receive visitors, letters, and parcels. Republican and nationalist literature surrounding their demands places them and the larger struggle in the context of human rights and human dignity, struggling for self-determination, battling against oppression.[48]

Historically, Irish republican prisoners used the Irish language as a tool, particularly, the 1981 hunger strikers. It was a way for them to communicate with each other and hold onto their culture in a very culture-less place. They even had Irish language "classes" in the prison. Sands said, "The screws [guards] didn't like Gaelic being shouted about the wing or its use in conversation. It alienated them, made them feel foreign, and even embarrassed them."[49]

Less than two weeks into Sands' hunger strike, members of Sinn Féin began working toward putting Sands up for election as a Member of Parliament (MP). The seat was made available after the sitting MP, an independent, died. Sands nomination on the Anti-H-Block/Armagh Political Prisoner ticket was no small feat. Electoral politics were complicated matters for republicans. There had been previous campaigns for elected office, north and south of the border, however, strategy and issues of legitimacy and abstentionism, were often cause for consternation. Republicans were concerned about legitimizing either the parliament in the south (the Republic) or the British "occupation" of the North by participating in elections. Once they overcame this issue, the next organization obstacle was whether to take their seats if elected. Finally, there was a fear of losing – putting too many of one's eggs in the electoral basket only to have them upset and broken. None of this was made easier by the splits and divisions that

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48 See for example, Father Denis Faul and Father Raymond Murray, "Hunger Strikes – the Search for Solutions," May 1981, Northern Ireland Political Collection, Linen Hall Library, Belfast, Northern Ireland; Gerry Adams, "The Way Forward," May 10, 1981, Northern Ireland Political Collection, Linen Hall Library, Belfast, Northern Ireland.
49 Bobby Sands, *One Day in My Life (*Dublin, Ireland: Mercier Press, Ltd., 1983), 35.

historically undermined the cohesion of the IRA and Sinn Féin.[50]

At the beginning of the hunger strikes, one republican characterized their organizing efforts as "difficult" citing people's weariness with the ongoing waves of prison-related activism.[51] By the end of the hunger strikes things had changed radically. Bobby Sands won the parliamentary seat, and, had he survived, he would have abstained from taking the seat in Westminster, a policy Sinn Féin maintains to this day. Also in 1981, two other hunger strikers were elected in to the Irish parliament, the Dáil. Feeny said Sinn Féin successfully "exploited the emotionalism" regarding the prisoners and used it to garner publicity and support.[52] Sinn Féin broadened their base during this period.[53] Indeed, Hannigan notes their rapid success was due to a "sudden and dramatic shift in the level of public support for [the IRA] as a result of the 1981 hunger strike, which led to a succession of election victories for Sinn Féin and an upsurge in sympathy for their cause around the world."[54]

After Sands death, Adams wrote that the British government's criminalization policy – treating the republican prisoners as ordinary criminal offenders – "is actually fuelling the resistance struggle especially with the recent well publicized murder of Volunteer Bobby Sands."[55] A British news program reporting on the death of subsequent hunger strikers including Patsy O'Hara, a member of the Irish National Liberation Army (INLA), noted the shrine-like quality of his house in which he was laid out for viewing "to heighten emotion and play on

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50 See: Feeny, *Sinn Féin;* and, Agnes Maillot, *New Sinn Féin* (New York: Routledge, 2005).
51 Id at 287.
52 Id at 290.
53 Seamus Metress, *The Hunger Strike and the Final Struggle* (Toledo, OH: Centre for Irish American Studies, 1983).
54 John Hannigan, "The Armalite and the Ballot Box: Dilemmas of Strategy and Ideology in the Provisional IRA, *Social Problems*, 33.1 (Oct., 1985), 33.

Catholic reverence for the dead."[56] The program cited the use of INLA propaganda to garner support for the cause and play to the world's media, particularly at the funerals.

The hunger strikes successfully impacted international public opinion. Protests were ramped up in the United States. Catalonian and Basque parliamentarians expressed support, as did French trade unions. A Portuguese newspaper circulated the headline, "Thatcher Murdered Bobby Sands," and *The Times* (of London) published survey results which found, "the hunger strikers have rekindled a flagged interest Ulster and its problems, as a result, world opinion has begun to shift away from the British government in favour of the IRA."[57]

The idea of internationalizing the struggle was a two-way street — many republicans saw themselves as part of larger, global effort. In a compilation of prisoners' thoughts on the hunger strikes, one republican wrote, "All the various forms of oppression and discrimination … practiced upon people came to light in the course of discussions between comrades, and with it a deep feeling of unity with those people… the world became divided into Oppressor and Oppressed, rich and poor, unjust and just. We became deeply proud of the 'wretched oppressed.'" Sands well understood this dynamic of *us vs. them* when he said: "I am a casualty of a perennial war that is being fought between the oppressed Irish people and an alien, oppressive, unwanted regime that refuses to withdraw from our land… I believe and stand by the God-given right of the Irish nation to sovereign independence."[58]

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55 Adams, "The Way Forward."
56 The New Lodge, "News Coverage of the 1981 Irish Hunger Strikes," Episode 3-7, Part 7-12, http://www.youtube.com/watch?v=FiGrcSc09ao&feature=related. Last accessed October 12, 2010.
57 Metress, *The Hunger Strike,* 8.

BUILDING THE NATION – BALLOTS, BULLETS AND BRIDGES

In the years following the hunger strikes, Sinn Féin and the IRA sought to capitalize on their political and social momentum – they were support-maximizers. They were no longer outsiders working on the outside. Instead, they became outsiders seeking to construct the republican nation from within and without – through engagement with the British system and against it. This represented a shift within the movement and presented challenges. Republicanism needed to maintain its commitment to a united, sovereign Ireland, yet, successfully work within the system it opposed.

Ballots

Sinn Féin's electoral effort was one way to work within the system and strategically maintain their revolutionary appeal. On the heels of Sands election to the UK parliament, Owen Carron (who was Sands' election agent), won the Fermanagh seat in a by-election on the Anti-H-Block/Armagh Prisoners ticket. Given the success of prisoners at the ballot box, north and south of the border, they might have been the logical candidate choice. However, in the wake of Sands' election, the UK made it illegal for prisoners to run for office.[59]

By October of 1981 a new approach was developed within Sinn Féin and with the approval of the IRA, after much discussion within the movement. Danny Morrison, Sinn Féin's master of publicity and editor of the Republican movement's flagship publication, *Republican News*, set forth the new strategy in a nutshell: "Who here really believes we can win the war through the ballot box? But will anyone here object if, with a ballot paper in one hand and the

58 Sands, *One Day in My Life,* 219.

Armalite in the other, we take power in Ireland?"[60] This is the infamous encapsulation of the Armalite and ballot box strategy.

Less than a year later, Sinn Féin threw its hat into the Northern Ireland electoral ring. Gerry Adams, Martin McGuiness and three others won seats for the party in a new Northern Ireland Assembly. Overall, Sinn Féin came away with five seats and 10% of the vote in the contest.[61] Election literature for Adams and Alex Maskey (who ran with him in the West Belfast constituency) emphasized broad human rights concerns, economic and social rights as well as discrimination based on politics, gender and youth. It also contained a quote from Bobby Sands that said Ireland *is* its people and those who do nothing to help their countrymen are "fraud[s]."[62]

The June 1983 Westminster elections affirmed the movement's decision and shored up the electoral foundations for the future. Gerry Adams, vice president of Sinn Féin, became an elected Member of Parliament for West Belfast, and Sinn Féin took more than 13% of the vote across the north. Less than 100 votes prevented Danny Morrison from winning a second parliamentary seat in the Mid-Ulster constituency. Five months after Adams became an MP, he was elected the president of Sinn Féin at the party's annual conference.[63]

One year later Danny Morrison contested the European parliamentary elections. The

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59 Moloney, *A Secret History.*
60 Feeny, *Sinn Fein*, 303.
61 See: New Ireland Social and Political Archives, "Northern Ireland Assembly Elections 1982," http://www.ark.ac.uk/elections/fa82.htm. Last accessed July 30, 2010.
62 Sinn Féin, "Gerry Adams, No. 1, Alex Maskey, No. 2 – Vote Sinn Féin" (Dublin, Ireland: AP/RN Workshop, 1982), Northern Ireland Political Collection, Linen Hall Library, Belfast, Northern Ireland.
63 See: New Ireland Social and Political Archives, "Westminster Election, 11 June 1983," [note: date appears to be a typo; election 9 June] http://www.ark.ac.uk/elections/fw83.htm. Last accessed August 3, 2010; and, Fionnuala McKenna, "Westminster General Election, Thursday, 9 June 1983," http://cain.ulst.ac.uk/issues/politics/election/rw1983.htm/. Last accessed August 3,

party's *Election News* publication drew together the strategy of resistance at the polls and concerns about justice to build the movement: "Through Sinn Féin's participation in election campaigns since then, nationalists have been able to further demonstrate their will and intention to resist, not just the British occupation itself, but all the other evils which inevitably flow from that unjust situation…."[64] Although Morrison didn't win any of the three seats that were up for grabs, he garnered more the 13% of the vote. However, John Hume's (SDLP) victory was a blow to the movement's newfound confidence given its recent electoral successes.

Bullets

In the wake of the hunger strikes, the British government was cracking down in Northern Ireland, trying to quash the IRA's momentum, and state violations of human rights were rampant. A security services "shoot-to-kill" policy was in place that resulted in numerous deaths. Supergrasses were used by British to convict suspected paramilitaries, often in "Diplock" courts – one-judge trials without juries.

Questions about shoot-to-kill as state policy emerged in the wake of an incident in which the RUC fired more than one hundred bullets into a car carrying a group of alleged IRA men, all unarmed; three were killed. The RUC officers involved were cleared of criminal wrongdoing; the judge recommended their commendation.[65] Subsequent victims of shoot-to-kill included four IRA men, killed by the British SAS in late 1984, and a seventeen year-old boy, shot by the

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64 Sinn Féin, "Showing the Will to Resist," *Election News*, June 1984, Northern Ireland Political Collection, Linen Hall Library, Belfast, Northern Ireland.

65 Paul Johnson, "When Shoot to Kill Comes Before Stop and Search: Army Tactics which Leave a Question Mark over the Rule of Law in Northern Ireland," *The Guardian* (London),

British Army's Ulster Defense Regiment (UDR), after a car he was in crashed into a roadblock.[66] Writing about the policy, Helsinki Watch cited a 1985 international lawyers' report which found, "The evidence we have heard leads us to conclude that an administrative practice has been allowed to develop in Northern Ireland, by which killings in violation of the European Convention and the International Covenant are at least tolerated, if not actually encouraged."[67]

The controversy over the UK's shoot-to-kill policy is ongoing, decades after it was instituted. An official government inquest into the early killings, known as the Stalker/Samson inquiry, has yet to be made public. In 1985 Stalker said, "Policemen are committing murder and I am unable to get to them."[68] Stalker was himself placed under investigation (charges he was later cleared on), suspended, and removed from the inquiry. Many nationalists felt his removal came about because he was getting too close to the truth about the killings.[69]

The term supergrass is used to refer to informants who gave information about their compatriot's "terrorist" activity to state authorities for investigation and then affirmed that information at trial to help secure convictions. As Dickson noted, informants are used regularly in criminal justice; the use of supergrasses in Northern Ireland was exceptional due to the number of defendants incarcerated and the lack of corroborating evidence.[70] A 1983 trial

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December 10, 1984, LexisNexis.

66 Jo Thomas, "British Soldiers Kill a Teen-ager in West Belfast," *The New York Times,* January 19, 1985, LexisNexis.

67 Helsinki Watch, *Human Rights in Northern Ireland* (New York: Human Rights Watch, 1991), 48.

68 Michael Unger, "Stalker Diary: When the Rumour Mill Ground out Tales of Free Mills in Chinatown," *The Guardian* (London), January 28, 1988, LexisNexis.

69 See, for example: Hugh Carnegy, "Stalker Affair Weaken Crucial Plank of Ulster Pact," *Financial Times* (London), editorial, June 12, 1986; and, "Mixed Messages from N. Ireland," *Christian Science Monitor*, October 3, 1986, LexisNexis.

70 Brice Dickson, "The Protection of Human Rights: Lessons from Northern Ireland," Lecture at

involving one supergrass led to twenty-two individuals receiving sentences exceeding 4,000 years' imprisonment.[71] In just a few years, a little more than two-dozen supergrasses led the courts to convict more than 500 individuals.[72]

Fear of the jury and prospective jury fear led to the creation of Diplock courts, single-judge, nonjury trials, named after the British lord that pushed for their creation in 1973. In the 1980s, the courts were hearing upwards of 300 jury-less cases per year.[73] Writing about the United Kingdom's court system, Fionnuala Ni Aolain stated:

> Serious concerns about fair trial continue in Northern Ireland. The abrogation of jury trials in Northern Ireland through the creation of the Diplock courts in 1973 was one of the most fundamental encroachments on the protection of due process rights in the jurisdiction. The Diplock courts have been plagued by controversy since their inception. In addition to the coercive arrest and detention process, concerns about judicial case-handling, the high level of confession-based convictions, and the manipulation of the rules of evidence to ensure convictions have severely discredited the courts both domestically and internationally.[74]

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the British Institute of Human Rights, King's College, London, April 6, 2010, http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/35/sieghart_lecture.doc. Last accessed August 8, 2010.

71 BBCNews, "Northern Ireland Supergrass Terrorist Trials," February 26, 2010, http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/8538895.stm. Last accessed August 9, 2010.

72 David Bonner, "Combating Terrorism: Supergrass Trials in Northern Ireland," *The Modern Law Review,* 51 no.1 (Jan. 1998): 23-53.

73 Northern Ireland Office, "Replacement Arrangements for the Diplock Court Sytstem," Consultation paper, August 2006, http://www.nio.gov.uk/replacement_arrangements_for_the_diplock_court_system__a_consultation_paper.pdf. Last accessed August 9, 2010.

74 Fionnuala Ni Aoilin, "The Fortification of an Emergency Regime," *Albany Law Review,* 59

The legislation that supported the Diplock system was not abolished until 2007.[75]

In the 1980s, the state was not the only actor wrecking havoc as the IRA was also quite active - it undertook several major operations. One of the more infamous was the Brighton Hotel bombing, an attempt on Prime Minister Margaret Thatcher's life (on whose watch the hunger strikes died) who was staying at the hotel. Although she narrowly escaped death (her bathroom was damaged), five others were killed and several gravely injured. The IRA statement of responsibility is nearly as infamous as the attack itself: "Thatcher will now realise that Britain cannot occupy our country, torture our prisoners and shoot our people in their own streets and get away with it. …. Today we were unlucky, but remember we have only to be lucky once, you will have to be lucky always. Give Ireland peace and there will be no war."[76] After the bombing, an IRA member said, "Thatcher supports plastic bullets, shoot-to-kill policies, judicial' corruption. She also supports judicial murder in the form of capital punishment."[77] Here, the IRA is clearly and repeatedly referencing shoot-to-kill and the Diplock courts to justify its actions and seek support.

After the Brighton bombing, Thatcher met with the Irish taoiseach (prime minister), Garret FitzGerald. On the agenda, amongst other items, was the report of the New Ireland Forum. The forum was an Irish government effort to coordinate nationalist politics north and

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(1996): 1353-1387.

75 Clive Coleman, "The Debate Behind Holding a Criminal Trial without Jury," BBCNews, January 12, 2010, http://news.bbc.co.uk/2/hi/uk_news/8454102.stm. Last accessed August 9, 2010.

76 Quoted in: Paul Johnson, "Bomb Ours, Says IRA/Responsibility Claimed for Brighton Bombing," *The Guardian* (London), October 13, 1984, LexisNexis.

77 Paul Johnson, "Confident IRA 'Plans New Terror Campaign,'" *The Guardian* (London), October 19, 1984, LexisNexis.

south of the border and marginalize Sinn Féin through their exclusion from the proceedings.[78] The forum report advanced the idea of a united Ireland, but only "peacefully and by consent."[79] The document also critiqued the British government and the IRA, and acknowledged, "security issues have been exploited by the paramilitaries in order to intensify alienation and with a view to increasing their support."[80]

The FitzGerald talks were the backdrop for Thatcher's infamous "out, out, out," statement – no to a unified Ireland, to a confederation, and to joint authority.[81] An opinion piece in the *Washington Post* noted, "Out, out, out means down, down, down for any chances that moderation might work in a solution to Northern Ireland. Thatcher has given the IRA an unprecedented opportunity to strengthen its ranks. … To the impoverished 1.5 million citizens of Ulster, her message was worse: Keep suffering."[82] Approximately one month later, speaking of efforts to stem Noraid fundraising, IRA veteran Joe Cahill said, "'We often benefit from things that seem to be set up to do us harm."[83]

In February 1985, the IRA killed nine members of the Royal Ulster Constabulary (RUC), Northern Ireland's police force, in a mortar attack. An IRA statement said Britain governed without the consent of the people and the "armed struggle" was key to winning the war.[84] Just a

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78 See: Feeny, *Sinn Fein*; and, Gerry Adams, *A Farther Shore* (New York: Random House: 2003).
79 New Ireland Forum, "New Ireland Forum Report," Dublin: The Stationary Office, 1984, §5.4, http://cain.ulst.ac.uk/issues/politics/nifr.htm. Last accessed May 2, 1984.
80 Id at §3.18.
81 Adams, *A Farther Shore*, 37.
82 Colman McCarthy, "Thatcher's Boost for the IRA," *The Washington Post*, December 9, 1984, LexisNexis.
83 Warren Richey, "British, Irish Officials Advise against Donations to Noraid," *Christian Science Monitor,* January 21, 1985.
84 W. Clegg, "Protestant Threat to 'Repay Blood Debt,'" *Courier-Mail* (Brisbane), March 4,

few months later, Sinn Féin showed that politics was also integral to moving forward as they exceeded their own electoral predictions and won 59 seats in local elections.[85]

While Sinn Féin and the IRA busily worked to advance the Republican cause, the British and Irish governments actively tried to undermine it. In relatively secret discussions, the two countries created the Anglo-Irish Agreement, announced in November 1985. The agreement affirmed the Forum report's commitment to unification only through peaceful means and with the consent of the people, and it renounced violence and the threat of violence.[86] The agreement angered and alienated unionists and did not improve the immediate security situation in Northern Ireland. Moreover, it caused Sinn Féin to reevaluate its electoral strategy.[87]

Bridges

Most observers place the start of the "peace process" in 1993; however, for Sinn Féin, 1987 is the beginning. For republicans broadly, it was a particularly bumpy year. In early May, eight IRA volunteers were killed by the British SAS as they attempted to launch an attack on a police station.[88] Gerry Adams was reelected as a MP, however, the June 1987 electoral results for Westminster were underwhelming. A ship, the *Eskund*, was captured with more than 100 tons of weapons destined for the IRA.[89] In October, a bungled IRA bomb attack tragically killed

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1985, LexisNexis.
85 Adams, *A Farther Shore.*
86 "Anglo-Irish Agreement (1985) between the Government of Ireland and the Government of the United Kingdom," http://cain.ulst.ac.uk/events/aia/aiadoc.htm. Last accessed August 10, 2010.
87 Adams, *A Farther Shore*.
88 "'No Gloating' over IRA Casualties," *Financial Times* (London), May 15, 1987, LexisNexis.
89 Richard Ford, "Provos' Hopes Shot Down: The Significance of the Arms Seizure from the Eksund," *The Times* (London), November 6, 1987, LexisNexis.

eleven civilians and wounded dozens at a Remembrance Day parade in Enniskillen.[90] In the midst of all this tumult, Sinn Féin issued "A Scenario for Peace," a proposal for all-Ireland self-governance based on international law, including human rights, which cited a variety of covenants and declarations. [91]

Nations have been described as "pre-eminently territorial in character. That is to say, the nation is a human population that is territorially bounded with mobility throughout that territory whose members belong to a particular territory which is recognized as 'theirs' by right."[92] "A Scenario for Peace" concurred: it asserted the indisputable existence of the Irish nation, based on the inviolable bond to the island of Ireland. Moreover, it explicitly laid out the oppressor/resistor dynamic: "The perennial cycle of oppression/domination/resistance/oppression has been a constant feature of the British government's involvement in Ireland and the Irish people's rejection of that government's usurpation of the right to exercise control over their political, social, economic and cultural destiny."[93] According to Adams, this was Sinn Féin's "public launch of our peace strategy."[94]

From 1987 into 1993, there were several key events that shaped the dialogue and process that would come later. First, John Hume (leader of the SDLP) and Gerry Adams began a series of discussions and cross party meetings between their respective organizations. This was no

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90 John Cooney and Michael McCarthy, "Defiant IRA Puts Blame on the Army: Statements of 'Regret' as Ulster Mourns 11 Bomb Victims," *The Times* (London), November 10, 1987, LexisNexis.
91 Sinn Féin, "A Scenario for Peace," May 1, 1987, http://cain.ulst.ac.uk/issues/politics/docs/sf/sf010587.htm. Last accessed October 12, 2010.
92 Anthony Smith, *Nations and Nationalism in a Global Era* (Cambridge, MA: Blackwell, 1995), 56.
93 Sinn Féin, "A Scenario for Peace."
94 Adams, *A Farther Shore,* 54.

small feat: although both parties are nationalist in orientation, they are also key political rivals for votes, influence and power. As part of the getting to know each other process, in March 1988, Sinn Féin elaborated on "A Scenario for Peace" and issued "Towards a Strategy for Peace," which it provided to the SDLP. The document was diplomatically critical of the SDLP and unionism and unflinchingly critical of the British government.[95] Key amongst its complaints against Britain were the state's impediment of the Irish right to self-determination, the use of torture, the shoot-to-kill policy, and the maintenance of an unfair judiciary.

Two of these human rights issues were at the fore in 1988. Shoot-to-kill repeatedly made headlines. In January, the British Attorney General Peter Mayhew said although "evidence of an attempt to pervert the course of justice" had taken place, shoot-to-kill prosecutions would not be forthcoming because of the "national interest."[96] Republicans were not alone in their dismay. British Labour MP Ken Livingstone accused Mayhew of being "an accomplice to murder."[97] Peter Barry, the former Irish Foreign Minister and key figure behind the Anglo-Irish Agreement said he was reviewing his advice to Catholics to enlist in the RUC.[98]

Just a few months later, three unarmed IRA volunteers were shot and killed by British SAS forces in Gibraltar. The IRA issued a statement which called on Great Britain to acknowledge it was at war with the IRA and that "Its [the British Government's] rules of war

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95 Sinn Féin, "The Sinn Féin /SDLP Talks," January-September 1988, http://www.sinnfein.ie/contents/15215. Last accessed October 12, 2010.
96 D. Costello, "Britain Drops Probe into Police Killings," *Courier – Mail*, January 27, 1988, LexisNexis.
97 "Parliament: Decision 'Strikes a Blow at Confidence in Justice' – N. Ireland," *The Times* (London), January 26, 1988, LexisNexis.
98 Joe Joyce, David Hearst, and Peter Murtagh, "Dublin Outrage Poses New Irish Security Threat: Ministerial Meeting on Stalker-Sampson Findings," *The Guardian* (London), January 27, 1988, LexisNexis.

include the execution of unarmed volunteers, so let us hear no more hypocrisy about British Government forces acting within the civil law."[99] A Sinn Féin spokesperson highlighted that the IRA volunteers were unarmed and harkened back to the slaughter on Bloody Sunday when the British government shot dead thirteen unarmed demonstrators.[100]

At the funeral for those killed in Gibraltar, an attack was launched on mourners attending services. More than 20,000 were present at Milltown cemetery when Michael Stone opened fire and lobbed grenades into the crowd. Victims were placed in the hearses which moments earlier carried the deceased volunteers.[101] Kevin Myers, a reporter not known as a friend of Republicanism, said the mourners who pursued the attacker despite the onslaught of bullets and grenades were heroes who "in other circumstances would have won the highest military decorations. Victoria Crosses have been won for less."[102] IRA members and supporters became heroes at the burial of their dead, shot and killed by the British government.

Within two months, the IRA killed three British servicemen operating in the Netherlands. The IRA statement said: "We have a simple statement for [Prime Minister] Mrs. Thatcher: Disengage from Ireland and there will be peace … If not, there will be no haven for your military personnel, and you will regularly be at airports awaiting your dead."[103] Thus, according to the IRA, it remained the British government's responsibility to end the killing by respecting the Irish people's right to self-determination.

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99 David Hearst, "Declare War, Says IRA," *The Guardian* (London), March 9, 1988, LexisNexis.
100 Id.
101 Kieran Cooke, "Grenade Terrorist Kills Three and Injures 68 During IRA Funeral," *Financial Times* (London), March 17, 1988, LexisNexis.
102 Cited in Feeny, *Sinn Fein*, 352.
103 Howell Raines, "3 British Servicemen Are Killed in IRA Attacks in Netherlands," *The New*

Around the same time, the British justice system reaffirmed critics' lack of faith in the state when it affirmed the convictions of the so-called Birmingham Six. The Birmingham Six men were convicted of two British pub bombings which resulted in nearly two dozen dead and scores wounded. Human rights observers and others were critical of the police inquiry, the forensic evidence and the treatment of the men. At the time, British Labour MP Chris Mullin stated, "Today's judgment reaffirms that an Irishman charged with a terrorist offence cannot hope to receive justice from a British court."[104] Mullin went onto say that he would rally US and Australian support against the British government actions. Three years later, a Sinn Féin publication used the case in a laundry list of complaints to highlight the history of British injustice stating the government: "has been found guilty of 'inhuman and degrading' treatment by the European Court of Human Rights. It is regularly criticized over treatment of detainees in interrogation centres by Amnesty International. The Guildford Four, the Birmingham Six and the Maguire Seven cases are only the tip of the iceberg."[105]

The tide, however, was beginning to turn. In late 1989 Secretary of State for Northern Ireland Peter Brooke stated it was "difficult to envisage" the military defeat of the Irish Republican Army.[106] Brooke received a tongue-lashing from a variety of quarters for his statement British and Northern Irish. However, Sinn Féin took the statement as a signal and

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York Times, May 2, 1988, LexisNexis.
104 J. Murche, "Outrage as Law Lords Quash "Birmingham Six' Appeal," *Herald* (Melbourne), January 29, 1988, LexisNexis.
105 Sinn Féin, "Government by Repression," *Freedom*, May 1991, http://www.sinnfein.org/documents/freedom.html#rep. Last accessed October 12, 2010.
106 Ian Graham, "Paisley Denounces 'Treachery' of IRA Talks Suggestion," Press Association, November 3, 1989, LexisNexis.

reissued "A Scenario for Peace."[107]

Two years later, a Sinn Féin publication entitled "Freedom" addressed a range of issues, including the following four, grouped together: "Peace with Justice," "The Conditions for Peace in Ireland," "A Scenario for Peace," and "Law." These sections focused on international law, emphasizing human rights with a focus on self-determination. The latter section noted, "Ireland's right to sovereignty, independence and unity, the right of the Irish people, as a whole, to self-determination, is supported by universally recognized principles of International law."[108]

The next year, Gerry Adams lost the MP seat to SDLP candidate Joe Hendron. Although Adams regained the seat in 1997, he intimated the party did not necessarily see the loss coming. He said the SDLP had waged a very negative campaign and it enlisted unionist and loyalist voters to unseat Sinn Féin.[109] Coogan observed that 3,000 Unionists electorally supported Hendron, and in the wake of the election, more than 1,000 new voters were registered, many likely Sinn Féin.[110] This analysis, however, was not universal. O'Moloney noted voters were disillusioned with the IRA's campaign of violence and the horrific mishaps that went with it. Later that year, Adams' press officer presciently stated: "We're not going to realize our full potential as long as the war is going in the North and as long as Sinn Féin is presented the way it is with regard to armed struggle and violence."[111]

During the early years of this spate of tumult, the aforementioned official SDLP-Sinn Féin talks broke down, but resumed again in 1993 and resulted in a joint statement published in

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107 Adams, *A Farther Shore*, 93.
108 Sinn Féin, "Freedom," May 1991, http://www.sinnfein.org/documents/freedom.html. Last accessed October 12, 2010.
109 See: Adams, *A Farther Shore* and Feeny, *A Hundred Turbulent Years.*
110 Coogan, *The IRA*.

April 1993. Notably, in the interim, Adams and Hume continued to secretly meet. The statement emphasized the right to self-determination and that a "peaceful and democratic accord for all" on the island of Ireland was the key task they confronted.[112] In early May, Adams drafted an editorial which reemphasized self-determination, noting the United Nations could have a role monitoring a "de-colonization" process. He also addressed the issue of British censorship of republicanism, stating, "Censorship is part of the problem and a source of injustice. Conflict comes from injustice."[113] The local district elections later that month were positive for Sinn Féin – they gained eight councilor seats over the prior 1989 results.[114] In November of 1993, a statement said they were encouraged by the support they received and an opportunity for peace was at hand, although the route to get there remained unclear. In terms of next steps, the onus was again placed on the British government.[115]

The Downing Street Declaration was that next step, although the republican reaction was less than welcoming. In the declaration, the British government emphasized the right to self-determination, but with the consent of all the people of Northern Ireland; from the republican perspective, this was a Unionist veto. It also affirmed the need for "dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland."[116] In the days

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111 Quoted in O'Moloney, *The Secret History*, 340.
112 Sinn Féin, "John Hume/Gerry Adams Statement," April 23, 1993, http://www.sinnfein.ie/contents/15217. Last accessed September 18, 2010.
113 Gerry Adams, "Sinn Féin Strategy Calls for Talks and Agreement to End Partition," *The Irish Times,* May 3, 1993, LexisNexis.
114 New Ireland Social and Political Archives, "The 1993 Local Government Elections in Northern Ireland," http://www.ark.ac.uk/elections/flg93.htm. Last accessed September 26, 2010.
115 Sinn Féin, "John Hume/Gerry Adams Statement," November 20, 1993, http://www.sinnfein.ie/contents/15219. Last accessed September 18, 2010.
116 Republic of Ireland, Department of Foreign Affairs, Joint Declaration 1993 (Downing Street Declaration), December 15, 1993, http://www.dfa.ie/home/index.aspx?id=8734. Last accessed

before the statement was issued, IRA leadership drafted a letter to the Irish government regarding a draft of the declaration. It asserted the organization was after an "irreversible" agreement whose focus was "national self-determination."[117]

Meanwhile, across the pond, efforts were underway to grant Gerry Adams a visa (long sought after by Adams) to come to the United States. There was reluctance in many quarters in the US government, however, key Irish American figures, including the late Senator Ted Kennedy lobbied for Adams visa saying they were at a crossroads – those within the movement could be encouraged down the path to peace or they could be left to their own devices.[118] Six weeks after the issuance of the Downing Street Declaration, Adams was issued the visa because the White House believed Adams was moving the IRA toward peace.[119]

Weeks later, in the party's annual conference, its *ard fheis*, Martin McGuinness discussed the declaration and stated:

> The greatest injustice ever inflicted on the beleaguered nationalist community was to be trapped in a gerrymandered, undemocratic sectarian state. If the British government is prepared to say that the Unionists will not have a veto over British government policy and that guns, vetoes and injustices will all be left outside the door, then there is no good reason why talks cannot take place in an appropriate

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October 2, 2010.

117 Irish Republican Army, Army Council, "Letter from the IRA Army Council to the Irish Government via Intermediaries," April 13, 1993, Northern Ireland Political Collection, Linen Hall Library, Belfast, Northern Ireland.

118 See: Niall O'Dowd, "The Real IRA Lesson for US in Middle East Peace," *The Huffington Post*, September 10, 2010. http://www.huffingtonpost.com/niall-odowd/the-real-ira-lesson-for-u_b_712177.html. Last accessed October 2, 2010.

119 David Brown, "U.S. Shift, Grants Visa to President of IRA's Political Wing" *The Washington Post,* January 31, 1994, LexisNexis.

> atmosphere. Let us walk into the conference room as equals and not second class citizens.[120]

Gerry Adams also addressed the document and other related issues of peace in his speech to the *ard fheis*. The conference was notable because it was the first which RTE (Radio Telefis Eireann), the Irish national broadcaster, was able to cover. The Republic of Ireland had also censored Sinn Féin to varying degrees through an essential broadcast ban on interviews with Sinn Féin members. Sinn Féin wanted to make the most of the opportunity and it welcomed RTE's coverage. Journalist Coogan observed, "The public at large looked to [this party conference]… in expectation that a ceasefire was imminent."[121] However, the bulk of Adams statement focused on the requirements for a legitimate peace process in conjunction with the repeated assertion of the Irish right to self-determination (mentioning the right more than a dozen times). Sinn Féin also separated itself from the IRA and at the same time asserted its ability to move the process forward.[122]

In August 1994, the IRA called for a cessation of military operations. It stated: "We note that the Downing Street Declaration is not a solution, nor was it presented as such by its authors. A solution will only be found as a result of inclusive negotiations," and placed the onus again on

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120 Stephen Goodwin, "Call to Drop Unionist 'Veto' on Irish Unity: Sinn Fein Conference: Delegates Back Peace Strategy – Adams Keeps Ceasefire Option Open – Poll Result Challenged," *The Independent*, February 28, 1994, http://www.independent.co.uk/news/uk/call-to-drop-unionist-veto-on-irish-unity-sinn-fein-conference-delegates-back-peace-strategy--adams-keeps-ceasefire-option-open--poll-result-challenged-1396971.html. Last accessed October 2, 2010.
121 Coogan, *The IRA,* 496.
122 Gerry Adams, "Presidential Address to *Ard Fheis*," 1994, http://www.sinnfein.ie/contents/15170. Last accessed September 27, 2010.

the British government.[123] The same day, Adams responded and acknowledged the struggle wasn't over but rather entering a new phase and also said the conflict was the British government's responsibility.[124] Sinn Féin then issued a preliminary statement to the Forum for Peace and Reconciliation (set up by the Irish government) regarding the discussions that were underway. The statement welcomed the IRA's ceasefire and affirmed the centrality of the Irish people's right to self-determination, grounding it in Irish constitutional law, as well as regional and international treaties.[125] Approximately one week later, a joint statement was issued by Gerry Adams, John Hume (SDLP) and *Taoiseach* Albert Reynolds. The statement emphasized their commitments "to democratic and peaceful methods of resolving our political problems."[126] The "peace process" was now well underway.

The summer of 1994 was made even more eventful by the circulation of the "Totally Unarmed Strategy" (TUAS) document, developed by republican leadership, which affirmed the Downing Street Declaration wasn't a solution. The TUAS emphasized a need to move toward a series of consensuses both within Irish nationalism and amongst those who could support its goals such as Irish-America and the Irish government. It acknowledged differences between the parties as to how some key principles such as national self-determination could be understood and implemented. At issue was the British failure to enable "the absolute right the Irish to N.S.D.

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123 Irish Republican Army, "IRA Announce Cessation of Military Operations," August 31, 1994, http://www.sinnfein.ie/contents/15224. Last accessed September 27, 2010.
124 Sinn Féin, "Gerry Adams Responding to IRA Cessation Announcement of 31 August 1994," August 31, 1994. http://www.sinnfein.ie/contents/15191. Last accessed October 2, 2010.
125 Sinn Féin, "Sinn Féin Contribution to the Preliminary Discussions," September 1, 1994, http://www.sinnfein.ie/contents/16342. Last accessed October 2, 2010.
126 Sinn Féin "John Hume/Gerry Adams/Albert Reynolds Statement 6th September, 1994," September 6, 1994, http://www.sinnfein.ie/contents/15220. Last accessed October 9, 2010.

[national self-determination] without external impediment."[127] However, republicans stated it was a unique time of broad agreement in Irish nationalist history that might not be repeatable. It said the TUAS was "a risky strategy. Its success will depend greatly on workload. All activists must be pro-active. Those who continue their present work need to double effect. … It is vital activists realize the struggle is not over. Another front has opened up..."[128]

In 1995, Martin McGuinness' speech at the annual Bodenstown commemoration (in honor of Wolfe Tone) highlighted the need for an inclusive peace process and at the same time emphasized that republicans would not surrender – the sacrifices made would not be in vain. The British government had taken a hard-line against republican inclusion in talks before a decommissioning of IRA weapons. He also noted that the Irish people had collectively risen up against British injustice and wouldn't settle for a one-sided endless process without progress or peace. [129]

The unarmed strategy, however, didn't hold as the IRA ended its ceasefire because it said the British government failed to rise to the challenge and evaded its responsibilities relative to the peace process. The IRA stated, "The resolution of the conflict in our country demands justice. It demands an inclusive negotiated settlement."[130] The organization's ability to strategically attack British interests was driven home in a devastatingly spectacular attack on

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127 "The TUAS (Totally Unarmed Strategy)," document circulated by the republican leadership in summer 1994, Northern Ireland Political Collection, Linen Hall Library, Belfast, Northern Ireland.
128 Id.
129 Sinn Féin, "Bodenstown Speech by Sinn Fein Mid-Ulster MP Martin McGuiness," 1995, http://www.sinnfein.ie/contents/15182. Last accessed October 9, 2010.
130 Irish Republican Army, "IRA Announce with Regret Ending of Cessation of Military Operations," February 9, 1996, http://www.sinnfein.ie/contents/15230. Last accessed October 9, 2010.

London's Canary Wharf Tower area that caused more than $100 million in damage and killed two people (a standard telephone warning was phoned in to authorities in advance of the bomb). The February 1996 resumption of violence wasn't without warning: In December 1995 the IRA issued a statement, which said there wasn't any possibility of the IRA meeting a British government demand for surrender of weapons.[131]

In a series of statements the IRA explained its resumption of militant tactics and sketched out the alternatives: continued defense of Irish rights by through armed struggle or legitimate political inclusion. In the wake of the Canary Wharf bombing, the IRA placed the blame for the end of the ceasefire at British Prime Minister John Major's door. After being asked whether they were "naïve" to trust the British government to live up to expectations, the IRA spokesperson stated history had taught them not to trust the government, and their approach was "based firmly on political realities and on our responsibility in seeking a just and lasting peace settlement."[132] Two months later, they released their annual Easter message (commemorating the 1916 Easter Rising) and stated they were committed to a process which could lead to real negotiations, however, their "mandate for armed struggle derives from Britain's denial of the fundamental right of the Irish people to national self-determination and sovereignty," and as long as Britain denied "national and democratic rights," it would "continue to assert those rights."[133]

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131 Irish Republican Army, Untitled statement of December 7, 1995, Linen Hall Library, Northern Ireland Political Collection, Belfast, Northern Ireland.
132 Full text of an interview with a spokesperson for the General Headquarters Staff of Oglaigh na hEirann, published in *An Phoblacht/Republican News,* February 15, 1996, Linen Hall Library, Northern Ireland Political Collection, Belfast, Northern Ireland.
133 Irish Republican Army, "Annual Easter Message," April 4, 1996, Linen Hall Library, Northern Ireland Political Collection, Belfast, Northern Ireland.

RE-IMAGINING THE FUTURE

Republicanism was arguably in an awkward position in the years leading up to the negations that resulted in the Good Friday agreement: it was a sturdy nationalist vehicle but it was somewhat stuck in political neutral. The SDLP had solidified its more moderate nationalist base, British withdrawal seemed no more likely now that at any time in the past unless there was a significant reshuffling of the deck, and the IRA, while prepared to continue to wage the war, was also ready for a change.[134]

In this section, the heart of the peace process is explored by looking at republican statements made along the negotiation path and after arriving at the Good Friday Agreement. In so doing, one also examines the theoretical underpinnings of the role of the movement in defining the borders of the nation, the nature of *us and them*, as well as the status of the nationalist myth within the divided society.

The Beginning of the End

Canary Wharf was literally the beginning of the end – of the ceasefire – for the IRA. It engaged in other attacks in 1996 and 1997, including one in the English city of Manchester and another on a British Army base in Northern Ireland. At the same time efforts were underway to revive the political process. Adams was concerned that Sinn Féin's political strategy was

134 Jon Tonge, "The Political Agenda of Sinn Fein: Change without Change?" in *Contemporary Political Studies* eds. Jeffrey Stanyer and Gerry Stoker (Belfast, Northern Ireland: Political Studies Association, Jordanstown, 1997):753-54.

sidetracked by the IRA's resumption of violence.[135] However, by mid-1997 the political tide was again turning.

In the spring of 1997, the intransigent administration of Conservative British Prime Minister John Major was replaced by that of Labour's Tony Blair who brought fresh perspectives and energy to the process. The same election that brought Blair to power also brought Sinn Féin significant electoral gains in six counties. Gerry Adams recaptured "his" West Belfast seat from the SDLP. The DUP, hard-line anti-peace process Unionists, lost their mid-Ulster seat to Sinn Féin's Martin McGuinness. Moreover, Sinn Féin outpolled the DUP for all of Ulster and became the third largest political party in the North.[136] Sinn Féin's election manifesto called for "imagination" and "flexibility" in approaching the peace process, and emphasized equality for all the citizens of Ireland in areas of housing, education and employment. It addressed women's issues, political prisoners and policing. The manifesto emphasized national self-determination, and said it looked toward "a new Ireland in which all of us can shape the future. It is a vision for which Sinn Féin activists throughout Ireland are working tirelessly."[137] Sinn Féin was thus remodeling republican's future, using human rights building blocks to construct the Irish nation within an inclusive process.

In McGuinness' June 1997 Bodenstown speech, he said, "A vote for Sinn Féin is a vote for our political analysis that British domination and injustice should end and for our proven

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135 Adams, *A Farther Shore*, 231.
136 New Ireland Social and Political Archives, "The 1997 Westminster Elections in Northern Ireland," http://www.ark.ac.uk/elections/fw97.htm. Last accessed July 30, 2010.
137 Sinn Féin, "A New Opportunity for Peace," Westminster Election Manifesto, May 1, 1997, Linen Hall Library, Northern Ireland Political Collection, Belfast, Northern Ireland.

commitment to our peace strategy. A vote for Sinn Féin is a vote for peace."[138] After a meeting between Prime Minister Blair and Ireland's outgoing Taoiseach John Bruton, decommissioning was dropped as a precondition to Sinn Féin's inclusion in talks – and the hope was that progress would be made on parallel tracks.[139] The following month, the IRA, having reassessed the political landscape, announced the resumption of the cessation of military operations so that the inclusive search for a "democratic peace" could be undertaken.[140]

In September 1997, Sinn Féin entered the talks and within eight months most key parties and actors in Northern Ireland had arrived a framework accord for building a new Northern Ireland which embraced inclusiveness and consent as key principles: the Good Friday Agreement. The negotiations were chaired by former US Senator George Mitchell, who had been involved in Northern Irish economic and political affairs for several years. The talks were organized along three strands, (1) internal Northern Irish relations; (2) north-south Ireland relations; and (3) Irish-British relations, reflective of the final structure of the GFA.

In a speech to the participants negotiating strand two, Gerry Adams harkened back to the words of hunger striker Bobby Sands and highlighted courage and vision. He also invoked Nelson Mandela in discussing equality. Among the key issues highlighted were sovereignty as well equality – both economic and cultural.[141]

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138 Sinn Fein, "Bodenstown Speech by Sinn Fein Mi-Ulster MP Martin McGuiness," 1997, http://www.sinnfein.ie/contents/15184. Last accessed October 9, 2010.
139 David Sharrock, "Blair's Final Offer to Sinn Fein; Anglo-Irish Deal on Arms Disposal," *The Guardian* (London), June 24, 1997, LexisNexis.
140 Irish Republican Army, Untitled statement of July 19, 1997 announcing the restoration of the ceasefire," Linen Hall Library, Northern Ireland Political Collection, Belfast, Northern Ireland.
141 Sinn Féin, "President Gerry Adams MP to Strand Two of the Peace Talks," October 7, 1997, http://www.sinnfein.ie/contents/15193. Last accessed October 9, 2010.

In January 1998, Adams responded to the issuance of a government document of concern (related to the talks), and he once again emphasized human rights:

> Rights belong to citizens - They are not concessions to be bartered in negotiations. They cannot be an illusion, but must be a fact. … We need to see the urgent implementation of a programme of measures to ensure political, social, cultural and democratic rights to freedom from discrimination for all citizens, on parity of esteem and on justice and equal treatment for the identity, ethos and aspirations for all our people.[142]

Sinn Féin published "A Bridge to the Future" in the month preceding the conclusion of the agreement. It set forth minimum changes necessary and addressed issues of equality, demilitarization, the end of "the Unionist veto," and all-Ireland bodies – all issues which were positively addressed in the GFA. Notably, Sinn Féin also decried any reduction in the constitutional definition of Ireland, one of the key criteria that didn't make it through the GFA processes.[143] In April 1998, those rights became fact with the promulgation of the Good Friday Agreement.

The Good Friday Agreement contains a section devoted to human rights – including political participation and freedom from sectarian (religious) harassment. It also mandates the British government incorporate the European Convention on Human Rights into Northern Irish law with remedies available for breaches and create a human rights commission. The Irish language is also to be promoted in Northern Ireland through a variety of mechanisms. State

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142 Sinn Féin, "Imaginative Approach Is Vital," January 19, 1998, http://www.sinnfein.ie/contents/15196. Last accessed October 9, 2010.
143 Gerry Adams, "A Bridge to the Future," March 8, 1998,

security issues – including the drawdown of the armed forces, removal of security installations and repeal of emergency legislation are also specified.

In its 1998 *ard fheis*, the Sinn Féin president affirmed the party's importance to the peace process – intertwining rights, republicanism and progress: "It was Sinn Féin which put British constitutionality and sovereignty on the agenda; it was our party which placed equality, partition, injustice and national and democratic rights at the top of the agenda in Ireland, Britain and internationally."[144] Sinn Féin was keenly aware of the risks involved in negotiating the Good Friday Agreement and noted it got membership support to make the necessary organizational changes to be a full participant in the process set to unfold.[145] It is noteworthy that all of the parties signed the Agreement at the outset, except Sinn Féin, who first took it to its membership for approval.[146] The Good Friday Agreement was approved in Northern Ireland by 71% of voters with turnout of 81%.[147]

Affirming the Boundaries

Ethno-nationalism in Ireland "is rooted in significant intra as well as inter-community differences based not only on differences in ethnic and national identity but also on conflicting

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http://www.sinnfein.ie/contents/15211. Last accessed October 9, 2010.
144 Gerry Adams, "Presidential Address to *Ard Fheis*," 1998, http://www.sinnfein.ie/contents/15175. Last accessed October 9, 2010.
145 Sinn Féin, *Defending the Good Friday Agreement* (Dublin: Sinn Féin, September 23, 1999), 4.
146 Joseph Ruane and Jennifer Todd, "The Belfast Agreement: Context, Content and Consequences," in *After the Good Friday Agreement* (Dublin: UC Dublin Press, 1999).
147 Martin Melaugh and Fionnuala McKenna, "The 1998 Referenda on 'The Agreement,'" n.d, http://cain.ulst.ac.uk/issues/politics/election/ref1998.htm. Last accessed October 9, 2010.

views concerning the very legitimacy of the state and its boundaries."[148] As evidenced throughout, self-determination is perhaps the key right which is consistently and passionately invoked by republicans. For republicans, self-determination is about the people of the island of Ireland being able to freely determine their collective future, a redrawing of the state boundaries to include the six counties and exclude Great Britain as a governance entity. However, Sinn Féin's strategy for exercising this right has clearly evolved. One veteran Northern Ireland observer noted a change in Sinn Féin policy toward the process of self-determination in the lead up to the negotiation of the Good Friday Agreement; he stated: "Recently there is some evidence that the leadership of Sinn Féin now see national self determination as a process rather than as a prescribed outcome or solution."[149]

As noted above, human rights play a key role in the agreement. Although there were many sticking points in the negotiation of the GFA, one that received a lot of ink revolved around the right to self-determination. Key was the amendment of the Irish constitution's articles two and three, ultimately reworded to eliminate the Republic's territorial claim to Northern Ireland. As per the Agreement, it approved a right for the people of Northern Ireland (as opposed to all-island) to electoral consent for any boundary changes. The magnanimity of letting go of articles two and three may not, in reality, have been that big of a compromise. Originally enshrined in the constitution as a nod to militant nationalists of the time, the articles had become dusty components of the document. In fact, "It was only when unionists began to make an issue of the Articles that nationalists, and the Dublin administration in particular, woke up to the fact

148 Hayes and McAllister, "Ethnonationalism, Public Opinion," 32-3.
149 Robin Percival, "Towards a Grassroots Peace Process, *The Irish Reporter*, no. 22 (June 1996): 61.

that this rusting vehicle in the constitutional garage might be tradable commodity rather than a candidate for the scrapyard."[150]

In the first *ard fheis* after the Good Friday Agreement was concluded, Adams said:

> It is clear that the referendums do not constitute the exercise of national self-determination. Self-determination is universally accepted to mean a nations right to exercise the political freedom to determine its own social, economic, and cultural development without external influence and without partial or total disruption of the national unity or territorial integrity. These criteria are not observed in Ireland. British government involvement in our country is in contravention of the established international norms which create and sustain conditions to the establishment of internal peace, democracy, justice, stability and national freedom.[151]

Two years later, he noted that republicanism "asserts the core principle that the people are sovereign. In Ireland today the people are not sovereign. We are not sovereign because of the partition of this island and the involvement of the British Government in our affairs. Even those leading partitionists who described the Good Friday Agreement, endorsed in referendum North and South as the exercise of self-determination by the Irish people, have had to skulk away from that propaganda assertion."[152]

In 2003, the Northern Ireland Assembly was suspended because of the intransigent

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150 Deaglán de Bréadún, *The Far Side of Revenge* (Cork, Ireland: The Collins Press, 2001), 148-9.
151 Gerry Adams, "Presidential Address to *Ard Fheis*," 1998, http://www.sinnfein.ie/peace/speech/5. Last accessed: October 9, 2010.
152 Gerry Adams, "Presidential Address to *Ard Fheis*," 2000,

demands of Unionist politicians for concessions regarding disarmament and allegations of Irish Republican Army spying within the Stormont building. Gerry Adams had the following words: "Imagine the people of this island free from division, foreign occupation, injustice and conflict. Imagine the five million people of our small island applying our collective energy, our intelligence, our wisdom to produce the wealth to improve the quality of life for all our people."[153]

Thus, the year of the GFA, Adams sounded confident and legalistic, affirming that the nation had an international right to self-determination and acknowledging this was a step beyond the confines of the document's text. A few years later, Adams affirmed the mission of the nation through defining republicanism and their right to sovereignty and again reminded the people that the Agreement did not free the people. In 2003, five years on, the language took on a more revolutionary tone, referring to foreign occupation and challenging members to envision a future beyond oppression. Thus as the Agreement and the difficulties of implementation became more entrenched the language of interaction became less about process and more about progress.

TIOCFAIDH ÁR LÁ?

Revolutionary rhetoric aside, progress has indeed made. The Irish Republican Army has put all of its weapons beyond use.[154] Sinn Féin is now the largest national party, outpolling its

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http://www.sinnfein.ie/peace/speech/7. Last accessed: October 9, 2010.
153 Gerry Adams, "Presidential Address to *Ard Fheis*," 2003, http://www.sinnfein.ie/peace/speech/35. Last accessed: October 9, 2010.
154 Mark Hennessy, "DeChastelain Insists He Has No Doubts," *The Irish Times,* September 27, 2005, LexisNexis.

rival, the SDLP, in the Northern Irish Assembly.[155] As evidenced above, the road to ballots over bullets was bloody and bumpy. However, through a combination of strategic choices involving human rights, Irish Republicans reconstructed, transformed and fortified the Irish nation, not just the republican one. Sinn Féin took an imaginative leap forward and embraced constitutional nationalism, at least legally, if not in their hearts, as a way toward self-determination, and respect for civil and political rights. In this post-ceasefire era of relative peace, the Good Friday Agreement is just the beginning. It represents the dawn of a new era of legal inclusion and political self-determination not just for republicans but for all the peoples of Northern Ireland. For Sinn Féin, maybe their time, if not their day, has come.

155 Northern Ireland Assembly, "Membership of the Northern Ireland Assembly," http://www.niassembly.gov.uk/members/breakdown.htm. Last accessed October 9, 2010.

CHAPTER 4

THE MUSLIM BROTHERHOOD: BUILDING A "NATION" IN OPPOSITION

> The Muslim Brotherhood represents a universal Islamic body that has historic, political, and social legitimacy. …. The Constitution guarantees the right of all Egyptians to engage in politics, whether they are members of political parties or independent. Brotherhood members engage in political activity in accordance with Article 4 of the Constitution. …The people have the right to self-determination and to regain their rights.[1]

INTRODUCTION

The Muslim Brotherhood (or Muslim Brothers) is the most significant opposition movement in Egyptian society.[2] It has confronted issues of Western colonialism and cultural imperialism, the Egyptian monarchy, and those who have followed in its governance-style footsteps in practice if not in name. Among its more prominent opponents were presidents Gamal Abdel Nasser, and Anwar Sadat, as well as the current leader (as of 2010), Hosni Mubarak.

Although members once used violence to effect change, they long ago gave up the bullet for the proverbial ballot box and a concordant focus on civil society in Egypt. Notably, there are accusations of Brotherhood support for its organizational offspring, Hamas, in the occupied Palestinian territories and Hezbollah in Lebanon. Certainly the Brotherhood provides rhetorical

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1 "Egypt: Muslim Brotherhood Leader on Right to Political Party, Dialogue with U.S.," *Al-Misri Al-Yawm* (Cairo), May 9, 2005, Open Source Center (OSC) doc. no. GMP200509007003. Translated from Arabic by OSC. Quote from Mohamed Mahdi Akef, then-chair of the Muslim Brotherhood.

2 This chapter focuses on the Egyptian Muslim Brotherhood. There are numerous branches or offshoots of the organization in countries around the Middle East including Jordan, and Saudi Arabia.

support and individual members likely offer a range of assistance, however, there is nary any evidentiary proof that the organization as a whole provides weapons or related assistance to their brethren in Levant.[3]

Despite the Brotherhood's nonviolent tack and political pragmatism, the Egyptian government has been consistently inconsistent in its approach to the Islamist organization, alternating between brutal crackdowns and periods of relative acceptance. In recent years, Egypt's legal and political strategy toward the Brotherhood was widely characterized as "banned but tolerated." However, the run up to the 2005 national elections marked the begin of the end of the state policy of "tolerance."

The period surrounding and subsequent to the 2005 national elections brought on a seachange in both the Muslim Brotherhood's organizing tactics and the government's approach to the Brotherhood. This is critical for the exploration herein because the confluence of circumstances has created somewhat of a perfect storm of nationalist entrepreneurialism for the Brotherhood.[4] Between the beginning of 2005 and 2009, the MB used state violations of human rights to reinforce an *us vs. them* dynamic – the people vs. the state with the Brotherhood as the vanguard of the people. This case study is structured differently than the preceding and subsequent chapters because the Muslim Brotherhood's popular and electoral activism and its related, rhetorical use of human rights are a relatively recent phenomenon. Thus, while the

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3 Hamas and the Brotherhood are discussed below. On support, see for example, the statement of leading Brother Essam El-Erian, who stated, "'Hamas has adopted the principles of the MB… But there is absolutely no 'organisational relationship' between the two movements." Adam Morrow and Khaled Moussa al-Omrani, "Israeli's War on the Gaza Strip; Mideast: Brothers in Thought Not in Arms," IPS (Latin America), January 20, 2009, LexisNexis.

4 This statement does not imply that the Muslim Brotherhood have applauded the state's abuses of its citizens but rather, organizationally they have benefitted from the repressor and resistor

chapters on Sinn Féin and the IRA as well as Hamas cover the movements over multiple decades, and are organized chronologically, the analysis of the Muslim Brotherhood is largely encompassed within a five-year period, and is organized around groupings of rights. This narrow time frame and structure provides an analytic window to view the strategic use of particular rights groupings in its nation-building discourse. The focus herein is on its use of five groupings of human rights: arbitrary arrests and detentions; ill treatment and torture; military trials; rights pertaining to political participation; and, the Israeli-Palestinian conflict. Notably, these human rights claims garner positive domestic attention for the organization and contextualize them (the claims and the group) in way that increases international legitimacy. Before proceeding into this analysis, however, the historical and contemporary stage is set with an introduction to the political and legal contexts in which the Brotherhood has operated.

SETTING THE STAGE: THE BROTHERHOOD IN HISTORICAL AND CONTEMPORARY CONTEXT

Citing a series of complaints and aspirations — both secular and religious — the Muslim Brotherhood emerged in Egypt in 1928 under the leadership of Hassan al-Banna. The British occupation of Egypt, colonialism more generally, state secularization policies and Western cultural imperialism, were part and parcel of the group's founding grievances.[5] According to al-Banna, the West bore responsibility for "abuses that have done injury to their [Muslims'] dignity, their honor, and their independence as well as commandeered their wealth and shed their

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narrative.

5 See, for example: Mark Huband, *Warriors of the Prophet* (Boulder, CO: Westview Press, 1999), 81-3; Richard P. Mitchell, *The Society of the Muslim Brothers* (New York: Oxford UP, 1969,) 7 (regarding al-Banna's observations); and, Denis J. Sullivan and Sana Abed-Kotob, *Islam in Contemporary Egypt: Civil Society vs. the State* (Boulder: Lynne Rienner Publishers,

blood."[6] Al-Banna also implored King Farouk of Egypt to reorient the country on a more genuine Islamic path, one on which the shari'a (Islamic law) was paramount. The Brotherhood and Jamaat i-Islami took an interesting approach to the Islamicization of Egypt - they separated themselves from society while remaining a part of it, seeking to recreate the larger community from the inside out.[7] Indeed this is an approach the Brotherhood could be said to be using today.

During the next twenty years, the fledgling organization became a force to be reckoned with as the Brotherhood grew and expanded in numbers and power. Additionally, the influence of the Brotherhood was increasing beyond Egypt's borders. By the mid-late-1940s, the struggle between Egypt's Palestinian Arab neighbors against the nascent state of Israel was underway, and the Brothers did not stand idly by; they provided supplies and volunteers.[8]

At the same time, things were tumultuous within Egypt as the Brotherhood was accused of involvement in a range of militant activities including high-profile political killings. In late 1948, the Egyptian government banned the organization and ordered its assets seized. Shortly thereafter, the Egyptian prime minister, Mahmud Fahmi al-Nurqreashi Pasha — a key figure behind the crackdown on the organization — was assassinated by a member of the Muslim Brotherhood. In February 1949, the Egyptian government killed Hassan al Banna.[9] Suffice to

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1999), 41-2.

6 Hasan al-Banna, Five Tracts of Hasan al-Banna (1906-1949): A Selection from the Majmu'at Rasa'il al-Imam al-Shahid Hasan al-Banna, trans. and annot. Charles Wendell (Berkley: University of California Press, 1978), 48.

7 John Esposito, *Islam the Straight Path* (New York: Oxford University Press, 1988), 154. See also: Denis J. Sullivan and Kimberly Jones, *Global Security Watch – Egypt* (New York: Praeger, 2008).

8 Richard P. Mitchell, *The Society of the Muslim Brothers* (New York: Oxford University Press, 1993).

9 See: Huband, *Warriors of the Prophet* and Sullivan and Abed-Kotob, *Islam in Contemporary Egypt.*

say, peace and goodwill were not forthcoming.

The Brotherhood was not alone in its disdain for the government. In 1952, the Free Officers movement, whose more famous members included Gamal Abdel Nasser and Anwar Sadat, brought an end to the Egyptian monarchy through bloodless coup. This ended the rule of King Farouk. Notably, the Free Officers acted with the cooperation of the Muslim Brotherhood.[10] Nasser ultimately emerged from the governmental melee as the prime minister in 1954, then president in 1956, and he moved quickly to consolidate power. Ma'moun Hudaybi, then a spokesman for the Brotherhood and son of the organization's former General Guide Hassan Hudaybi, noted that the "honeymoon" between the Brotherhood and the new regime did not last long. He said, "Nasser professed his loyalty to the Muslim Brotherhood, but he later betrayed this and chose to go on alone, even though the Brotherhood was organizing the revolutionary cells in the army."[11] In 1954, Nasser survived an assassination attempt, which he publicly blamed on the Muslim Brotherhood. In response, Nasser imprisoned thousands of Brothers, killed dozens, and effectively forced many into exile.[12]

Nasser ruled until 1970 when he passed away from natural causes. He was succeeded by his vice president and fellow Free Officer Anwar Sadat. Nasser's rule as a pan-Arab nationalist and socialist contrasted with his successor. Sadat positioned himself publicly as the "Believer President," and he pragmatically walked several tightropes in a bid to strengthen his role domestically, in the region, and abroad. Most importantly for purposes herein, he created space

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10 Nawal El Saadawi, *The Nawal El Saadawi Reader* (New York: Zed Books, 1997), 109.
11 Omayma Abdel-Latif, "Nasser and the Brotherhood," *Al-Ahram Weekly On-line*, June 27-July 3, 2002, http://weekly.ahram.org.eg/2002/592/special.htm. Last accessed December 10, 2010.
12 Gilles Kepel, *Muslim Extremism in Egypt: The Prophet and Pharaoh* (Berkley, U.C. Berkley Press, 1993).

for the Islamists, including the Muslim Brotherhood, who were brought back into the Egyptian societal fold.[13] However, Kepel notes that the outlook for long-term positive change in their relations was far from rosy: "This relative liberalization of religion occurred while the political arena remained under tight control. There was no press freedom worth of the name and no free exchange of ideas except in the mosques, where the Islamists were able to use the religious framework to their advantage."[14]

The combination of increased religious tolerance with a concordant lack of political rights proved quite volatile. As the Muslim Brotherhood reasserted itself in Egypt, Islamic student organizations (*jama'aat Islamiyya)* and a host of more radical groups sprung up in their midst including Takfir al-Hijra, al-Gama'a al-Islamiyya (the Islamic Group) and Egyptian Islamic Jihad (EIJ).[15] The latter two went on to become quite notorious militant groups, and they, or their members, were responsible for some of the more dastardly attacks in Egypt or on Egyptians abroad in the 1990s.[16]

Increased opposition to Sadat's government in the late 1970s went hand-in-hand with state repression. The Believer President tried to control mosques and outlaw the Islamic student groups. The proverbial straw that broke the camel's back came in September 1981 when Sadat ordered the detention of thousands, including many Muslim Brothers and key political opposition figures.[17] Less than a month later, Khalid Islambuli, the brother of a man detained in

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13 John Esposito, *Unholy War – Terror in the Name of Islam* (New York: Oxford University Press, 2002).
14 Gilles Kepel, *Jihad – The Trail of Political Islam* (Cambridge: Harvard University Press, 2002), 65.
15 Jason Burke, *Al-Qaeda – Casting a Shadow of Terro*r (New York: IB Tauris, 2003), 139.
16 For more on these groups, see: Sullivan and Jones, *Global Security Watch – Egypt*.
17 Milt Freundheim and Barbara Slavin, "The World – Sadat Defends Arrests of His

Sadat's September crackdown, assassinated President Sadat.

Hosni Mubarak, then vice president, succeeded Sadat. His ascent to power was "approved" in a national referendum in 1981. Throughout the past twenty-eight years, President Mubarak has adopted a passive/aggressive approach toward the Brotherhood, at times giving them some social and political space and at others engaging in violent crackdowns and attempting social and political suffocation.[18] Indeed, Mubarak has woven a complicated political and legal web in which the Brotherhood often finds itself ensnared. The president, like his republican predecessors, presides over an authoritarian state, and the National Democratic Party, which he controls, holds a tight grip on political power. As of December 2010, Mubarak was serving in his fifth term as president, most recently "elected" in 2005 to another five-year term. As the 2005 parliamentary and presidential elections are the jumping off point for the analysis of the Brotherhood, they merit further examination.

September 2005 marked Egypt's first direct multi-party presidential elections. Previously, the parliament nominated the president, which he effectively controlled, and then his "candidacy" was subject to a yes/no popular vote.[19] President Mubarak "won" all of his previous elections with at least 90% of the vote. In February 2005, the president proposed an amendment to article 76 of the constitution, which would pave the way for the electoral changes.[20] Notably, an analyst with the Al-Ahram Centre for Political and Strategic Studies observed the

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Opponents," *New York Times*, September 13, 2001, LexisNexis.
18 John Walsh, "Egypt's Muslim Brotherhood – Understanding Centrist Islam," *Harvard International Review*, 24 no. 4 (2003), http://hir.harvard.edu/perspectives-on-the-united-states/egypt-s-muslim-brotherhood. Last accessed November 10, 2010.
19 Daniel Williams, "Egyptian President Says He Will Push Multiparty Elections," *Washington Post*, February 27, 2005, LexisNexis.
20 Id.

Brotherhood appeared to be directly and intentionally positioned in the electoral law's crosshairs, which killed their chances for advancing a presidential candidate.[21]

The amendment was ultimately met with great disdain by a broad cross-section of Egyptian civil society. In theory, the new law provided a democratic opening; in practice, however, it placed insurmountable hurdles in the path of most would-be candidates including a *de facto* requirement that NDP support potential presidents. Indeed, elected, organized, political opposition is somewhat of an endangered species in Egypt. In the last thirty-four years, the government's Political Parties Committee has only green-lighted a handful of applications while rejecting sixty-three. Eleven of the nineteen legally recognized parties (as of 2005) "won" their status through battles in the courts.[22]

Approval of the amendment by both houses of Egypt's NDP dominated parliament was necessary prior to holding a popular referendum. In Egypt's lower house of parliament, the People's Assembly, the opposition, including members of the Muslim Brotherhood, walked out before the vote to pass the amendment was taken. The actual referendum was held on May 25th, and a surprisingly (for Egypt) broad-based opposition coalition called Kifaya (meaning "enough" as in enough of Mubarak) was formed. The Muslim Brotherhood became involved with Kifaya, and the coalition called for a boycott of the vote.[23] Although the referendum passed and the constitution was amended, the results were disputed by domestic and international observers.

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21 Gamal Essam El-Din, "NDP Reacts Coolly to Boycott Call," *Al-Ahram Weekly On-line*, May 25, 2005, http://weekly.ahram.org.eg/2005/743/fr2.htm. Last accessed November 10, 2010.
22 "New Election Rules for Egypt Effective Ban Independent Parties,' *The Irish Times*, May 12, 2005, LexisNexis.
23 El-Din, "NDP Reacts Coolly to Boycott Call." The Brotherhood issued a separate call for a boycott, even though they were aligned with Kifaya because of the objections of one of the coalition members was opposed to the Brotherhood.

The period leading up to and during the referendum appears to be the beginning of the end of the Egyptian government's relative tolerance of the Muslim Brotherhood. Key events along the political trajectory accompanying the rights and rhetoric analysis that follows include the May 25, 2005 referendum on article 76 of the constitution as well as the historic September 25, 2005 presidential election (resulting in Mubarak's sixth five-year term). Later that fall, the elections for the People's Assembly, conducted in three rounds, two in November and one in December, in which the Brotherhood increased its representation (as independents) from seventeen to eighty-eight (of 454) seats;[24] Just a year and half later, in March 2007 thirty-four amendments to the constitution were "approved." Three months later, the June 2007 Shura Council (upper house of parliament) elections took place followed by the local council elections in April 2008.

Although the Muslim Brotherhood was born out of the complaints and aspirations of Hassan al-Banna and his followers some eighty years ago, the political and social landscape has changed radically during these years. Some of the original grievances may still ring true, but empires have fallen, boundaries have been redrawn, and new states have been (and continue to be) formed. Moreover, the global legal order was reordered with the founding of the United Nations and the creation of a new set of organizing tools which the Brotherhood may use: international human rights.

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24 "Parliamentary Elections 2005," *Al-Ahram Weekly On-line*, 2005, http://weekly.ahram.org.eg/2005/parliamentary_elections.htm. Last accessed November 9, 2010.

STATE VIOLATIONS OF HUMAN RIGHTS AND THE CONSTRUCTION OF THE MUSLIM BROTHERHOOD "NATION"

If the Brotherhood is to be understood as a rational, support-maximizing entity, *a la* Anthony Downs, an exploration of the methods used to generate that support is essential.[25] Support maximization in this instance relates to how the group positions itself to garner optimal backing. Clearly, the Brotherhood, given its name, can and does use religion to appeal, genuinely and strategically, to fellow Muslims. They also provide social services, or public goods, to "fill-in" for and effectively supplant the state in areas where it has failed to meet the needs of the people (e.g. health care and education). Notably, this raises the issue of the free rider paradox, which states that one will get away with "free riding" on the efforts of others, while paying little whenever possible. However, the problem with paradox is that it focuses on material gain. It fails to take into account emotional payoffs such as a sense of belonging and the value of community.[26] Herein, our focus is on the Muslim Brotherhood's rhetorical use of state human rights violations to tap into popular and potent emotions and identify the state as an oppressor. This supports the group's narrative of the organization as a victim and, at the same time, the resistance movement *par excellence*. In so doing, they create group cohesion, helping forge and strengthen the "nation."

Arbitrary Arrests and Detentions

As indicated above, the Muslim Brotherhood has long been targeted in the state's

25 Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957).
26 Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard U.P, 1971), 166.

intermittent, but seemingly never-ending, crackdowns. Historically and subsequent to Mubarak's efforts to amend article 76 of the constitution, this has regularly included arbitrary arrests and detentions. The Brotherhood understands the United Nations and the international human rights community take the practice of arbitrary arrest and detention quite seriously, and with good legal justification. The Universal Declaration of Human Rights provides that "No one shall be subjected to arbitrary arrest, detention or exile."[27] Recall from the second chapter that this is reaffirmed in the ICCPR (to which Egypt is a state party) as well as the "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment."[28]

Egypt's practice of arrests and detentions often take place under the guise of the state's Emergency Law (No. 162 of 1958). This is an overarching piece of legislation providing the legal cover for a range of state actions. It has been continuously in force since Sadat's assassination, which, of course, inaugurated the rise and rule of President Mubarak. Its provisions create allowances for the arbitrary arrest and detention of suspects, the use of special emergency courts, and media censorship.[29] The Brotherhood has repeatedly cited the Emergency Law generally, and arbitrary arrests and detentions specifically, as part of its package of grievances and as motivation for various actions such as participating in demonstrations and boycotting of polls. The Brotherhood has also used its response to the arrests to highlight other state violations of human rights, particularly political rights, and it expressed its solidarity with

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27 Universal Declaration of Human Rights, article 9.
28 International Covenant on Civil and Political Rights, article 9 and "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," adopted via General Assembly resolution 43/173 of December 9, 1988, http://www.unhchr.ch/html/menu3/b/h_comp36.htm. Last accessed March 19, 2008.
29 See, for example, International Federation for Human Rights (FIDH), "Item 9 of the Agenda: Egypt," Written submission to the United Nations Commission on Human Rights, 61st session,

other groups and the Egyptian population generally. Thus, although the Brotherhood positions itself as the consummate victim of the state, the organization positions its suffering as the Egyptian peoples' suffering. The group's chairman, Mohammed Mahdi Akef, said: "The next elections will have to be free; this will not be achieved unless the emergency law is abolished, because its presence makes the citizen feel that his freedom is incomplete."[30] The organization has also focused specifically on arrests. In a 2005 speech, Akef stated:

> We demand a review of administrative imprisonment; around twenty thousand members of the Muslim Brotherhood have been victims of this measure during the past thirteen years. Some of these victims languished in prison some times for up to fifteen months pending investigation only to be freed without trial. Clearly, administrative detention has been used against us as a punishment without the due process of the law.[31]

In March 2005, weeks after the amendment of article 76 was proposed, the Brotherhood participated in a demonstration attended by thousands of Egyptians. Reports indicated that the Egyptian security services arrested anywhere from several dozen to a couple hundred members of the Brotherhood, some in advance of the protest.[32] At the demonstration, the group's deputy

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January 3, 2005, http://www.fidh.org/spip.php?article2264. Last accessed March 19, 2008.

30 "Egypt: Muslim Brotherhood Guide Interviewed on Presidential Elections, Amending Constitution," *Al-Arabi* (Cairo), March 20, 2005, Open Source Center doc. no. BMP20050320000133.

31 Muhammad Mahdi Akef, "At the Iftar (Fast Breaking) Party," Ikhwanweb, October 12, 2005, http://www.ikhwanweb.com/Article.asp?ID=13336&SectionID=74. Last accessed November 11, 2010.

32 See, for example: William Wallis, "Democracy Still a Dream for Egypt's Beleaguered Islamist Movement," *Financial Times* (London), March 20, 2005, LeixsNexis; and, Mona El-Naggar, "Cairo Police Arrest 100, Blocking Rally by Opposition," *New York Times*, March 28, 2005, LexisNexis.

chairman said they were protesting the arrests and restrictions on their organization.[33] A leading member of the Brotherhood, Essam el-Erian said: "Right now, in Ramses Square - the biggest in Cairo - there are some 10,000 demonstrators chanting [slogans] in support of freedom, the abolition of the state of emergency and real constitutional change, not cosmetic."[34] After the arrests, Deputy Chairman Mohammad Habib noted their focus on the national constitutional reform, their peaceful exercise of their rights, and distinguished the leeway given to the National Democratic Party versus the state's repressive clampdown on the Brotherhood.[35]

Although these are only part of their public comments regarding one demonstration, the Brotherhood representatives accomplish several things with their statements. First, they highlight that the demonstrators are acting lawfully in implicit contrast to the authorities. This helps reinforce the *us/them* dynamic and emphasizes their status as victims of an unjust state. Second, the protestors gathered in a place of national significance en masse. Finally, they are not rallying for a narrow Brotherhood concern, but rather for Egyptians' civil and political rights.

The Brotherhood was not alone in their emerging public disdain for the amendment process. The relatively new, broad-based coalition group Kifaya, also planned demonstrations. The two organizations have worked together on protests. As the constitutional referendum drew near, the Brotherhood's chairman elaborated on his political vision, not just for the Brotherhood but also for the country as a whole. He stated: "Along with the other opposition groups, *we echo the demands of the Egyptian people*: free and open elections for the presidency and the

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33 Omayma Abdel-Latif, "The Shape of Things to Come," *Al-Ahram Weekly On-line*, March 31-April 6, 2005, http://weekly.ahram.org.eg/2005/736/eg4.htm. Last accessed March 19, 2005.
34 "Egyptian Authorities Said to Arrest 49 Muslim Brotherhood Members," Abu Dhabi TV, March 27, 2005, Open Source Center doc. no. BMP20050327000069.
35 "Egypt: Brotherhood Says it Will Not Vote for Mubarak, May Put Own Candidate," *Al-Misri*

legislative bodies, democracy, a multiparty system, repeal of the state of emergency, freeing of all the political prisoners, and respect for human rights."[36]

In early May 2005, the Muslim Brotherhood organized several demonstrations, which drew tens of thousands of participants and resulted in more than one hundred arrests. Demonstrators included leading members of the organization, students, judges, and union members.[37] The gatherings were said to be largely peaceful until state security forces surrounded those assembled and made arrests. Brotherhood representatives stated they were rallying for freedom for the Egyptian people.[38]

Days later, in response to a reporter's statement that the group remained "outlawed," Chairman Akef pointedly derided the use of the term as nonsensical. Picking up on the larger populist theme of the rally, he stated:

> The MB [Muslim Brotherhood] is present historically and realistically, and it derives its existence from the people, the law, and the constitution. As for those who control this nation without any right to do so and who claim for themselves things that are not rightfully theirs, they are the ones who use words like outlawed. The MB has tolerated 50 years [of this kind of treatment] with patience and endurance. And they are still tolerating all this.[39]

Al-Yawm (Cairo), March 30, 2005, Open Source Center doc. no. GMP20050330000082.
36 "French Daily Interviews Egyptian Muslim Brotherhood Chief Mahdi Akif on Policies," *Le Monde* (Paris), April 27, 2005, Open Source Center doc. no. EUP20050427029003. Emphasis added.
37 "Egyptian Paper Reports on 4 May Muslim Brotherhood Demonstrations, Demands," *Al-Misri Al-Yawm* (Cairo), May 5, 2005, Open Source Center.
38 Id.
39 "MB Supreme Guide Interviewed on Cairo Clashes, Police Involvement," Al-Arabiyah Television (Dubai), May 6, 2005, Open Source Center.

Akef and others drew the line between the Brotherhood and the state, between legitimate and illegitimate, between being of the people and against the people. Moreover, he did so within the dialogue of national political reform, not religion.

The Brotherhood's chair also made the link between the political and religious spheres. He later stated: "These demonstrations are aimed at promoting (political) reforms - that is our only objective and our religious duty… We are not resorting to confrontation or violence. We call for love and peace … *No group has been so enormously harmed by the regime like the Muslim Brotherhood; no one has sacrificed like we have.* Nevertheless, we are only demanding reform."[40] Here, he positioned the organizations as a victim of the state, without compare. Moreover, their grievances are shared as many others have been targeted by the state, and, redressing this collective harm requires political change.

By mid-May 2005, the Egyptian Organization for Human Rights said upwards of 500 Brothers were arrested thus far that month.[41] After more than sixty members were subsequently rounded up in one day (May 18), Habib pointedly said the Muslim Brotherhood was in agreement with "other *nationalist"* groups in opposition to the referendum.[42] On May 19, the injustices perpetrated against the Brotherhood were again taken up by EOHR as they demanded the release of the Muslim Brotherhood members who were detained in addition to freedom for

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40 Salah Nasrawi, "Muslim Brotherhood Leaders Says Group Opposes Election as Planned, But May Find and Back a Candidate," Associated Press, May 15, 2005, LexisNexis. Emphasis added.
41 Brian Whitaker, "In Brief: 500 Protesters Held in Egypt," *Guardian* (London), May 17, 2005, LexisNexis. Emphasis added.
42 "Egyptian Security Authorities Arrest 63 MB Group Members in 8 Provinces 18 May," *Al-Misri Al-Yawm* (Cairo), May 19, 2005, Open Source Center doc. no. BMP20050519007007. Emphasis added.

all political prisoners.[43]

Days before the referendum, a group of Muslim Brotherhood leaders, including their secretary general Mahmud Izzat, were arrested. Akef addressed the contradiction between democratic reform and mass arrests of the movements' members.[44] He added that the Brotherhood was not alone — other groups had rallied against the referendum. Akef called on local and international groups to oppose the arrests as part and parcel of the government's consistent human rights violations. He also said governmental intimidation would not "deter the group from pursuing its demands to give people their freedoms."[45] After the vote, the *Christian Science Monitor* reported that at least three thousand Muslim Brothers had been jailed in the preceding weeks.[46] Physical abuse of other activists, including those from Kifaya, was also documented during the referendum.[47] Thus, in little more than a week, the Brotherhood was repeatedly victimized by the state, more so than others; yet, at the same time, it framed its grievances as shared by much of Egypt, and indeed, of importance to those outside of Egypt.

Rather than opting for a narrow Islamist or even organizational approach, Akef again aligned his group with broader Egyptian concerns and respect for human rights when he said,

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43 Nadia Abou El-Magd, "Egypt Extends Detention of 79 Members of Banned Islamic Group after Pro-Reform Protests," Associated Press, May 19, 2005, LexisNexis.
44 "Egyptian Police Reportedly Swoop on Muslim Brothers, Arrest Leading Figures," *Nahdat Misr* (Cairo), May 23, 2005, Open Source Center doc. no. CMP20050523013007.
45 "Egyptian Muslim Brotherhood Undeterred by Arrests – Leader," BBC World Monitoring, Al-Jazeera TV, May 22, 2005, LexisNexis.
46 Dan Murphy, "Egyptian Vote Marred by Violence," *Christian Science Monitor*, May 26, 2005, LexisNexis.
47 See: Human Rights Watch, "Egypt: Calls for Reform Met with Brutality," May 25, 2005, http://www.hrw.org/en/news/2005/05/25/egypt-calls-reform-met-brutality. Last accessed December 13, 2010; Murphy, "Egyptian Vote Marred by Violence;" and, Robert Fisk, "Protestors Beaten as Egypt Votes on Electoral Reform," *The Independent* (London), May 26, 2005, LexisNexis.

"The Kifayah Movement is a national movement that is performing its role, and we appreciate the role it is performing as a duty toward its homeland. We fully appreciate and support this. We also demand that its members should not be harmed because they are performing their role toward the homeland and the desired freedom."[48] A local political observer noted the Brotherhood was engaging in a new type of activism and was requesting domestic and international human rights activists to participate in their efforts and help free the detainees.[49]

The referendum process was only the beginning of a series of round-ups and detentions that would plague the Brotherhood in the succeeding months and years. Elections for the lower house of parliament were undertaken in three stages in November and December of 2005. In the lead up to the elections, Akef stated, "our popularity is our legitimacy."[50] Weeks later, Habib noted that "There is a huge difference between what is legal and what is legitimate," and noted the Brotherhood has played an eminent role in Egypt's national life.[51] As the final stage of the electoral drama began, Amnesty International issued a statement and reported Muslim Brotherhood strongholds were the scene of mass arrests, including some candidates.[52] After the elections, the waves of arrests continued. In April of 2006, the deputy chair of the Brotherhood

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48 "Egypt: Kifayah Movement, MB Say Regime Responsible for 'Foreign Interference,'" *Al-Misri Al-Yawm* (Cairo), May 28, 2005, Open Source Center doc. no. BMP20050528013006.
49 Jailan Halawi, "A New Dynamic," *Al-Ahram Weekly On-line*, May 26 – June 1, 2005, http://weekly.ahram.org.eg/2005/744/eg4.htm. Last accessed April 28, 2008.
50 Mohammad el-Shreef, "Akef: the Election Is Part of Our Agenda," October 18, 2005, IkhwanWeb, http://www.ikhwanweb.com/Article.asp?ID=13320&SectionID=70. Last accessed May 19, 2008.
51 "Egypt's Muslim Brotherhood Holds Rally; Denies Deal with NDP, Foreign Funding," *Al-Misri Al-Yawm* (Cairo), November 13, 2005, Open Source Center doc. no. GMP20051113013004.
52 Amnesty International, "Egypt: Amnesty International Concerned about Mass Arrests and Violent Attacks," Public statement, November 30, 2005, http://www.amnestyusa.org/document.php?lang=e&id=ENGMDE120372005. Last accessed

said:

> [T]he latest detention campaign in which 8 leaders and prominent members of the MB have been detained is part of the series of messages by Egyptian regime to Muslim Brothers to put them in check and pressure them into stopping their demand for real political reform. The political reform that the MB demands starts with ending the state of emergency, unleashing public freedoms, canceling and annulling emergency and exceptional courts and anti-democratic laws, issuing the 'independence of the judiciary law' and releasing all political detainees.[53]

In the beginning of October 2007, the *Washington Post* concurred with what many had been saying all along: The Egyptian state was violating the civil rights of Muslim Brotherhood members in an attempt to stymie the country's largest political opposition group[54] At the end of November, key Egyptian human rights organizations prepared a petition criticizing the government's recent "systemic oppression" of the Muslim Brotherhood, and they said failure to speak out against the state's repressive actions amounted to collusion.[55] This wide-ranging

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April 30, 2008.

53 El-Saeed Ramadan, "Detentions Ami to Stop Muslim Brotherhood's Call for Reform," IkhwanWeb, April 2, 2006, http://www.ikhwanweb.com/Article.asp?ID=4504&SectionID=70. Last accessed May 19, 2008.

54 Ellen Knickmeyer, "Cairo Moving More Aggressively to Cripple Muslim Brotherhood," *Washington Post*, October 1, 2007, LexisNexis.

55 Arabic Network for Human Rights Information, "We Must Not Keep Silent about the Systemic Oppression of the Muslim Brotherhood," November 20, 2007, http://-www.hrinfo.net/en/reports/2007/pr1120.shtml. Last accessed May 21, 2008. Signers were the: Arabic Network for Human Rights Information; Hisham Mubarak Law Center; Nadeem Center for Psychological Therapy and Rehabilitation of the Victims of Violence; Egyptian Association Against Torture; Democratic Social Egyptian Center; Association for Freedom of Thought & Expression; Egyptian Initiative for Personal Rights; Arab Program for Human Rights Activists; the Land Center for Human Rights; Ibn Khaldoun Center for Development Studies; Habi Center for Environmental Rights; and the New Women Foundation.

support for Egypt's indigenous human right community speaks volumes about the Brotherhood's ability to use a human rights narrative to reach beyond its traditional base and garner support from secularists and progressives.

Local council elections were supposed to be held in 2006; they were postponed until April 2008. Council members and candidates again found themselves rounded up by the state — some for simply trying to register their candidacy (as independents) for the poll. Habib termed the government's campaign "ferocious," and said Egyptians were angry about a range of issues including declining social services and poverty and the Brotherhood was trying to "save the ship of the *nation* from sinking."[56] The leader of the organization's parliamentary bloc, Mohammed Saad el-Katani, said that as of March 10 the police seized 700 "potential candidates."[57] Less than a week before the elections, Amnesty International said 160 potential candidates had been arrested along with 650 supporters, 530 of whom remained detained. The arrested included professors and doctors and former members of parliament.[58] The director of Human Rights Watch in the Middle East said the arrests and military court proceedings were part and parcel of a state effort to fix the elections.[59] Although the Brotherhood had earlier urged participation, after being illegally prevented from registering all but twenty of its candidates, the organization

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56 Challiss McDonough, "Egypt's Muslim Brotherhood Vows to Contest Local Elections," Voice of America, February 21, 2008, http://www.voanews.com/english/news/a-13-2008-02-21-voa53.html. Last accessed November 10, 2010. Emphasis added.
57 "700 Potential Opposition Candidates Arrested Ahead of Egypt's Elections: Islamist Lawmaker," Ikhwanweb.com, March 10, 2008, http://www.ikhwanweb.com/Article.asp?ID=16294&SectionID=125. Last accessed May 19, 2008.
58 Amnesty International, "Egypt: Municipal Elections on Tuesday 8 April, Concerns Mount," April 3, 2008, http://www.amnesty.org/en/for-media/press-releases/egypt-municipal-elections-tuesday-8-april-concerns-mount-20080403. Last accessed May 19, 2008.
59 Human Rights Watch, "Egypt Jailing 800 Activists Casts Doubt on Elections," March 30,

called for a boycott of the polls, terming the election a sham. El-Erian said the crackdown left room for only one conclusion, "It is clear now, there is no desire or will in the government to have political reform or free and fair elections or any competition at all … This is the message for the regime - if he [Mubarak] doesn't open the door of hope for the people to change peacefully, he is actually opening the doors of hell."[60] El-Erian, considered a "moderate" leader within the organization, was not threatening Egypt with violence at the hands of the Brotherhood but rather outlining the choice the government was implicitly making: it could either choose to work with democratically-minded Islamists or risk radicalizing a segment of the population whose response to government repression would be far less benign than a call for an electoral boycott or a public strike.

Ill Treatment and Torture

Arbitrary arrests and detentions in Egypt are not infrequently accompanied by state torture and/or ill treatment of detainees. Often such human rights abuses are directed at the Brotherhood, although they are by no means the only victims of the state. Secular activists as well as alleged militants also suffer. The international community's repulsion for such acts is widely understood, and the Muslim Brotherhood has been an equal opportunity critic, slamming government misdeeds against its members as well as others. On their English-language website, IkhwanWeb, they provide links to issues of concern, and torture appears at the top of the list.

2008, http://hrw.org/english/docs/2008/03/30/egypt18397.htm. Last accessed May 19, 2008.
60 Challiss McDonough, "Muslim Brotherhood to Boycott Local Elections in Egypt After Crackdown," Voice of America, April 7, 2008, http://www.voanews.com/english/archive/2008-04/2008-04-07-voa50.cfm?CFID=299628351&CFTOKEN=50313660. Last accessed May 19, 2008.

IkhwanWeb dedicates a page to the subject of torture and it lists a variety of articles and postings, which discuss a range of incidents, coupled with condemnations from domestic and international actors. Their support-seeking narrative, as it relates to torture, is less explicit than that relating to detentions. Moreover, when they address incidents of torture they utilize juxtapositions – it's about ordinary Egyptians and Brothers suffering the same cruel fate, and rhetorically standing side-by-side with human rights stalwarts such as the Egyptian Organization for Human Rights and Amnesty International in condemnation of the state.

On December 10, 2005, United Nations "Human Rights Day," the Brotherhood issued a statement, "Together Against Torture," and called torture the "most brutal form of humiliation."[61] The document noted Islam, Judaism, and Christianity have long prohibited "all forms of psychological and physical humiliation of the human being."[62] They critiqued the U.S. "war on terror," the treatment of detainees at Guantanamo, and noted the barring of the International Committee of the Red Cross (ICRC) from secret prisons and Arab states' holding prisoners without due process. Looking to their own backyard, the Brotherhood singled out the Egyptian security forces for their ongoing brutality as well as their specific mistreatment of detainees during the elections for the People's Assembly. The group also listed several action points including a call for the international community to prevent torture and provide accountability for perpetrators of torture through fair trials without regard for the recentness of the offense.[63]

In the spring of 2007, the Brotherhood compared Egypt's use of torture to Israel's

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61 Muslim Brotherhood, "Together Against Torture," IkhwanWeb, December 10, 2005, http://www.ikhwanweb.com/Article.asp?ID=5124&SectionID=70. Last accessed May 20, 2008.
62 Id.

mistreatment of Egyptian prisoners of war (POWs) during the 1967 war. This was an action of nationalist entrepreneurialism, comparing a leader of the Arab and Islamic worlds with their perennial enemy. In also strengthened the distinction in the *us. vs. them* narrative. At the same time, after the National Council for Human Rights published its annual report (2006/7) indicating the systematic nature of torture in Egypt, the deputy director of the Brotherhood's parliamentary bloc said the Interior Ministry was implicated in torture, requested surprise visits to police stations (which were denied), and said these cases were the proverbial "tip of the iceberg" for Egyptians forced to live under Mubarak's tyrannical rule.[64]

The Brotherhood has repeatedly reported on stories of torture, without always per se connecting them to the organization– identifying the victims as neither members nor supporters. For example, in May 2007, they told the story of a man stopped by police who was not carrying proper identification. Although the police reported his death in custody as a suicide, signs of torture were apparent.[65] Then, in August 2007, the organization criticized the government for the apparent torture of a child – a twelve-year old boy accused of burglary who was taken into police custody, later found lying in the street showing visible signs of abuse; his mother said they used electric shocks on him.[66] The parliamentary bloc of the Brotherhood, seeking to address this case and others called for an urgent joint session of the Defense and National Security and Human

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63 Id.
64 "Egyptian MP: Torture is Systematic under Current Regime," IkhwanWeb, March 13, 2007, http://www.ikhwanweb.com/Article.asp?ID=2172&SectionID=153. Last accessed May 20, 2008.
65 S. Abbady, "Egyptian Citizen Tortured to Death Inside Police Station," IkhwanWeb, May 19, 2007, http://www.ikhwanweb.com/Article.asp?ID=1569&SectionID=153. Last accessed May 21, 2008.
66 BBC Worldwide Monitoring, "Egyptian Assembly member Criticizes Torture at Police Stations," August 14, 2007, LexisNexis.

Rights Committees to discuss issues of torture in the police stations and at the hands of Interior Ministry.[67]

This was not the first time the Brotherhood used the People's Assembly to try to create accountability for torture. In January 2006, the Muslim Brotherhood's parliamentary spokesperson called for a formal investigation into the deaths of nineteen Islamists (of varying stripes) inside Egypt's prisons. He critiqued the lack of information about prisoner deaths generally, and the lack of accountability for those resulting from torture.[68] Earlier in the month he railed against Egypt's general prosecutor who stonewalled investigations into the mistreatment of journalists who were demonstrating against the referendum and asked the People's Assembly to take up the issue.[69] The spokesman noted such an obstruction of justice precluded the government from protecting the people, hindering democracy through effectively allowing the mistreatment of the political opposition and violating principles of separation of powers.[70] In 2007, the Egyptian Justice Ministry rejected a Brotherhood draft law mandating penalties for those who order torture as well as those who instigate, carry out, or fail to stop or report it.

While the Brotherhood may well have the genuine interest of the Egyptian people as a motivation, these actions also exemplify the strategic use of the People's Assembly, a state institution, to raise issues of torture, a *jus cogens* norm of international law. It is a story that casts the Egyptian nation as a victim, the state of Egypt as the aggressor and the international

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67 Id.
68 "Egypt: Muslim Brotherhood Official Urges Inquiry into 19 'Mysterious' Jail Deaths," *Al-Misri Al-Yun* (Cairo), January 27, 2006, Open Source Center doc. no. GMP20060128710006.
69 "Egypt: Muslim Brotherhood MPs Urge Speaker to Stop Prosecutor's 'Violations,'" *Al-Misri Al-Yun* (Cairo), January 13, 2006, Open Source Center GMP20060114710014.

community as the backdrop and the Muslim Brotherhood as the hero, struggling against overwhelming odds to save the day, or at least the people, from torture.

The Brotherhood also makes a point of specifically highlighting the torture of their members. For example, Farid Shaban was detained by state security forces and subsequently and repeatedly beaten and kicked, accused of belonging to an illegal organization and proffering pamphlets calling for a boycott of the May referendum. They told him his wife could be detained, beaten, and electrocuted. Shaban was electrocuted, including through shocks to his genitalia. This physical and psychological torture went on for more than two weeks. Another member was detained just days before the referendum, held for allegedly having tapes of a particular sheikh. He was beaten and tortured using electroshocks over a six-day period, during which time he became deaf in one ear.[71] Muhammad Naji, a member of the Brotherhood, filed a complaint with the public prosecutor alleging torture (including forced nudity and electro-shocks) at the hands of the State Security Investigations Sector.

Others also report on and condemn such incidents. Britain's *Guardian* noted that in the lead up to the May referendum "excessive force" was used against protestors including rubber bullets." [72] The news article noted that the state dealt with the Brotherhood protestors more severely than those from the Kifaya. Reporters without Borders condemned the detention of a Brotherhood blogger, Abdul –Moneim Mahmud, who reported on human rights violations, including torture, in Egypt. The formal charge was membership in an illegal organization.

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70 Id.
71 "Gharbiya Citizen Tortured Till Deafness," IkhwanWeb, May 27, 2007, http://www.ikhwanweb.com/Article.asp?ID=1496&SectionID=153. Last accessed May 21, 2008.
72 Brian Whitaker, "Egyptian Police 'Too Forceful,'" *Guardian* (London), May 17, 2005,

However, Reporters without Borders said the likely reason was his criticism of government misbehavior.

In December 2007 IkhwanWeb reported on an upcoming meeting of the Egyptian Movement against Torture and noted "the notorious phenomenon of torture has considerably mushroomed in Egypt in a worrisome manner, triggering local and international condemnations."[73] Indeed the problem has mushroomed and so has the Brotherhood's response. The have carefully crafted an inclusive narrative in which they are victims, alongside other ordinary Egyptians, and, at the same time are a champion of the people, using state institutions to try to effect positive change. Moreover, their victimhood is validated by credible observers both within and outside of Egypt,

Unjust Military Tribunals

After Egyptians have been arbitrarily arrested and detained, then possibly subjected to ill treatment or torture, they may wonder if the regular criminal court system will render a verdict that is fair, whether they will be referred to a military court, or both. While this may sound rather quippish, this was the reality for the Brotherhood's deputy chair Khariat al-Shatir and others, as described below. Like torture and arbitrary arrests, the Brotherhood has put this issue front and center: On their English language website they posed a poll question: "Do you think the ongoing military tribunal for Muslim Brotherhood leaders in Egypt has increased the group's

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LexisNexis.

73 Nadine Abdullah, "Egyptians against Torture' Meets Thursday to Resist Torture in Egypt," IkhwanWeb, December 23, 2007, http://www.ikhwanweb.com/Article.asp?ID=14980&SectionID=153. Last accessed May 21, 2008.

popularity?"[74] They also devote a subsection of their website to military tribunals, an unfortunate key feature of Egypt's justice system.

In December 2006, security forces arrested al-Shatir, along with more than a dozen other Brotherhood members. In late January 2007, a criminal court dismissed the charges and ordered him and his codefendants released. Security forces, however, quickly rearrested the freed men. Less than a week later, President Mubarak explicitly ignored the court decision and ordered the cases (along with about two dozen others) transferred to a military court. One year into the detention the families filed a complaint with Egypt's National Council for Human Rights.[75] In April 2008, a military tribunal sentenced al-Shatir and others to prison terms and ordered the seizure of their assets.

Independent newspapers and human rights organizations rallied to the cause of al-Shatir and the others throughout their legal ordeal. For example, an *Al-Wafd*, columnist said, "We are against the military trials of the Muslim Brotherhood members and the others because the Egyptian citizen has the right to be tried by his ordinary judge… The ordinary law is deterrent enough… there is no need for extraordinary laws and courts."[76] In *Al-Dustur*, military tribunals were said to "lack the guarantees and conditions of fair trials stipulated by the international covenants for human rights."[77] As the proceedings were underway, Ramsey Clark, a former U.S. attorney general and a lightening rod for controversy, was in Egypt to observe the trials. He

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74 "Detentions Aim to Stop Muslim Brotherhood's Call for Reform," IkhwanWeb, April 2, 2006, http://www.ikhwanweb.com/Article.asp?ID=4504&SectionID=70. Last accessed April 30, 2008.
75 "MB Families File a Complaint to the NCHR," IkhwanWeb, December 14, 2007, http://www.ikhwanweb.us/Article.asp?ID=14870&SectionID=152. Last accessed June 9, 2008.
76 "Egyptian Independent, Opposition Press Review 21 February 07," BBC Worldwide Monitoring, February 21, 2007, LexisNexis.

spoke at a press conference with the coordinator of their defense team and called on the government to abide by its international human rights obligations, which provide for fair and independent proceedings. Clark said the "Egyptian government violates these charters and its brazen injustice against the Muslim Brotherhood is so clear."[78] Human Rights Watch complained that the government had, at one point, failed to allow human rights observers (the group as well as Amnesty International, the Arab Commission for Human Rights, and the Egyptian Organization for Human Rights sent trial monitors).[79] The Middle East director of the group said, "Having failed to secure convictions from ordinary criminal courts, the government is now turning to a military tribunal to deliver the desired verdict."[80]

In December 2007, the Brotherhood posted a rather lengthy piece on their website discussing the various condemnations of the military tribunals, quoting statements, citing blogs. As the trial wrapped up, Brotherhood defense attorneys said they were focused on the domestic judicial process, and the use of international human rights law, rather than regional or international bodies as mechanisms for seeking redress.[81] This accomplishes two tasks: first it appeals to an Egyptian audience by staking out the battleground as "home," and also legitimizes Brotherhood grievances by citing them within the context of international legal standards of behavior. After the verdicts were rendered, a Muslim Brotherhood statement and reinforced the

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77 Id.
78 "Ramsey Clark: Egyptian Regime Commits Violations against Muslim Brotherhood," IkhwanWeb, November 5, 2007, http://www.ikhwanweb.us/Article.asp?ID=14537&SectionID=152Last accessed June 9, 2008.
79 Human Rights Watch, "Egypt: Flawed Military Trials for Brotherhood Leaders," Press release, June 5, 2007, http://hrw.org/english/docs/2007/06/05/egypt16072.htm. Last accessed November 10, 2010.
80 Id.
81 "Egyptian Muslim Brotherhood Lawyers Reject Internationalization of Trials," BBC

us. vs. them dynamic: The decision was "harsh," government decisions "tyrannical," and Mubarak et al abdicated their responsibility to the Egyptian people of favor of prolonging their reign. Meanwhile, the Brotherhood is positioned as honest and an implied part of the "peaceful political opposition." Ready to engage in self-sacrifice on behalf of the Egyptian nation.[82]

The Brotherhood is aware of the domestic and international distaste for military tribunals. Accordingly, they are willing to accept and even highlight condemnations of state conduct by "outsiders." Yet, because their primary audience is domestic, they do not want to be perceived as co-opted and/or lacking control or legitimacy as victims. At the end of the day the Brotherhood want the struggle to be understood of one of them vs. the state, not the state vs. the international human rights community. Their statements accomplished this: the organization is aware of international human rights law, Egypt's violations of it, and the negative impact those violations have on all Egyptians, not just the Brotherhood. They are willing battle on the frontlines of this struggle, and pay the ultimate price for a dignified (and Islamic) Egypt.

Political Rights

While the bulk of the case studies herein focus on human rights violations involving arrests, torture, and unjust trials, the Brotherhood (as well as Hamas and Sinn Féin) also focus on political rights. Recall that violations of political rights (to vote, to run for elected office, to form parties) were intertwined with the discussion above, particularly that on arbitrary arrests. Thus, here their efforts to use political rights and reform to maximize Egyptian popular support are

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Worldwide Monitoring, February 13, 2008, LexisNexis.
82 "Muslim Brotherhood Statement on the Military Decisions," IkhwanWeb, April 16, 2008, http://www.ikhwanweb.us/Article.asp?ID=16726&SectionID=152. Last accessed December 13,

explored.

In their 2007 platform document (for Shura Council elections), the Brotherhood took a comprehensive approach to Egyptian citizen empowerment, connecting human rights, citizenship and Islam. The Brotherhood noted that the Egyptian people were sickened from a lack of national ethics and focus on materialism, and that to be made well again, the citizenry must be rejuvenated: ”Rebuilding [the] Egyptian citizen demands promoting all political, social, economic and cultural conditions and thus, legitimate choices will be open to citizens. This will be made by stressing the right of human to have respectable life whether being material and spiritual for soul and body without any discrimination based on gender, ethnicity or faith.”[83] Reform, as evidenced below, has been a hallmark of their call for increased respect for political rights throughout the time period examined herein.

In early 2005, as Egyptians warily looked toward a multi-party presidential election, the Brotherhood anticipated it would be precluded from running its own nominee and opted for a unifying approach. The organization looked toward a consensus-building and reform-minded candidate."[84] In the wake of Brotherhood demonstrations leading to the May 2005 referendum, Habib said political reform should be speedier and that the people should participate in their own political liberation. He added, “The demonstrations were for this purpose. Freedom cannot be granted and democracy cannot be given but the people must wrest their rights.”[85]

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83 Muslim Brotherhood, “The Electoral Programme of the Muslim Brotherhood for Shura Council in 2007,” Ikhwanweb, June 14, 2007, http://www.ikhwanweb.us/Article.asp?ID=822&SectionID=94. Last accessed June 12, 2008.

84 Inter Press Service, “Egypt; Opposition Waits for Democracy, Cynically,” Africa News, April 1, 2005, LexisNexis.

85 “Egyptian Muslim Brotherhood Official Interviewed on Policy, Election Position, Protests,”

name of support.

Israel and the Occupied Palestinian Territories

As evinced above, the Muslim Brotherhood focuses on human rights issues within Egypt, however, they also pay heed to the situation of their Muslim, Arab brethren in neighboring Israel and the Occupied Palestinian Territories (OPT). This rhetorical criticism of Israel combined with their support of the Palestinians, serves two purposes for the Brothers: First it feeds into a pan-Arab narrative about a larger collective struggle, *us vs. them*, whether the state in question be Egypt or Israel. Second, it positions the Brotherhood as having expressed concerns and developed positions about regional issues of importance to the Arab and Islamic worlds. As we shall see, these messages of solidarity in struggle find resonance within Egypt and abroad for a variety of reasons.

SURVEY OF PUBLIC "SUPPORT"

How successful has the Muslim Brotherhood been at using state violations of human rights as building blocks for its movement? The answer, in short, is quite good. There are many ways one could try to measure the Muslim Brotherhood's support – they range from the number of votes garnered in elections, to external perceptions, to the organization's membership rolls, to the level of U.S. interest in dealing with the Brothers as an organization. Some of these proverbial yardsticks have been addressed above to varying degrees. However, because they are a resistance movement, standing in opposition to an authoritarian regime, accurate and consistent

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Al-Wafd, BBC Worldwide Monitoring, May 29, 2005, LexisNexis.

measurement over time is troublesome. Each measurement and its difficulties is addressed in turn.

Electoral Votes

Three elections took place during the timeline covered in the period encompassed by this study: the presidential election in September 2005; the three rounds of voting for the lower house of parliament (People's Assembly) in November and December of 2005, and polls for the upper house of parliament (Shura Council) in June 2007.

The Brotherhood was legally unable to contest the presidential election, but gained considerable political clout during the process through forming alliances across a range of the political spectrum. In the People's Assembly elections, the Brotherhood won 88 out of 444 contested seats — just under 20%, netting representation on behalf of the majority of the country's governates. In some respects, the state gave the Brotherhood considerable new latitude in campaigning. In others, the state's reaction to the campaign was at times brutal and/or illegal, such that the legitimacy of some NDP candidates could be called into question. In any event, the Brotherhood increased its parliamentary representation more than five-fold. The Brotherhood did not win any seats in the Shura Council elections; they only ran nineteen candidates. Given the state's crackdown in the run up to the polls (and wake of the 2005 elections), this outcome was not exceptional.[86]

86 See, for example, "Egyptian Shura Elections Kick Off with Detentions, Riggings," Ikhwanweb, June 11, 2007, http://www.ikhwanweb.com/Article.asp?ID=1368&SectionID=94. Last accessed November 10, 2010.

Popular Perceptions

In addition to its electoral victories, the Brotherhood reached beyond its sectarian base with success. Two examples highlight this point. In April 2005, Egyptian socialists joined in a demonstration with the Muslim Brotherhood. The former issued a statement that said they were unequivocally in solidarity with the Brothers in opposition to the tyrannical state, which was quashing the peoples' dignity and freedoms.[87] In 2006, a spokesman for Kifaya talked about the organizations' deep political roots and the commonalties of their agendas.[88]

The media were also onboard the Brotherhood bandwagon, at least in terms of recognizing their standing and legitimacy and, in some cases, lending credence to the cause. *Al-Misri al-Yawm*, commented on the debacle that was the 2007 Shura Council elections and said, "The National Democratic Party [NDP] will win the elections, and the Muslim Brotherhood will not lose anything, except some prisoners, and they may win some publicity."[89] A year and a half prior, after the fall 2005 parliamentary elections, the editor of *Al-Dustour* said any citizen "in their right mind would have chosen the MB [over the NDP] without hesitation."[90] After the Muslim Brotherhood rallied the masses during the polling process, *Al-Misri Al-Yawm* reported the Brotherhood summoned one of their largest crowds ever in a manifest display of social and

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87"Egypt: Demonstrators Accuse Regime of Tyranny, Reject Renewal for Mubarak," *Al-Misri Al-Yawm* (Cairo), April 1, 2005, Open Source Center doc. no. CMP20050401000079.
88 Mohamed El-Sayed, "Back to the Streets: Kifaya Returns to Street Activism and Proves It Is Still Very Much Alive and Kicking," *Al-Ahram Weekly On-line,* February 23, 2006, http://weekly.ahram.org.eg/2006/783/eg2.htm. Last accessed November 10, 2010.
89 "Egyptian Independent, Opposition Press Review 12 June 07," BBC Worldwide Monitoring, June 12, 2007, LexisNexis.
90 Amira Howeidy, "Lessons Learned," *Al-Ahram Weekly On-line*, December 1-7, 2005, http://weekly.ahram.org.eg/2005/771/eg8.htm. Last accessed April 30, 2008.

political potency.[91] The gathering was organized in relation to the second phase of the elections and sources estimated crowd strength at 15,000.[92] The Brotherhood was not without its critics, but even the state-owned *Al-Ahram* noted the Muslim Brotherhood electoral gains (at the end of the second round) were an "outstanding achievement." However, they tempered their response and said the organization lacked policy direction and were vague about the way forward.[93]

Although international support was far from unanimous, headlines and articles around the globe generally registered the success of Egypt's main opposition organization. The *Toronto Star* headline read: "Fed-up Egyptians Boost Brotherhood."[94] A local Egyptian interviewed for the article said, "I am not a member of the Muslim Brotherhood but I sympathize with them and I want them to win because they understand our problems and can help us. The government normalizes their relations with the United States, they normalize relations with Israel, but they have yet to normalize relations with their own people."[95] Iran's *Tehran Times* reported, "despite all the pressure imposed by the Egyptian security services, both the tendency of the Egyptian nation toward the Muslim Brotherhood and the number of their supporters has increased considerably."[96] Some 70,000 Egyptian protestors rallied in the first half of 2005 calling for a repeal of laws restricting the freedom to assemble and free speech. According to a U.S.-based

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91 "Egypt's Muslim Brotherhood Holds Rally; Denies Deal with NDP, Foreign Funding," *Al-Misri Al-Yawm* (Cairo), November 13, 2005, Open Source Center doc. no. GMP20051113013004.
92 Id.
93 "The Brotherhood Programme," *Al-Ahram Weekly*, editorial, December 1, 2005, http://weekly.ahram.org.eg/2005/771/ed.htm. Last accessed November 10, 2010.
94 Hicham Safieddine, "Fed-up Egyptians Boost Brotherhood," *Toronto Star*, December 12, 2005, LexisNexis.
95 Id.
96 "Tehran Times Says Vote for Muslim Brotherhood Heralds Change in Arab World," BBC World Monitoring, December 5, 2005, LexisNexis.

paper, the increased size of the rallies corresponded with their "broad support."[97]

Egyptians are also aware of the state's targeting of the Brotherhood for judicial mistreatment and view it negatively. The Arab Network for Human Rights found 67.53% of Egyptians surveyed rejected the military tribunal for Muslim Brotherhood leaders and called it "unjust and unfair." A little more than 18% said they didn't know about the trials, and approximately 14% were not aware of the trials and could not give an opinion.[98]

Membership

Understanding the Brotherhood's membership rolls and how they might fluctuate over time in response to crackdowns, group rhetorical and Egypt's ever changing but somehow constant political realities would provide invaluable insight into their success (or failures) at seeking support. However, as an illegal organization, these rolls are not made public and there is nary any reliable way to check the veracity of various numbers that float about in the informational ether. For example, a 2007 *Washington Post* article said some estimates put membership at 200,000.[99]

PRAGMATIC OPPOSITION: EMBRACING THE NATION

At the end of the day, the Brotherhood are pragmatic in their resistance to the state: they

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97 Dan Murphy, "Egypt Backtracks on Reforms," *Christian Science Monitor*, May 11, 2005, LexisNexis.
98 "67% of Egyptians Believe Military Tribunal for MB Leaders Unjust," Ikhwanweb, March 13, 2008, http://www.ikhwan.tv/Article.asp?ID=16290&SectionID=125. Last accessed September 29, 2008.
99 Ellen Knickmeyer, "Cairo Moving more Aggressively to Cripple Muslim Brotherhood," *Washington Post,* October 1, 2007, http://www.washingtonpost.com/wp-

highlight what distinguishes them as an organization when appropriate, but also understand that to be successful, they need to embrace and be embraced by a larger cause: that of the Egyptian nation. Habib encapsulated their approach and employed human rights rhetoric when he said, "First of all, we acknowledge that every political movement has a different agenda and political vision and modalities, but we are keen on being part of the general national context which is based on the political frame of reference that brings together the common denominators, over which we cannot differ. These are manifested in our quest to form a truly democratic parliamentary system where there is respect for pluralism and the concept of the peaceful transfer of authority is acknowledged, and where the nation is the source of authority."[100]

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dyn/content/article/2007/09/30/AR2007093001309.html. Last accessed November 10, 2010.

100 "Egypt's Muslim Brotherhood Leader on Organization's Platform, New Alliance," Al-Sharq al-Awsat website, BBC Worldwide Monitoring, July 5, 2005, LexisNexis.

CHAPTER 5

HAMAS: "CONSTRUCTIVE" RESISTANCE

> Break their bones.[1]
>
> Even worse, the peace process of the early 1990s had raised expectation it utterly failed to fulfill. Life, for all but a tiny elite, remained harsh. And to cap it all, there were no effective non-violent avenues for protest, either against the Israelis or against the Palestinians' own ineffectual and venal leaders.[2]

INTRODUCTION

Hamas is an acronym standing for *Harakat al-Muqawama al-Islamiya* – the Islamic Resistance Movement.[3] As a movement, it embraces the oppressed/oppressor narrative seeking to defend the former and defeat the latter (i.e. Israel), which is evident in its organizational charter, issued at the time of its founding. Therein, Hamas emphasizes the links between nationalism and the religion of Islam – that "giving up any part of Palestine is like giving up part of religion," and discusses Israeli violations of Palestinian human rights.[4]

Hamas is many things to many people. To some, it is an Islamic resistance organization, standing in social, political, and militant opposition to the Israeli occupation of Palestinian lands. To others it is a band of Islamic fundamentalists, terrorists, bent on driving Israeli Jews into the sea and destroying the Israeli state. For others, it is the better of two less-than-ideal alternatives:

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1 Avi Shlaim, *The Iron Wall* (New York: W.W. Norton, 2001), 453. Quote from Yitzhak Rabin, Israeli Defense Minister during the first intifada to his troops.
2 Jason Burke, *On the Road to Kandahar*, (Toronto, CA: Random House, 2006), 101.
3 Hamas also means zeal in Arabic.
4 Hamas, "The Charter of Allah: The Platform of the Islamic Resistance Movement (Hamas)," in Khaled Hroub, *Hamas – Political Thought and Practice* (Washington, D.C.: Institute for

a conservative Islamist organization that strategically uses violence, but is governed honestly and works in the service of the Palestinian people. This is in contrast to the secular Palestinian group Fateh, which, although improved in recent years, has a legacy of acting in its own self-interest (to the detriment of the larger Palestinian community) and a reputation of being rife with corruption.

In addition to these descriptors, one can add nationalist entrepreneur. Like Sinn Féin, Hamas successfully uses human rights issues to build movement support and justify a range of activities — civil, political and violent — during its struggle with Israel. The Palestinian narrative is framed by the creation of the Israeli state, and the ongoing, related catastrophe, the *nakba*. Palestinians are displaced, occupied, repressed, violated, and victimized. Israel is the colonizer, the occupier, the violator, and the victimizer. This chapter will analyze Hamas' use of the *us* and *them* narrative to build the Palestinian national movement in several important stages of its conflict with Israel. The first phase is that of Hamas' birth, which occurred during a time of struggle – the first intifada (uprising) in the late 1980s and early 1990s. The second occurs in the post-Oslo (peace process) period, after 1993, when Hamas became known for its use of "suicide-bombers," or, as the movement refers to them, martyrdom operations. The third stage encompasses Hamas' decisive electoral victory in the Palestinian election when it won a majority of parliamentary seats in 2006. The final phase examined is the period surrounding the "Gaza War" of 2008-2009, when Israel launched an attack on the Gaza Strip, purportedly in response to Hamas rocket-fire. During the Gaza War Israel killed nearly 1,400 Palestinians and decimated much of the Strip's already fragile infrastructure. As in the previous two chapters, before

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Palestine Studies, 2000), Appendix, document no. 2, article 13.

proceeding with this analysis, it is necessary to set the stage and develop an understanding of the context that gave rise to the creation and growth of Hamas.

SETTING THE STAGE

Hamas is the organizational offspring of Egypt's Muslim Brotherhood. As noted in the previous chapter, the Brotherhood was involved with the Palestinian resistance to Israel, in the period around the state's founding. Israel was the product of decades of Zionist struggle in the face of seemingly insurmountable obstacles. Zionism, a Jewish nationalist ideology that took hold in the late 1800s, centered on the creation of a homeland for the world's Jews who were victimized through discriminatory laws, policies and pogroms. It advocated for the creation of a Jewish state on a territory populated by hundreds of thousands of Palestinian Arabs — Muslims, Christians, and Druze — who had deep roots and attachment to the land. Israel became that homeland.

Beginning in the late nineteenth century, a series of waves of Jewish migration to the land of Palestine — first under Ottoman sovereignty, then under the British mandate — began to alter the social and demographic character of the land. By the mid 1940s as World War II ended, Jews, Palestinians, and the British, the mandatory power legally and military responsible for the territory, were engaged in heated conflict with each other. The British, for a range of reasons involving domestic and international political and economic issues, worked to end their mandatory responsibilities for Palestine and asked the nascent UN to sort out a solution. A UN committee drafted two reports (majority and minority) that posited the partition of the territory; both were problematic. Subsequently, the UN General Assembly promulgated resolution 181

which called for partition of mandatory Palestine into two states. From the Arab perspective, the resolution privileged Zionist interests over Palestinian rights and was about politics rather than law and was unworkable.[5] The envisaged Palestinian state was but a smaller shadow of the mandatory territory. Moreover, although the Jewish Agency accepted the resolution, the Zionist movement was divided because the proposed Jewish state did not encompass all of *Eretz* Israel. A war broke out when the Israelis declared their independence from the United Kingdom and sough to position themselves as David versus Goliath, the larger and more established Arab military forces in the region. The reality, however, was that the Arab states and Palestinians who battled with Israel were disorganized and wracked by differing goals. Moreover, members of Jewish militant groups such as the Haganah, the Irgun and the Stern Gang, were organized, trained and battle tested.[6]

When the dust settled, the state of Israel was left standing and a Palestinian state was nowhere to be seen. Although Israelis view this as their war of independence, from the Palestinian perspective, this was the *nakba*, the catastrophe. It was a time when 750,000 Palestinians were forcibly displaced from their land and homes. The Palestinian narrative also includes incidents of terror at the hands of Zionist militant groups who destroyed villages and massacred their inhabitants to send a message to those who would not flee.[7] While these events happened more than six decades ago, they provide the context for understanding the evolution of contemporary Palestinian nationalist grievances and the way Israel's ongoing human rights

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5 John Quigley, *The Case for Palestine* (Durham, NC: Duke UP, 2005), 37-8.
6 See, for example, Avi Shlaim, "The Debate about 1948," *International Journal of Middle East Studies,* 27 no. 3 (Aug., 1995): 287-304.
7 Ilan Pappe, "The Ethnic Cleansing of Palestine," *Journal of Palestine Studies*, 36 no. 1 (Autumn 2006): 6-20.

violations have become building blocks in reimagining a new nation, one free from repression and what would come next – the occupation. Israel's victory was decisive, however, it was not necessarily complete.

The new Israeli state did not encompass all of historic, mandatory Palestine.[8] Israel's neighbor Egypt controlled the Gaza Strip and Jordan assumed responsibility for East Jerusalem and the West Bank. Egypt controlled the Gaza Strip until the Six Day War in 1967 when Israel began its occupation. Additionally, the 1967 conflict resulted in the Israeli occupation of the Sinai Peninsula, as well as the West Bank and the Golan Heights. In a subsequent peace accord Israel returned the Sinai to Egypt. Israel has *de facto* control over much of the West Bank. To date, and despite strenuous protests from Syria, Israel remains in control of the Golan Heights. The West Bank, Gaza Strip and the Golan Heights, as of late 2010, remain occupied territory under international law.

As noted above, the Muslim Brotherhood had long been active to varying degrees in Palestine, including the creation of organizational branches in Gaza. In the late 1960s, Sheikh Ahmed Yassin, who became a legendary Hamas figure, assumed a leadership role of the Brotherhood's movement in Gaza. In 1976, the Brothers set up *al-Mujamma' al-Islami* (the Islamic Center), a hub of nonviolent, religious and educational activity.[9] In the years that followed, a confluence of circumstances led to the emergence of the separate entity of Hamas, distinguishing itself from the Brotherhood and its agenda of an internal jihad (struggle for an Islamic society) with one emphasizing external jihad – a struggle against the occupying Israeli

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8 Edward Said, *From Oslo to Iraq and the Road Map* (New York: Random House, 2007).
9 Shaul Mishal and Avraham Sela, *The Palestinian Hamas* (New York: Columbia University Press, 2000), 20.

state.[10] The Brotherhood focused on internal rebuilding because they viewed the Israeli state and subsequent occupation as a "sickness" that ailed the Muslim nation; recovery meant growing a healthy, strong Islamist community.[11] However, this inward focus was insufficient to address shifts and changes within Palestinian society and politics in the lead up to the intifada, the popular Palestinian uprising.[12]

The West Bank and Gaza Strip became widely known as the occupied Palestinian territories (OPT); however, when the intifada broke out in 1987, they were not the base for the dominant Palestinian group at that time — the Palestinian Liberation Organization (PLO). The PLO is an umbrella group for a range of secular, nationalist factions, which evolved in its position toward Israel over time. The PLO was initially grounded in the elite state interests of the League of Arab States who created it. This changed with ascent of Yassir Arafat of the Fateh movement, one of the constituent factions, when it moved to become more independent. In the late 1960s and early 1970s, PLO groups used Jordanian territory to engage in a series of attacks against Israeli targets and the hijack airplanes. The PLO also gained prominence in the burgeoning Palestinian refugee camps east of the Jordan River. Jordan's monarch, King Hussein, feared the consequences of the PLO's rising power within his country's (recently shrunken) borders and Israeli retaliation. In a bloody civil war, the PLO was expelled and sought new quarters in neighboring Lebanon, a bastion of regional instability. After a series of internal and external violent conflicts in Lebanon, during which Israel and Lebanese groups targeted

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10 Id at 33.
11 Azzam Tamimi, *Hamas – A History from Within* (Northampton, MA: Olive Branch Press, 2007), 28.
12 Id. See also: Ziad Abu-Amer, "Hamas: a Historical and Political Background," *Journal of Palestine Studies,* 22.4 (Summer 1993): 5-19.

Palestinians, the PLO was organizationally divided and wounded; Arafat and the Fateh leadership retreated to Tunisia where it operated in exile.[13]

The emergence of the Muslim Brotherhood splinter group Palestinian Islamic Jihad (PIJ) in the early 1980s was also key in the emergence of Hamas. PIJ was led by Fathi al-Shaqaqi, a former Brother and refugee from the 1948 war with Israel. Islamic Jihad offered a focused and more militant form of resistance to the Israeli state.[14] In the run up to the intifada, Islamic Jihad engaged in a series of popular attacks targeting the Israeli military. Younger members of the Muslim Brotherhood who had not split with Jihad, engaged in their own plotting and planning, as they bided their time and pushed the organization to take more direct action against the Israeli occupation.[15]

THE FIRST INTIFADA: RISING UP, CLAMPING DOWN

The first intifada unfolded in an environment that was ripe for the emergence of Hamas.[16] In 1967, approximately 350,000 Palestinians were displaced because of the Six Day War, many of them for a second time. The first was the 1948 war.[17] The oppression of the occupation - from the political stultification to the economic exploitation - had long taken its toll on the Palestinians.[18] Two years into the intifada, a local scholar wrote, "Housing conditions are intolerable and with perhaps a family of fifteen living in three small rooms, it does not take much

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13 See: Deborah Gerner, *One Land, Two Peoples* (Boulder: Westview, 1991), 85-8; and, Ilan Pappe, *A History of Modern Palestine* (New York: Cambridge, 2004), 221-4.
14 See: Tamimi, *Hamas – A History from Within*, 43-4; also: Hroub, *Hamas – Political Thought*; and, Abu-Amr, "Hamas: a Historical and Political Background."
15 Mishal and Sela, *The Palestinian Hamas*, 33-4.
16 Hroub, *Hamas – Political Thought*, 41.
17 Quigley, *The Case for Palestine*, 168.

to start a demonstration in a camp. As a consequence, the camps are subjected to the harshest Israeli measures, such as arrest, house demolitions, curfews, siege and interruption of services."[19] Between 1967 and 1987, nearly 1,400 Palestinian homes were demolished or sealed by the Israeli government, for military, administrative or other reasons.[20]

The intifada happened accidentally – literally and figuratively. An Israeli-driven vehicle struck and killed four Palestinians in Gaza in early December 1987. Rumors circulated that the accident was, in fact, on purpose – a revenge killing for a recent Palestinian attack on an Israeli. Without prior planning, Gaza, the West Bank, and Palestinian Arabs in Israel erupted in simultaneous protest.[21] The intifada did not originate as a nationalist movement but rather was grounded in grievances related to poverty and the conditions of occupation, in other words human rights violations. It did, however evolve into a movement for self-determination; Shlaim terms this "the Palestinian war of independence."[22]

Hamas emerged out of the chaos as a distinct organization in December 1987 in tandem with the eruption of the intifada. Gaza's Muslim Brothers, including Sheikh Yassin, convened in the early hours of the uprising and within a week issued a statement that was signed the Islamic Resistance Movement, which would become known as Hamas.[23] A founding Hamas member,

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18 Saree Makdisi, *Palestine Inside Out* (New York: Norton, 2008), 77-80.
19 Ziad Abu Amer, "An Overview of Social Conditions in the Refugee Camps," *Journal of Refugee Studies,* 2.1 (1989): 149-151.
20 B'Tselem, "Through No Fault of Their Own: Israel's Punitive House Demolitions in the al-Aqsa Intifada," http://www.btselem.org/english/publications/summaries/200411_punitive_house_demolitions.asp. Last accessed November 5, 2010.
21 Samih K. Farsoun and Naseer H. Aruri, Palestine and the Palestinians - a Social and Political History (Boulder: Westview, 2006), 224-5.
22 Shlaim, *The Iron Wall*, 450.
23 Zaki Chehab, *Inside Hamas* (New York: Nation Books, 2007), 25-7.

Dr. Ibrahim al-Yazuri, stated: "Strong passions were aroused amongst a number of our brothers who were urging for a revolt and to stir up the public, especially the youth, into intensifying their resistance against the occupation and bring revolution to the streets."[24] Al-Yazuri was unlikely aware he was channeling seventeenth century French intellectual Francois La Rochefoucauld. La Rochefoucauld found emotions strategically useful to sway the opinions of others; he stated: "The passions are the only orators who always convince."[25]

Hamas issued its charter approximately eight months into both its and the intifada's existence, and therein explained that it was a branch of the Muslim Brotherhood. The charter also affirmed that:

> Hamas regards Nationalism (*Wataniyya*) as part and parcel of the religious faith. Nothing is loftier or deeper in Nationalism than waging Jihad against the enemy and confronting him when he sets foot on the land of the Muslims. And this becomes an individual duty binding on every Muslim man and woman; …While other nationalisms consist of material, human and territorial considerations, the nationality of Hamas also carries, in addition to all those, the all important divine factors which lend to it its spirit and life…[26]

Regarding human rights, Hamas observes that international summits will not enforce human rights guarantees or provide "justice to the oppressed."[27] The charter discusses the need for social solidarity among Muslims and draws attention to the fact that its "enemy [Israel] has

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24 Id at 26.
25 Francois LaRochefoucauld *Maxims*, (New York: Penguin Books: 1959), Maxim no. 8.
26 Hamas, "The Charter of Allah," article 12.

adopted the practice of breaking our bones and shooting women, children old men – with or without reason and creating concentration camps to place thousands in inhuman conditions, not to mention the demolition of homes, orphaning of children and the issuing of tyrannical laws against thousands of young people so that they spend their best years in the obscurity of prisons."[28]

Human rights violations were part and parcel of the occupation and the increasingly repressive Israeli response to the growing Hamas movement and the intifada. Reports indicate most Hamas leaders were jailed by the end of February 1989, and membership in the organization was illegal by the fall of that year.[29] Human rights also became a notable component of Hamas' messaging, an attempt to deepen the *us* vs. *them* dynamic – the resistance and the oppressors.

Education was one focus of the Islamic Resistance's outreach activities. This was natural for Hamas given the Brotherhood and Islamic Center's activities in this area. Issues related to education were also key grievances of those rising up as Palestinian children suffered tremendously. One source noted that education was targeted by the Israeli authorities during the intifada and that "there had been an escalation of Israeli repressive measures," such as "(1) the arrest and deportation of students and faculty; (2) intensified financial harassment; and (3) school closures."[30] Schools were closed for periods ranging from two to four years and some served as

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27 Id at article 13.
28 Id at article 20.
29 "Palestine Chronology, 16 February -15 May 1989," *Journal of Palestine Studies*, 18.4 (Summer 1989): 180-200; "Palestine Chronology, 16 August -15 November 1989, *Journal of Palestine Studies,* 19 no. 2 (Winter 1990): 189-210.
30 Said Assaf, "Educational Disruption and Recovery in Palestine," n.d., 53, http://www.ibe.unesco.org/publications/free_publications/Tawil6e.pdf. Last accessed November

detention facilities. Teachers, students and curricula were all targeted, including in the case of the latter, attempts to deny the historical Palestinian narrative.[31] In one example as part of the uprising, Palestinians embraced "Palestine-time," in which their clocks differed from the Israelis' by one hour. The Israeli army threatened to detain students abiding by this independence-oriented time zone.[32] In another example, the Israeli occupation forces (IOF) closed eight schools whose students were accused of stone throwing.[33]

Hamas repeatedly implored Palestinians to attend classes and pursue education. In 1988 it issued a leaflet that stated Israel sought to sow the seeds of ignorance, and Palestinian education was part and parcel of the intifada. It noted, "We must be armed with education. We must believe in a return to our study institutions, universities and schools of teachers and pupils… Otherwise the educators must go to the mosques in order to teach and to prepare a curriculum for the leaders of the future."[34] A leaflet issued the following month was dedicated entirely to education, and emotionally invoked the *us vs. them* dynamic as it spoke of students "fired with the spirit of revolt against the occupation, the plundering, the oppression."[35] The publication also bridged two of Hamas' underlying tenets: "National and religious duty obligates teachers at all levels of the educational system to redouble their efforts and to show understanding for the

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13, 2010.

31 Salah Alzaroo and Gillian Lewando Hunt, "Education in the Context of Conflict and Instability: The Palestinian Case," *Social Policy and Administration,* 37 no. 2 (April 2003): 165-180.

32 "Palestinian Guerrilla Is Killed at Lebanese-Israeli Frontier," *New York Times,* September 6, 1989, LexisNexis.

33 Id.

34 Shaul Mishal and Reuben Ahraoni, *Speaking Stones* (Syracuse, NY: Syracuse UP, 1994), 220 (Leaflet no. 10).

35 Id at 221 (Leaflet no. 11).

situation of the pupils."[36]

Leaflet number 45 began by affirming "knowledge is a sacred right." It went on to say that the Palestinians students are "the hopes of this nation, its pride and treasure… [schools] will continue to be natural hothouses for the shaping of generations and building the nation and raising its …sons on the manliness which God wanted the Islamic nation to possess."[37] In 1989 another new leaflet greeted, "our valiant students the eagles of the blessed intifadah who, with their determination to obtain their rights, foil the policy of stultification."[38] In one response to the Israeli closing of Palestinian schools, Hamas called for international human rights bodies to pressure the "Zionist enemy."[39]

In addressing education, a basic international human right, Hamas spotlighted the oppressor/resistor narrative emphasizing those who have a right to an education vs. those who would deny it. It linked nationalism to Islam invoking an emotional sense of patriotic and religious duty, seeking to appeal to less conservative or secular Palestinians as well as Islamists. It also connected the Islamic resistance to the broader Palestinian struggle by raising an issue with wide reaching relevance to youth and their parents.

Detentions were another major issue during the intifada and Hamas utilized related Israeli human rights violations in its nation-building efforts. Apparently, however, Israel was not cognizant of that fact that its escalating campaign against Hamas had the opposite of the intended

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36 Id at 222 (Leaflet no. 11).
37 Id at 262-3 (Leaflet no. 45).
38 "Hamas Statement Rejects Egyptian 10-Point Plan," BBC Summary of World Broadcasts, from Al-Quds Palestinian Arab radio, September 16, 1989, LexisNexis.
39 "Islamic Resistance Movement Issues Statement 52 on Intifadah," BBC Summary of World Broadcasts, from Al-Quds Palestinian Arab Radio, January 20, 1990, LexisNexis.

effect: it garnered the Islamist resistance "popular sympathy and support."[40] One observer noted that the prisons "are virtually schools for the education of a new generation of Palestinian revolutionaries. The upshot is that in most cases Palestinians are more determined to pursue the struggle when they leave prison than when they entered."[41]

By September 1988 the Israeli Defense Ministry reported that since the beginning of the intifada several thousand were imprisoned and nearly 20,000 had been detained.[42] By 1991, it was reported that during the first two years, 40,000 had been detained and nearly half appeared before military tribunals, from which on 400 were acquitted.[43] Israeli detention of Palestinians during the intifada occurred pursuant to military legislation that was made more "flexible" to respond the circumstances.[44]

Palestinians, however, were not invisible in their suffering as the international community took note of what was going on. The Lawyers Committee on Human Rights conducted an investigation and published its findings.[45] Amnesty International issued a series of reports throughout the intifada looking at detention practices and the military justice system. Amnesty's concerns included: incommunicado detention; a failure to notify detainees' families about their circumstances; torture and ill treatment; as well as lawyers' lack of access to

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40 Tamimi, *Hamas – A History from Within*, 61.
41 Aryeh Shalev, *The Intifada – Causes and Effects* (Boulder: Westview Press, 1991), 106.
42 Lawyers Committee for Human Rights, *An Examination of the Detention of Human Rights Workers and Lawyers form the West Bank and Gaza and Conditions of Detention at Ketziot*, (New York: Lawyers Committee for Human Rights,1988), 6.
43 Amnesty International, *Israel and the Occupied Territories*, July 1991, http://amnesty.org/en/library/info/MDE15/034/1991/en. Last accessed November 13, 2010.
44 Don Peretz, *Intifada – the Palestinian Uprising* (Boulder: Westview Press, 1990), 64.
45 Lawyers Committee for Human Rights, *An Examination of the Detention of Human Rights Workers*.

detainees.[46]

Related to the detention process were deportations through which Palestinians were forcibly removed from Israel, the West Bank and Gaza Strip to other states. In mid-1989, B'Tselem, an Israeli human rights group, reported that since the occupation commenced, more than 1,200 people were deported from Israel and the OPT, 53 since the beginning of the intifada.[47] International criticism was also forthcoming. In 1990, after Israel deported four Palestinians it said were affiliated with Hamas, the UNSC passed a resolution, supported by the United States, which "deplore[d]" the action and called on Israel to respect international humanitarian law.[48] This was the fourth time since the intifada erupted that the UNSC condemned Israeli deportations.[49]

For Hamas, a critical, mass deportation took place in 1992. Hamas had engaged in a targeted campaign of violence against the Israeli security services, which included the kidnapping of a member of the Israeli Defense Forces. Hamas' demands included the release of Sheikh Yassin, who had been arrested and jailed. Israel refused to meet the conditions and the soldier was killed. Prior to the deportations, Hamas member Abdel Aziz Rantisi said the outcome of the kidnapping operation was Israel's fault that it "merits the wide support of the Palestinian people."[50] Within a matter of days, Israeli rounded up thousands of Palestinians, and took more

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46 Amnesty International, *Israel and the Occupied Territories*.
47 B'Tselem, "Information Sheet: Update July 1, 1989," July 1, 1989, www.btselem.org/Download/199203_Interrogation_Followup_Eng.doc. Last accessed November 13, 2010.
48 United Nations Security Council, Resolution 681 (1990), December 20, 1990, http://www.un.org/Docs/scres/1990/scres90.htm. Last accessed November 13, 2010.
49 See: United Nations Security Council resolutions 607 and 608 (1988); 636 and 641 (1989), http://www.un.org/Docs/sc/unsc_resolutions.html. Last accessed November 13, 2010.
50 "Hamas Blames Israel for Tolegano's Death," *The Jerusalem Post,* December 16, 1992,

than 400, including many members of Hamas, and deported them into Lebanon.[51] A Hamas representative called them an act of state terrorism and a subsequent leaflet said the organization would no longer restrict its targeting to security forces.[52] Hoffman notes:

> The deportation proved to be a serious miscalculation. Deposited in the middle of rough country in south Lebanon, in the middle of winter, the deportees quickly became a cause célèbre, attracting international media attention and sympathy. Hamas bore the fruits of its leaders' suffering, attaining a level of support among both Palestinians and foreigners that it might not otherwise have achieved. Included among the exiles were doctors, clerics, teachers … thus supporting Hamas's claims that it was a true community and social welfare organization and not a terrorist group.[53]

B'Tselem issued a report condemning the deportations as violations of basic international human rights and humanitarian law.[54]

In Hamas' second leaflet, they noted "The Muslim people is avenging its honor and restoring its former glory. It refuses to concede… [and] rejects arrests and deportations."[55] More than three years later, the campaign of arrests and "deportations of the defenseless" were again

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LexisNexis.
51 Tamimi, *Hamas – A History from Within*, 66-9
52 See: "Israeli Cabinet Decides to Deport 418 Palestinians; Palestinian Reaction," BBC Summary of World Broadcasts, December 18, 1992, LexisNexis; "Field of Flowers Drama Being Watched Closely in the Occupied Territories," *The Irish Times*, December 23, 1992, LexisNexis.
53 Bruce Hoffman, *Inside Terrorism* (New York: Columbia UP, 2006), 148.
54 B'Tselem, "Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December," (June 1993), http://www.btselem.org/Download/199306_Deportation_Eng.doc. Last accessed November 13, 2010.

condemned.[56] Hamas also exalted Palestinian support for the intifada, which it called a noble activity, and heralded those who make the "greatest sacrifices" as part of its jihad.

According to one source, Israel almost destroyed the movement through its campaign of arrests and imprisonment; however, Hamas had set up a provision for leadership in exile.[57] Additionally, Hamas efforts around detainee and deportee issues happened in tandem with other activities. It organized its protest activities such as strikes, to target groups of actors and actions, reinforcing boundary lines between those who supported the movement's issues and those who stood in opposition. For example, there was a prisoner solidarity day, a strike to commemorate those who lost their lives at Sabra and Chatila as well as two days dedicated to "Palestinian slogans and flags decorated with 'There is no God but God.'"[58] Thus, over the course of two weeks Hamas worked to strengthen internal cohesion around the prisoners issue and affirmed its position in the larger uprising (other groups had imprisoned members). Hamas also linked itself to the Palestinian refugee community outside the OPT through invoking Sabra and Chatila, Palestinian refugee camps in Lebanon, where in 1982, more than 1,000 refugees were massacred through collusion between Israeli forces and Lebanese Christian militia members. Hamas' final protest announced in that leaflet was the consummate combination of nationalism and religion: Palestinian flags and Islam. The expression is the profession of faith and is one of the five pillars of Islam.[59] It is also emblazoned on the Hamas flag.

Hamas also monitored Israeli political developments and did not shy away from

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55 Shual and Ahraoni, *Speaking Stones*, 205 (Leaflet no. 2).
56 Id at 282 (Leaflet no. 74).
57 Tamimi, *Hamas – A History from Within*, 60-1.
58 "Hamas Statement Rejects Egyptian 10-Point Plan."
59 John Esposito, *Islam – the Straight Path* (New York: Oxford, 1988), 90.

critiquing its fellow Palestinians when it felt they were straying from the path of liberation. For instance, when an Israeli government dispute between the two major parties, Likud and Labor, unfolded Hamas asserted, "The two big parties are in agreement on denying our people their minimum rights. Why do some foolish members of our people declare a preference for one side over the other?"[60]

The first few years of the intifada were marked by the Palestinian assertion of "their *right to exist* but also their *right to resist Israel*."[61] In its last two years the uprising suffered from "relentless Israeli repression and the political and economic isolation of the Palestinians by the regional hegemonic states in the Gulf."[62] Khalidi notes that because of Fateh's negotiation, governance, and security failures, it "lost much of its legitimacy and credibility" with the Palestinian people.[63] As a result, the intifada lacked organizational cohesion and the nascent Islamist organization Hamas operated largely at-will.

Structurally, the Intifada was a time of growth and distinction for Hamas. It separated itself from the PLO-led Unified National Command (UNC) leadership of the intifada, while at the same time it participated in a range of resistance activities – civil, economic, and violent.[64] Hamas sought to frame the conflict on its own terms. A statement inquired: "[T]hey accuse us of being terrorists. Since when has the person who demands his rights been a terrorist?"[65] These

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60 Joel Greenberg, "Hamas Sees 'Government of Rabbis,'" *The Jerusalem Post*, March 29, 1990, LexisNexis.
61 Farsoun and Aruri, *Palestine and the Palestinians*, 208. Emphasis added.
62 Id at 209.
63 Rashid Khalidi, *The Iron Cage* (New York: Beacon, 2006), 152.
64 Mishal and Sela, *The Palestinian Hamas*, 59-64.
65 "Islamic Resistance Movement Hamas Calls for Continuation of Palestinian Uprising," BBC Summary of World Broadcasts, from Al-Quds Palestinian Arab radio, January 13, 1989, LexisNexis.

actions and dialogue set the stage for decades to come: Israel terms Hamas as terrorists and uses a variety of countermeasures Hamas demands justice and assails Israel using a variety of tactics, including its most infamous weapon – martyrdom attacks.[66] The first intifada lasted until 1993, the year the PLO negotiated the Oslo Accords. In the intervening years between the first and second intifadas (1993 and 2000), groups such as Hamas continued to assert their right to resist Israel in violent and nonviolent manifestations.

HAMAS' MARTYRDOM OPERATIONS: RIGHTS AND WRONGS

The years between the first and second uprising (termed the Al-Aqsa Intifada), were punctuated with political bargains and bombings. On the heels of the mass deportation in 1992, leaders of the PLO negotiated in secret with members of the Israeli government and began the Oslo "peace process." The Oslo process has had its supporters and detractors, Hamas among the latter. Farsoun and Aruri highlighted several mainstream criticisms which included: the lack of public input; recognition of the PLO but not "Palestinian rights;" the utilization of rights as bargaining chips; and the intentional lack of attention to major issues such as Jerusalem and refugees.[67] The head of the PLO, Yassir Arafat, tried to paint a positive picture of the agreement in his statement at the signing, emphasizing the opportunities presented by the agreement to move toward the realization of Palestinian self-determination and citing Palestinian common

66 Martyrdom attacks is akin to the terminology Hamas uses for these operations, and will be used herein. They are often termed suicide attacks by those who are critical of Hamas, however, this terminology can obscure and misrepresent fundamental issues including the motivations and mental state of the attacker.
67 Farsoun and Aruri, *Palestine and the Palestinians*, 242-245.

ground with the United States in terms of a desire for respect for human rights.[68] Hamas, however, wasn't buying what Arafat was selling.

This, of course, is not surprising given the critiques. Moreover, Tamimi notes that one of the functions of Oslo, along with the creation of the new self-governance entity, the Palestinian National Authority, was to marginalize other Palestinian organizations, including Hamas.[69] Hamas, however, was aware of the rough waters ahead it was entering and was determined that it would neither get overtaken nor sink. Focus and cohesion were key. In 1994, Hamas issued an internal document that emphasized the ongoing dynamic of the occupier/occupied distinction as Hamas' raison d'être: "We are a people under occupation … Our political and informational discourse must focus on the fact that the Zionists are both our foremost and our only enemies, that the central purpose of our people is to resist the Zionist occupation."[70] Thus, active participation in the resistance, and not just merely embracing it rhetorically, became the new hallmark of Palestinian nationalist authenticity.

Hamas, however, was in a bit of a conundrum. As per the Oslo accords, the PLO agreed to refrain from violence against Israel, and Hamas planned to continue its jihad, which it perceived as a source of legitimacy. Hamas operations were based on "cost-benefit" calculations toward ending the occupation and its associated human rights violations.[71] However, it also wanted to avoid overtly fracturing the Palestinian nation. The Islamic resistance opted to ramp

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68 US Department of State, "Recent Developments in the Middle East Peace Process," *Dispatch Supplement,* 4.4 (September 1993) http://dosfan.lib.uic.edu/ERC/briefing/dispatch/1993/html/Dispatchv4Sup4.html. Last accessed November 13, 2010.
69 See: Tamimi, *Hamas – A History from Within*.
70 Quoted in Hroub, *Hamas – Political Thought and Practice*, 62-3.
71 Mishal and Sela, *The Palestinian Hamas*, 67.

up "its armed struggle against Israel preceding the founding of the Palestinian Authority in Gaza and Jericho and tried by this means to enhance its public prestige and thereby immunize itself from the PA's attempts to suppress the Islamic opposition."[72]

One of the ways Hamas changed the dynamics of the conflict after Oslo was through the use of martyrdom operations, better known as suicide bombings. Dr. Abdel Aziz Rantisi, a founder of Hamas and former spokesperson for Palestinians exiled in southern Lebanon stated, "'Suicide bomber' implied an impulsive act by a deranged individual. The missions undertaken by the young men in the Hamas cadres … were ones that they deliberately and carefully chose as part of their religious obligation."[73] Rantisi said Hamas preferred *istishhadi*, which translates as self-chosen martyrdom.[74]

Hamas, as an Islamist organization, has a clear stake in utilizing the religious narrative. However, Pape found that a key motive for "suicide terrorism" is not Islamic fundamentalism, as is often thought.[75] Rather, these operations relate to Hamas' primary grievance: the occupation. Pragmatically, a key factor in their strategic use is "the trajectory of Palestinian support for suicide operations, because this is necessary to their persistence over time."[76] Related is that "Most suicide terrorism is undertaken as a strategic effort directed toward achieving particular goals; it is not simply the product of irrational individuals or an expression of fanatical hatreds."[77] Indeed, according to a noted Israel psychologist, these martyrs are relatively normal

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72 Id at 68.
73 Mark Jurgensmeyer, *Terrorism in the Mind of God (*Berkeley, CA: UC Press, 2003).
74 Mishal and Sela, *The Palestinian Hamas*, 74.
75 Robert Pape, *Dying to Win* (New York: Random House, 2005).
76 Id at 48.
77 Robert Pape, "The Strategic Logic of Suicide Terror," *American Political Science Review,* 20 no. 32 (2003): 3.

with the only real emotional deviation coming at the time of death when survivors of such operations say they felt no fear.[78]

Although Hamas first used a so-called martyrdom operation in 1993 (before the Oslo agreements were signed in September of that year), Hamas' violent campaign utilizing this strategy did not really get underway until 1994. The proverbial game changer for Hamas was American-born, Israeli settler Baruch Goldstein's massacre of Palestinians at the Ibrahimi Mosque in the Cave of the Patriarchs in Hebron. In late February 1994, Goldstein killed more than two-dozen and wounded more than 100.[79]

In April 1994, Hamas responded with a series of attacks including a car bomb at a public bus stop in the town of Afula that killed eight and wounded dozens. A Hamas member detonated the bomb from within the car.[80] A Hamas leader said this represented an escalation from the stone throwing of the intifada because the Israelis only understood the "language of violence."[81] A Hamas statement also warned Israelis to evacuate settlements.[82] Another attack came several days later when a bomber detonated a device he was holding at another bus stop in the town of Hadera. Several died and dozens were wounded. A Hamas statement said, ""The Izzadin al-Qassam battalions [Hamas' militant wing] have pledged to our people to take revenge for the blood of the martyrs of Hebron, and that the response will be violent."[83] *The Times* of London

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78 CBS News, "The Mind of a Suicide Bomber," *60 Minutes*, September 26, 2001, http://www.cbsnews.com/stories/2001/09/21/60minutes/main312098.shtml. Last accessed November 14, 2010.
79 Hoffman, *Inside Terrorism*, 100.
80 Patrick Martin, "Bomb Raises Stakes in Hebron - Hamas Claims Deaths of 8 are in Retaliation for Mosque Massacre," *The Globe and Mail* (Toronto), April 7, 1994, LexisNexis.
81 Id.
82 Tamimi, *Hamas – A History from Within*, 160.
83 Derek Brown, "Hamas Suicide Bomber Kills Five Israelis on Bus," *The Guardian* (England),

noted the second bombing came on the heels of "draconian new security measures" which included sealing the West Bank and Gaza Strip.[84] Hamas' needed to ground its stance against the Oslo process in specific human rights grievances both to garner and grow support.[85] Mishal and Sela found that by couching their "violent actions against Israel as a response in kind to the massacre in Hebron" Hamas could "mitigate criticism… following Israel's collective punitive measures against the Palestinian people."[86]

This was the beginning of a campaign of *martyrdom* attacks that would last for more than ten years. Gunning noted that support for these operations and Hamas increased throughout the 1990s while support for Oslo decreased, although Hamas was not entirely responsible for these outcomes. He states: "Israeli border closures, controversial settlement expansions and lack of progress in the peace process," in conjunction with problems within the Palestinian authority, were also key.[87] Bloom adds that support, however, remained relatively low and Palestinians weren't able to use this violence to successfully mobilize the masses.[88] This changed with the advent of the al-Aqsa intifada.[89]

The al-Aqsa intifada began in the wake of another attempted "peace process," this one at Camp David in the United States, hosted by President Bill Clinton. Although Camp David brought the two sides together, it failed to resolve any of the major final status issues from Oslo.

April 13, 1994, LexisNexis.
84 Christopher Walker and Michael Binyon, "Hamas Suicide Bomber Kills Six in Bus Attack," *The Times* (England), April 14, 1994, LexisNexis.
85 Joeren Gunning, *Hamas in Politics* (London: Hurst, 2009), 46-7.
86 Mishal and Sela, *The Palestinian Hamas*, 69.
87 Gunning, *Hamas in Politics*, 48.
88 Mia Bloom, "Palestinian Suicide Bombing: Public Support, Market Share, and Outbidding," *Political Science Quarterly,* 119, no. 1 (2004): 61-88.
89 Id, and see also: Pape, *Dying to Win*.

Efforts at talks continued after Camp David, but a wrench was thrown in the works when Israeli Defense Minister Ariel Sharon visited Islam's holiest site in Jerusalem – Haram al-Sharif, the site of the al-Aqsa mosque. The affront of the Israeli hawk's visit to (literal) Islamic holy ground was compounded by the presence of hundreds of Israeli security forces.[90] Jews know the site as the Temple Mount, which holds a revered place in their faith. However, Sharon knew its significance for Muslims and its location in occupied East Jerusalem would make the visit a flashpoint. Palestinians protested the visit; Israeli forces disproportionately retaliated, and thus began the second intifada.

The second intifada has been rife with Israeli violations of human rights - from the closures of borders to home demolitions, to the aerial bombings, to the assassination of Hamas targets. In the intifada's early days, Sheikh Yassin made a speech and affirmed, "[T]he restoration of our rights and realization of peace will not be achieved except through resistance, not through negotiations. We will continue to march along the path of either victory or martyrdom."[91] Closures and their related consequences were remarkable. Within the first eighteen months of the al-Aqsa intifada, more than 65,000 Palestinians lost their jobs in Israel, the Palestinian poverty rate rose by more than 20%, a decline in daily domestic economic production of at least $6 million/day, a decline in access between the territories and Israel and a decline in access between the territories and external states, in part due to the Israeli military destruction of the Gaza International Airport.[92] Although poverty and repression do not cause

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90 Makdisi, *Palestine Inside Out*, 89.
91 "Hamas Leader Addresses Islamist-Organized Rally in Jordan Camp by Phone Link," BBC Summary of World Broadcasts, from the Palestine Information Centre, October 2, 2000, LexisNexis.
92 Palestine Center for Human Rights, "Closures, Unemployment and Poverty," June 28, 2002,

one to turn to "terrorism" let alone martyrdom, it does create a context in which people make choices and respond to their circumstances. One choice during the second intifada was increased support for Hamas.[93]

In terms of home demolitions, from the start of the second intifada through October 2004, Israel engaged in the punitive demolition of more than 600 homes, which had provided shelter to more than 3,000 Palestinians.[94] In response to a slated demolition in Rafah refugee camp in Gaza, Hamas stated: "While condemning this heinous crime by the Zionist occupation troops - the crime that violates all international laws and conventions and human values - we … call upon the international community as well as legal and humanitarian organizations to oppose this heinous Zionist crime and raise their voices in order to lay bare this enemy."[95] It further noted these activities were inspiration to continue down "the path of resistance."[96] After the bombardment of Palestinian Authority positions in March 2001, Hamas issued a statement that said,

> This Zionist and terrorist bombing is intended to further assert the premeditated aggressive polices against our Palestinian people who are defending themselves against this incessant terrorism. We assert that this bombardment cannot deter our people nor can it smash their resolve or put an end to their legitimate

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http://www.pchrgaza.org/Intifada/Closures_stat.htm. Last accessed November 14, 2010.
93 Gunning, *Hamas in Politics* 48-51.
94 B'Tselem, "Through No Fault of Their Own," November 2004, http://www.btselem.org/download/200411_Punitive_House_Demolitions_Eng.pdf.
95 "Hamas Condemns Israeli Plan to Demolish Hundreds of Homes in Rafah," BBC Summary of World Broadcasts, from the Palestine Information Centre, May 14, 2004, LexisNexis.
96 Id.

aspirations to realize freedom and dispose of this occupation.[97]

In this one statement, Hamas bridged gaps between the Palestinians and separated *us* from *them* - the Zionist enemy, unifying the Palestinian nation – behind its efforts. Additionally, Hamas justifies further "defensive" activities against Israel in furtherance of Palestinian rights.

Israel also engaged in the assassination of Hamas leaders such as Sheikh Yassin and Abdel Aziz Rantisi. After Yassin's assassination, a Hamas statement said the "The Arab and Islamic nation must shoulder its responsibilities in defending Palestine and the holy Al-Aqsa Mosque, and must support our steadfast people." Ismail Haniya said that Yassin's last words related to working towards Palestinian national and Islamic unity.[98] At Rantisi's funeral procession in April of 2004, thousands of Palestinians turned out and "vowed revenge" as did Hamas.[99]

These statements took place against a backdrop of dozens of martyrdom operations that claimed the lives of hundreds of Israelis. The shift in support from operations undertaken during the "peace process" years and the second intifada weren't the result of radical changes in Hamas but rather a change in "people's diagnosis of the situation and their prognosis of how to respond. For rhetoric to be successful, it must resonate with the target group. … But without Israel playing its part in helping to create the conditions for radicalization – whether by deciding to use the army and helicopter gunships rather than riot police," or opting for collective punishment

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97 "Hamas Says Israel's Bombardment of Palestinian Areas 'Cannot Deter Our People,'" BBC Worldwide Monitoring, from the Palestine Information Centre, March 29, 2001, LexisNexis.
98 "Palestinian Hamas Official Says Yasin's Last Words Emphasized National Unity," BBC Summary of World Broadcasts, from the Palestine Information Centre, March 26, 2004, LexisNexis.
99 See, for example: Stephen White, "100,000 Pledge Revenge on Israel," *Daily Record* (Scotland), April 19, 2004, LexisNexis.

over targeted punishment, things could have been very different.[100] Notably, however, as support began to wane Hamas changed tactics.

In analyzing Palestinian martyrdom attacks broadly, Pape found the attacks through 2003 demonstrated "that the Palestinian terrorists are concentrating their fire against the state that is actually occupying the territory they view as their homeland."[101] A relatively easy deduction can thus be made in theory: end the occupation, end the attacks. Hamas, however, decided to end its martyrdom operations in 2006 although Israel clearly maintained the occupation. This was preceded by a period of temperature taking and consensus building within the Palestinian community that ultimately supported a series of negotiated ceasefires, which preceded the end of these operations.[102]

HAMAS' (ELECTORAL) VICTORY: BALLOTS AS BUILDING BLOCKS

In early January 2006, Hamas emerged victorious from the Palestinian National Authority legislative elections. The *Washington Post* called the victory a "trouncing" of the rival Fateh party.[103] The BBC termed it a "stunning win."[104] The outgoing Fateh Prime Minister, Ahmed Queria, said, "This is the choice of the people."[105] But how did the Palestinian people come to choose Hamas? How did the Islamic Resistance craft a message that incorporated non-Islamists and a broad Palestinian agenda? An examination of select movement statements during

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100 Gunning, *Hamas in Politics*, 219-20.
101 Pape, *Dying to Kill*, 51.
102 See: Gunning, *Hamas in Politics,* chapter 6.
103 Scott Wilson, "Hamas Sweeps Palestinian Elections, Complicating Peace Efforts in Mideast," *Washington Post*, January 27, 2006, LexisNexis.
104 BBC News, "Q &A: Hamas Election Victory," January 26, 2006, http://news.bbc.co.uk/2/hi/middle_east/4650300.stm. Last accessed November 22, 2010.

the electoral cycle indicates one tool in their vote winning (and nation-building) toolbox continued to be human rights.

Several rounds of municipal elections took place in the occupied Palestinian territories in 2004 and 2005. Hamas participated and ran candidates on the "Change and Reform" list. In one round, in January 2005, Hamas emerged decisively victorious. A Bir Zeit University political scientist observed that Hamas won because Palestinians were tired of both Fateh and its legacy of corruption as well the occupation and its impact on Palestinian Islamic life.[106] A Hamas candidate in the Beit Hanoun district said, "People are not against the launching of rockets here … They understand they are a reaction to the occupation … Hamas is a social movement with a long history of social services, and the resistance is loved."[107]

In the midst of a ceasefire with Israel and the municipal campaigns, Sheikh Hasan Yusuf, Hamas' West Bank spokesperson, addressed a range of rights-related issues including the prisoner releases, settlements and illegal land-grabs as well as the right of return for refugees. Yusuf also stated, "It is true we are a flexible movement and relate to political realities in a rational manner. At the same time, Hamas can't and will not accept any settlement not based on human rights and international law."[108]

Within two weeks, and on the heels of their municipal electoral triumph, Hamas announced its decision to participate for the first time in the Palestinian legislative elections.

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105 Wilson, "Hamas Sweeps Palestinian Elections."
106 John Ward Anderson, "Hamas Dominates Local Vote in Gaza," *Washington Post,* January 29, 2005, LexisNexis.
107 John Ward Anderson, "Embracing the Vote in Gaza," *Washington Post*, January 26, 2005, LexisNexis.
108 "Hamas West Bank Leader on Calm, Elections, London Meeting," BBC Worldwide Monitoring, from the Palestinian Information Centre, March 1, 2005, LexisNexis.

Hamas had declined to participate previously believing it would validate the Oslo process that it opposed. However, by 2005, the death of Arafat and Oslo helped changed its calculus along with public encouragement to field candidates.[109] A movement statement regarding participation noted the deliberative process that led to the tack, spoke of sacrifices, highlighted service in the interest of the Palestinian people, and emphasized Palestinian rights as well an end to the occupation.[110]

Hroub notes that Hamas electoral platform was issued when the movement had nary an idea about the scale of its legislative victory to come and that it was addressed primarily to its supporters.[111] He also finds the document is relatively secular in nature (for an Islamist organization). The preamble states electoral participation,

> . . . falls within its comprehensive program for the liberation of Palestine, the return of the Palestinian people to their homeland, and the establishment of an independent Palestinian state with Jerusalem as its capital. This participation [in the elections] will be a means of supporting the resistance and the intifada program, which the Palestinian people have approved as its strategic option to end the occupation. …
>
> The political system of this society and its reformist and political agenda will be oriented toward achieving Palestinian national rights. [In all this we] take into account the presence of the oppressive occupation and its ugly imprint on our

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109 See: Gunning, *Hamas in Politics,* chapter 5 and Khaled Hroub, "A New Hamas through Its Documents," *Journal of Palestine Studies,* 35.4 (Summer 2006): 6-27.
110 "Hamas representative Comments on Decision to Take Part in Legislative Polls," BBC Worldwide Monitoring, from Al-Jazeera TV, March 12, 2005, LexisNexis.
111 Quoted in: Khaled Hroub, "A New Hamas through Its Documents," *Journal of Palestine*

> land and people and its flagrant interventions in the details of the Palestinian life.[112]

The "Principles" section is a more potent mix of religious nationalism. It views the Palestinian national within the context of the Arab and Islamic nations. It states:

> The Palestinian people, wherever they reside, constitute a single and united people and form an integral part of the Arab and Muslim nation . . . Our Palestinian people are still living a phase of national liberation, and thus they have the right to strive to recover their own rights and end the occupation using all means, including armed struggle. [113]

"Principles" also advocates for self-determination, the right of return, water rights, and prisoners issues and advances the idea of a sovereign state with Jerusalem as its capital. Overall, this section is a striking and strategic mix of Islam, nationhood, unity, and human rights designed to appeal to a range of Palestinians, Arabs and Muslims. Gunning notes that Hamas has a keen understanding that political power is tied to votes which is linked to support and consultation and outreach are key.[114] Thus, a la Downs, Hamas are vote maximizers but not just for the sake of political power.[115] Their vote maximization strategy is tied to a larger nation-building practice that links to organizational support-maximization.

Once its legislative campaign had been announced and municipal elections were still afoot, Hamas' West Bank spokesperson, Sheikh Yusuf was at a rally commemorating the death

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Studies, 35 no. 4 (Summer 2006): 6-27.
112 Id at 8.
113 Id at 9-10.
114 See: Gunning, *Hamas in Politics*, chapter 5.
115 See: Anthony Downs, *An Economic Theory of Democracy,* (New York: Harper and Row,

of Sheikh Yassin – thousands of Palestinians were present. At the rally, Hamas was termed a "safety valve for the Palestinian people's unity, simply because it is still bearing the brunt of resistance in face of the Israeli usurpers."[116] A range of broad Palestinian rights including those related to the occupation of Jerusalem, refugees and prisoners, surrounded by Hamas and Islamist symbolism such as the movement's green flags, Qassam rocket replicas, as well as images of martyrs and the Dome of the Rock. Yusuf presciently noted that participation in the elections did not mean an abdication of the right to resist, which it retained as a "strategic option."[117] In one fell swoop (or rally) Yusuf positioned Hamas as *the* Palestinian resistance movement par excellence, which defends the rights of all Palestinians while advancing its agenda through a range of strategic choices including elections and violence, emphasizing its Islamist and nationalist character. He also spotlighted Hamas' role as the victims par excellence that suffered on behalf of the wider Palestinian community.

In June 2005, Hamas scored victories in local elections, which Deputy Politburo Chair Musa Abu Marzuq interpreted as meaning that, "Most of the Palestinian people today support Hamas. … Hamas is the movement which represents the hopes and aspirations of the Palestinian people. How can a movement which gained such a large-scale popular base be described as a terrorist organization?"[118] One month later, a Hamas statement called for Palestinian unity, emphasized Hamas' appreciation for consultation and political pluralism within Palestine, and

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116 "Hamas Leader Says Resistance 'Strategic Option,'" BBC Worldwide Monitoring, from the Palestinian Information Centre, March 26, 2005, LexisNexis.

117 Id.

118 "Hamas Official on Contacts with EU, US Policy, Palestinian Domestic Issues," BBC Worldwide Monitoring, from the Palestinian Information Centre, June 27, 2005, LexisNexis. Note the statement dealt with a range of issues in addition to those mentioned.

called on Palestinian President Mahmoud Abbas to set a date for elections and protect "the rights of citizens to live in freedom and dignity."[119]

As the legislative campaign wound to a close in January, Khaled Mishal affirmed the Islamic Resistance was campaigning to safeguard Jerusalem and secure the right of return for Palestinian refugees. The previous day, Abu Marzuq called these issues "national constants."[120] Mishal also took a not so subtle shot at Fateh when he said, "We shall not oppress as we were oppressed. We had forgiven our oppressors among the Palestinian people, as we don't resort to the principle of tit-for-tat against our Palestinian brethrens."[121] This was an interesting combination of targets – both Israel and his Palestinian brethren in one interview, employing the oppressor/oppressed narrative to distinguish the Resistance from Fateh.

THE GAZA WAR: RAZING BUILDINGS, REINFORCING THE NATION

Hamas and Fateh were ultimately unable to craft a stable coalition government despite internal and external efforts. Hamas electoral victory was punctuated by intra-Palestinian violence as the rival organizations physically battled it out. When the dust settled, Hamas was left in control of Gaza and Fateh claimed power over the Palestinian National Authority whose purview was limited to the West Bank. Hamas was marginalized on the main international stage and Gazans suffered but generally blamed Israel and the international community rather than Hamas. By the end of 2008, the situation in Gaza was bleak.

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119 "Hamas Announces End to Signs of Tension, Calls for Palestinian Reconciliation," BBC Worldwide Monitoring, from the Palestinian Information Centre, July 20, 2005, LexisNexis.
120 Palestinian Hamas figure Reiterates Adherence to Constants," BBC Worldwide Monitoring, from the Palestinian Information Centre, January 22, 2006, LexisNexis.
121 "Palestinian Hamas Leader Mish'al Addresses Polls Rally, Urges Participation," BBC

The Gaza War, which Israel termed Operation Cast Lead, began in December of 2008 and ran until January of 2009. When the missiles, mortars, and mayhem quieted, 16 Israelis died, including 13 soldiers, and more than 1,400 Palestinians were killed, the overwhelming majority civilians. More than 5,000 Palestinians were injured.[122] It garnered widespread critical assessments from international and domestic human rights organizations, such as Human Rights Watch (United States), B'Tselem (Israel), the Palestinian Center for Human Rights (PCHR; Gaza, OPT), and the International Committee for the Red Cross.[123]

In the run up to the Gaza War, conditions were already abysmal in Gaza. Hamas, despite having won democratic elections in 2006, governed Gaza in the face of international attempts at isolation. The *Journal of Palestine Studies* published a concise list of statistical indicators regarding conditions in the densely populated Strip. These include: 49% of Gazans are unemployed and seeking work; 35% of Gazans are living in "deep poverty;" 80% of drinking water does not meeting WHO standards; 70% of Gazans are using poultry for protein source; and less than 10% of needed humanitarian aid trucks enter Gaza.[124] Israel said it initiated Operation

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Worldwide Monitoring, from the Palestinian Information Centre, January 22, 2006, LexisNexis.
122 See: UN General Assembly, "Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-finding Mission on the Gaza Conflict," (2009), http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/factfindingmission.htm . Last accessed November 14, 2010. Hereinafter the Goldstone Report.
123 See: Kenneth Roth, "The Incendiary IDF," Human Rights Watch – Commentary, January 22, 2009, http://www.hrw.org/en/news/2009/01/22/incendiary-idf-kenneth-roth. Last accessed November 14, 2010. B'Tselem, Letter to the Attorney General of Israel, re: mechanism to investigate harm to Gaza civilians: suspicion of grave violations of the laws of war, January 20, 2009, http://www.btselem.org/Download/20090120_ACRI_to_Mazuz_on_Castlead_Investigations_Eng.pdf. Last accessed November 14, 2010. "Red Cross Slams Willful Disregard for the Wounded," *Weekend Australian,* January 10, 2009, LexisNexis.
124 "Statistical Indicators on the Eve of Operation Cast Lead," *Journal of Palestine Studies*, 38.3 (Spring 2009): 169-171.

Cast Lead in response to militant rocket fire coming from Gaza.[125] However, one analysis indicated that in the range of ceasefires that preceded Operation Cast Lead, it was Israel that repeatedly broke the pause in violence, which led to retaliatory strikes from Hamas and other groups in Gaza.[126] In a letter to the editor of London's *Sunday Times* a group of international legal experts asserted:

> The rocket attacks on Israel by Hamas, deplorable as they are, do not, in terms of scale and effect amount to an armed attack entitling Israel to rely on self-defence. Under international law self-defence is an act of last resort and is subject to the customary rules of proportionality and necessity. The killing of almost 800 Palestinians, mostly civilians, and more than 3,000 injuries, accompanied by the destruction of schools, mosques, houses, UN compounds and government buildings, which Israel has a responsibility to protect under the Fourth Geneva Convention, is not commensurate to the deaths caused by Hamas rocket fire.[127]

Hamas MP Salah al-Bardawil also affirmed "the legitimate rights of the Palestinians are approved by the international law and all humanitarian norms."[128] Accordingly, foremost amongst Hamas' goals are "the withdrawal of the Zionist enemy, lifting the siege, stopping this

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125 See: Israel Ministry of Foreign Affairs, "IDF Operation in Gaza: Cast Lead," http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center%20_Gaza_28-Dec-2008.

126 Nancy Kanwisher, "Reigniting Violence: How Do Ceasefires End?" Huffingtonpost.com, January 2009, http://www.huffingtonpost.com/nancy-kanwisher/reigniting-violence-how-d_b_155611.html. Last accessed November 21, 2010.

127 "Israel's Bombardment of Gaza is Not Self-Defence – It's a War Crime," *The Sunday Times* (England), January 11, 2009, LexisNexis.

128 "Hamas's Al-Bardawil Explains Call for Limited Duration Gaza Truce," BBC Worldwide Monitoring, from Al-Arabiya TV, January 15, 2009, LexisNexis.

aggression, and constructing Gaza"[129]

While Israel may be the initiator of the conflict's violent spasms, British journalist Robert Fisk sagely observed, "Hamas needs violence to emphasise the oppression of the Palestinians - and relies on Israel to provide it. A few rockets into Israel and Israel obliges."[130] The oppression and support for Hamas were indeed forthcoming. Interviews with Palestinians hospitalized due to injuries suffered in the Israeli assault show that support for Hamas was on the rise. Individuals previously unaffiliated with the group indicated a willing to support or join Hamas in their struggle against Israel. Moreover, such support was evident among Gazan professionals, not just the young and restless who are the usual suspects.[131]

As the offensive wound to a close, Hamas flipped Israel's David vs. Goliath analogy in its favor and noted that the Israeli mobilization against Gaza was "enough to occupy dozens of countries," and termed its resistance as "brave."[132] A Hamas spokesman stated Israel spread "excelled in destruction and killing children and women and the defenceless inhabitants in their houses. They succeeded to kill everything except our people's willpower and their determination and insistence on clinging to their national rights and constants and their rejection to offer any kind of concessions to the occupation."[133] The humanitarian toll at the end of the Gaza War included: 90% of Gazans entirely dependent on food aid; more than 1 million chickens killed;

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129 Id.
130 Robert Fisk, "The Only Think Israel Knows is Brute Force and Ignorance," *Belfast Telegraph,* December 21, 2008, LexisNexis.
131 Sudarsan Raghavan, "At Cairo Hospital, Injured Palestinians Increasingly Voice Support for Hamas," *Washington Post,* January 14, 2009, LexisNexis.
132 "Mideast: Hamas Wing Spokesman Says 48 Members Lost, Notes Achievements," BBC Worldwide Monitoring, from Al-Aqsa Satellite TV, January 19, 2009, LexisNexis.
133 "Spokesman Outlines Hamas-Led Government Stance after Gaza Offensive," BBC Worldwide Monitoring, from Al-Aqsa Satellite TV, January 20, 2009, LexisNexis.

214 schools destroyed or nearly destroyed; 52 mosques and churches sustained major damage or were destroyed; and nearly $2 billion in property damage.[134]

Hamas was aware of the impact of the war on the Palestinian population and its organization. A Hamas official stated, "The legitimacy of the movement is not secured violently or by force; the movement gains its legitimacy through the popular support it has won, has acquired by defending the Palestinian people, and by adhering to the national rights that it considers as a priority, mainly the resistance."[135] He went on to say that in the wake of the Gaza War Hamas was clearly the legitimate voice of the resistance because it was it engaged the occupation forces and guarded "the resistance project, which is the basis of its views and position."[136] Less than five months later, Khaled Mishal, the exiled Hamas political leader in Syria, said, "Resisting is based on evaluation and timing that take into consideration the following: maintain the right to resist and to respond to the occupation, keeping in mind the interest of our people and the hardship they are going through, and exposing the reality of the Israeli aggression and its policies."[137]

Hamas utilized the Gaza War to its advantage as it highlighted and piggybacked on international efforts that showcased Israeli human rights violations, which it sees as part and parcel of the occupation. During the Gaza War, Hamas positioned the Palestinian people as collective victims of Israel aggression who have the right to resist, and Hamas as the leader of

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134 "Damage to Palestinian people and Property during Operation Cast Lead," *Journal of Palestine Studies,* 38.3 (Spring 2009): 210-212.
135 "Mideast: Senior Hamas Leader Says Gaza War to Strengthen Hamas Legitimacy," BBC Worldwide Monitoring, from *Al-Hayat*, January 5, 2009, LexisNexis.
136 Id.
137 "Hamas Politburo Chief Khalid Mishal, Remarks on Hamas Charter, President Obama, Comparisons with Hizballah, and Other Matters," *Journal of Palestine Studies,* 38 no. 4

the resistance movement. In targeting Gaza, the base of Hamas, where it won legitimate, democratic elections, Israel not only provided building blocks for the Palestinian Islamist nation, but also became the cement that bound them together.

CONCLUSION

The United Nations General Assembly affirmed the Palestinians' right to self-determination in the 1974 "Question of Palestine" resolution. Therein it also affirmed Palestinians inalienable rights and the right of return for refugees.[138] Palestinians in the OPT are acutely aware of the disparities in law and practice, particularly those that existed between themselves and their Israeli neighbors. Palestinians have been "subjected to daily humiliations and had to live with the constant knowledge that they had been denied much that they considered was rightfully theirs. They knew they had been misgoverned by their own leaders and betrayed again and again by the international community and by other Arabs and Muslims."[139]

Hamas arose out of this anger and frustration to "resist" Israel's occupation of historic Palestine. However, as the Islamic resistance, they have been targeted by Israel. During the last twenty-two years, Israel has jailed and assassinated Hamas leaders and members, including Sheikh Yassin and Abd al-Aziz Rantisi, along with the ordinary Palestinians on whose behalf Hamas states it struggles. As of December 2009, approximately 10,000 Palestinians were jailed in Israel and more than 600,000 Palestinians have been jailed since 1967.[140] Human rights

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(Summer 2009): 216.
138 United Nations General Assembly, "Question of Palestine," Resolution 3236, November 22, 1974, UN doc. no. A/Res/3236.
139 Burke, *On the Road to Kandahar*, 101.
140 See, for example, statistics at Miftah (http://www.miftah.org/), and Palestine Center for

violations have served as Hamas' building blocks. It has utilized these narratives of common struggle against a common enemy to construct the Palestinian nation. Hamas positions itself as the legitimate defenders of the Palestinian people from Israeli violence – both physical and structural. It focuses on its members and the Palestinian population writ large. This allows Hamas to be one with the Palestinians, rather than a movement apart. Some Palestinians agree: One Gazan said Israel "think[s] everything is related to Hamas. They think if they destroy the buildings, they will bring Hamas down … But Hamas is not a building, or a mosque, or a school, or a police station. Hamas is people. Each and every house has Hamas people." [141]

Human Rights (http://www.pchrgaza.org/portal/en/).

141 Sudarsan Raghavan, "At Cairo Hospital, Injured Palestinians Increasingly Voice Support for Hamas," *Washington Post,* January 14, 2009, LexisNexis.

CHAPTER 6

ONE PERSON'S "TERRORIST" IS ANOTHER'S "NATIONALIST" ENTREPRENEUR

> [T]he depth and breadth of emotions that erupted on Monday throughout the region were not fueled only by the Yassin assassination. They reflected the general mood in the Arab world, which is defined by a troubling and cumulative combination of negative emotions, including anger and humiliation at the hands of the United States and Israel, … and fear for the ability of one's children to enjoy a better life in their own generations. None of those emotions or concerns is new. … They continue to be generated by a combination of domestic, regional and global events that the average Arab citizen perceives to be totally beyond his or her control.[1]

> How can you say your truth is better than ours?[2]

This was not a study of terrorism. However, two of the groups studied herein, the Irish Republican Army and Hamas, have oft been described as terrorist. When states battle against such groups they often engage in counterterrorism as part of their efforts to thwart violent attacks. Yet, Hamas and the IRA are much more than "terrorist" groups; they are, in part, nationalist entrepreneurs that have strategically used states' violations of human rights, often undertaken as part of counterterrorist policies, to build movement support. The Muslim Brotherhood, while usually not characterized as terrorist, also functions as a nationalist entrepreneur to build organizational support but does so through socio-political means and eschews violence.

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1 Rami Khouri, "Sharon Cannot Seem to Change," *The Globe and the Mail* (Canada), March 25, 2004, LexisNexis. Palestinain journalist Rami Khouri on the aftermath of Sheikh Ahmed Yasin's assassination.
2 Mumford and Sons, "I Gave You All," *Sigh No More*, Island Records UK, 2009.

Although these findings provide a jumping off point for analyzing a range of theoretical and practical implications, this conclusion will emphasize two that are policy based. First, by looking across all three case studies, it is clear that organizations often described as sectarian can use a secular rights discourse to increase movement support, create national cohesion and transform conflict relationships to work nonviolently with a state that is "the other," the oppressor, the victimizer. Second, and perhaps more significant because of its wider application, is that state violations of human rights are not only legal wrongs, and perhaps moral ones as well, they are also grounded in objective facts, which create context. Opposition and resistance movements make choices within those contexts. If there is a desire to alter the choices that certain groups make, the context must first be changed.

HAMAS: (RE)IMAGINING A NONVIOLENT ISLAMIST "NATION"

The Muslim Brotherhood uses, in part, a secular rights discourse to increase movement support and foster "national" cohesion while politically opposing Egyptian state violations of human rights. Sinn Féin and the Irish Republican Army re-imagined the Irish republican nation from one which utilized violence to highlight its human rights grievances and achieve its goals to one that works nonviolently within the state it opposed to address some of the same human rights grievances. Hamas, like the Brotherhood, uses in part, secular rights-based grievances to build the movement. However, unlike the IRA and Sinn Féin, it has not yet re-imagined the Islamist nation as one that can address its grievances (a) without utilizing violence as part of its strategic arsenal; and (b) work constructively with the Israeli state to end the occupation.

There are, as noted in previous chapters, differences between the IRA, Sinn Féin and

Hamas. The former two battled within a state, which has recognized sovereignty over the borders. By contrast, Israel's occupation of the West Bank and Gaza is not recognized under international law as just, and many of its actions have been criticized by a range of respected international actors as being illegal. For example, British journalist Robert Fisk, wrote of Israel's Operation Cast Lead which decimated the Gaza Strip, and compared the situation to Northern Ireland. He said, "[W]hen the IRA were firing mortars over the border into Northern Ireland, when their guerrillas were crossing from the Republic to attack police stations and Protestants, did Britain unleash the RAF [the Royal Air Force] on the Irish Republic? Did the RAF bomb churches and tankers and police stations and zap 300 civilians to teach the Irish a lesson? No, it did not. Because the world would have seen it as criminal behaviour."[3] There are of course, other reasons why the RAF did not bomb republican West Belfast. However, the point is not to say the British government did not commit human rights violations but rather it was aware of the perception of its actions, their legality and likely the potential backlash.

Finding positive ways to address human rights grievances that are respectful of international law, competing national narratives, and individual human dignity is a tall order. However, conflict transformation, as an approach can provide an answer. Conflict transformation embodies a different process than the oft-utilized tack of conflict resolution. Applying Lederach's transformative approach to Hamas and Israel — it is not just about ending Hamas and Israel violence but about building something positive such as Israeli security in tandem with

3 Robert Fisk, "The Only Think Israel Knows Is Brute Force and Ignorance," *Belfast Telegraph,* December 21, 2008, LexisNexis.

a Palestinian state.[4] Conflict transformation asks for more than evacuating Israeli settlements in the West Bank, but also creating communities in which Israelis and Palestinians can positively engage whether across, or on the same side of a border. In Northern Ireland, IRA violence ended as did select areas of British structural dominance of the region. However, the Good Friday Agreement also created a new framework for governance of the Northern Irish province. Thus, republicans moved from using human rights to construct a nation in opposition, to using human rights justice mechanisms as part of the foundation of the new state structures to address historic and ongoing violations.

Conflict transformation also emphasizes windows of opportunity for responding "to symptoms and engagement of systems within which relationships are embedded."[5] Given the above construction of entrepreneurial narratives, of victim/victimizer, resistor/oppressor, the reframing of narratives is crucial. It also provides each side a potential opportunity to continue to act as support maximizers within their respective communities but not toward the obliteration of each other. If human rights violations are a fundamental grievance, addressing the contraventions tackles a key symptom of the conflict. Addressing the structures in which those violations are perpetuated allows for transformation of the traditional relationship between the oppressed and the oppressor.

Northern Irish republicans were able to endorse the agreement because it alters the relationship between Northern Ireland and the Republic of Ireland, and Northern Ireland and Great Britain, creating a legal mandate for the possibility of Irish unification, contingent upon the

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4 John Paul Lderach, *The Little Book of Conflict Transformation* (Intercourse, PA: Good Books, 2003).
5 Id at 33.

consent of the people of the six counties. The GFA also spawned the creation of the Northern Ireland Human Rights Commission, a legislative assembly that embodies mechanisms for cross community support for certain types of legislation, and a new police force, the PSNI.[6] These new institutions address many of problems related to structural discrimination and violence and provide possibilities for new engagement and equality.

In many ways, the Egyptian government has failed to respond to windows of opportunity to engage with the Muslim Brotherhood. This is, in part, because of Brotherhood's popularity and its status as Egypt's most powerful opposition movement. In the 2005 parliamentary elections, Egypt opened a proverbial widow but attempted to literally and figuratively beat down any Brother that tried to enter. The state's efforts were unsuccessful and the Islamist organization won a large number of seats in the lower house of parliament. Electoral successes have not since been repeated, in part because those same windows have been closed or blocked. The Brotherhood, however, have not responded to Egyptian repression with violence. Rather, they have stayed the socio-political course, using human rights violations, ranging from arbitrary detention to ill-treatment, to build the "nation" and thus reinforce their standing within and at the forefront of the Egyptian public.

Like the IRA, Hamas, meanwhile, bides its time, realizing it cannot militarily defeat the Israeli state. However, Hamas is also aware that the Palestinian people want a future for their children, which is free of violence *and* the Israeli occupation. After it participated in democratic

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6 "Agreement Reached in the Multi-Party Negotiations," (Dublin, Ireland: Government of the Republic of Ireland, Department of Foreign Affairs, 1998), http://www.dfa.ie/home/index.aspx?id=335. Last accessed October 9, 2010. Hereinafter, the Good Friday Agreement.

elections, Hamas was subsequently isolated on the Palestinian and international stages, despite or more likely because of its decisive victory. In short, it cannot wage war forever but it alone cannot alter the relationships and structures necessary to make peace. So, Hamas uses Israeli violations of human rights to garner public support reinforcing the boundaries of *us* and *them*

The template exists, however, for Hamas to re-imagine the Palestinian nation as one that can live side by side with Israelis peacefully. To do this, Israelis and Palestinians must cooperatively work to forge new relationships, and new structures of intra-Palestinian and Palestinian-Israeli interaction must be created. Because of the role human rights violations have played, new frameworks must create space for Palestinians and Israelis to address historic and ongoing injustices without destroying each other in the process.

CHOICE IN CONTEXT

So, the question remains. How do those concerned about "terrorist" groups change the context in which the state and the organization are making decisions? The answer, in part, lies in approach. There are a myriad of ways to respond to "terrorist" groups that use human rights as building blocks; three emerge from the pages of this study. They are not particularly novel, but they are noteworthy for groups that use this method of "nation"-building. First, groups and their grievances must be analyzed. Second, if a state or the international community chooses not to engage with a group which uses human rights grievances as building blocks, that does not preclude them from taking serious, positive steps to remedy injustices. Third, rehumanization must be part of any conflict cessation strategy that involves groups who have been demonized.

Stating that analysts must seek to understand groups and their grievances may seem like

an obvious statement. However, viewing some groups, such as Hamas, as terrorist is problematic because they are multifaceted. Terrorism is a tactic; groups and individuals may strategically employ horrific acts of violence directed at civilians to draw attention to their plight or engage the enemy with whom they are engaged in an asymmetric battle. However, they may also engage in "legitimate" violence, provide social services and/or engage in politics.[7] All of these are points of interaction with their constituency as well as the target state, and they are potential windows of engagement.

Points of interaction are key. A RAND Corporation study entitled *How Terrorist Groups End* posits that groups with more narrow territorial or policy-oriented goals are more likely to reach political accommodation because there is space for dialogue and negotiation. Indeed they find groups that "ended" did so due to political engagement. Moreover, although the study found that a state can raise the cost of participation in groups through repression, it also highlighted these groups' dependence on public support.[8]

Cronin highlights a range of reasons segments of society might withdraw support from militant actors including: apathy; conflict fatigue; "historical ripeness;" or discomfort with group tactics.[9] Hamas has shown it is attentive to the Palestinian population and its perceptions of the movement. One example of this was its cessation of suicide or *martyrdom* operations.

Related is that Hamas engages in activities, violent and non, that would not be termed terrorism. For example Hamas may target the Israeli military, run candidates in elections,

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7 See, for example, Richard English, *Terrorism – How to Respond* (New York: Oxford U.P., 2009), chapter 1.
8 Seth Jones and Martin Libecki, *How Terrorist Groups End – Lessons for Countering al Qaeda* (Santa Monica, CA: RAND, 2008).
9 Audrey Kurth Cronin, "How Terrorist Campaigns End," in *Leaving Terrorism Behind* eds.

provide social support and education for people in Gaza. Hamas, as seen in chapter five, does all of these things. However, if the focus is on its "terrorist" activities, responses to these other tactics can be haphazard and counterproductive. For example, a U.S. Department of State survey in the occupied Palestinian territories found that many people were expected to support Hamas in the 2006 elections because of issues related to corruption and law and order the territories. It also found disenchantment with peace process to be a significant factor.[10] Despite this, within weeks of the election result, the United States engaged with Israel to sort through how the two states might undermine the new, democratically elected Palestinian government.[11] Rather than address the fundamental grievances that led people to vote for Hamas, two states key to an Israeli-Palestinian peace sought to negate the popular will of the Palestinian people. The window of opportunity was slammed shut.

Seeing groups solely through an Islamist prism raises issues for the same reasons. In the post 9/11 world, there has been tremendous scrutiny and demonization of Islamist groups, particularly in "the West." For groups such as the Muslim Brotherhood and Hamas, this is particularly troubling. Efforts to link the Muslim Brotherhood or Hamas with al Qaeda have been made by "terrorism experts." For example, Emerson stated: "The dream of a world under Islam has engendered Muslim dissidents everywhere in the world over the last two decades. Almost every Islamic country has its militant faction, often two or three. The Hamas of Palestine,

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Tore Bjorgo and John Horgan (New York: Routledge, 2009) 62.
10 U.S. Department of State, Office of Research, "Hamas and Fateh Neck and Neck as Palestinian Elections Near, January 19, 2005, http://www.fas.org/blog/secrecy/2006/03/state_dept_intelligence_tracke.html. Last accessed December 5, 2010.
11 Steve Erlanger, "U.S. and Israel Are Said to Talk of Hamas' Ouster," *New York Times*, February 16, 2010, LexisNexis.

Hizballah of Iran, … the Muslim Brotherhood and al-Gama'at a-Islamiyya of Egypt – all share the same goal of an Islamic world."[12] Notably, Emerson's influence extends beyond his book; he has testified before the U.S. Congress repeatedly – both before and after 9/11.[13]

This type of analysis oversimplifies and/or dangerously misapprehends the very local and very distinct nature of groups' grievances. If counterterrorism analysts don't understand group goals, it is more difficult to understand militant strategies and tactics as well as their organization and support infrastructure. Sageman finds neither the "root causes" nor the ideological motivations (resulting in shared goals) are sufficient. Rather one must look at relationships.[14] Moreover, in focusing primarily on their Islamist nature, other aspects of groups' dynamic messaging and appeal, particularly those which are homegrown and secular, can be overlooked or disregarded, which means there is a failure to engage with certain aspects of the organization. For example, when al-Qaeda leader Ayman al-Zawahiri called for global Islamist militant support for Hamas, a Hamas leader replied, "Our battle is against the Israeli occupation and our only concern is to restore our rights and serve our people. We have no links with any group or element outside Palestine."[15] In short, it is much more difficult to stop the violence and transform the conflict if we do not understand how groups form and function in their respective environments.

Efforts have been underway, at least at a rhetorical level, to undo some of the harm that

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12 Steve Emerson, *American Jihad* (New York: Free Press, 2006), 2. See also, Denis Sullivan and Kimberly Jones, *Global Security Watch – Egypt* (Westport, CT: Praeger Security International, 2008) chapter 3.
13 Investigative Project on Terrorism, "Testimony," http://www.investigativeproject.org/testimony/type/1/. Last accessed December 5, 2010.
14 Marc Sageman, *Leaderless Jihad* (Philadelphia: University of Pennsylavania Press, 2009) 22.
15 "Hamas Rejects Support and Denies Links," *Miami Herald,* March 6, 2006, LexisNexis.

was done in aftermath of 9/11. U.S. President Barack Obama has rightly pointed out that America is not a war with Islam.[16] Former British Foreign Minister David Miliband opined that:

> [W]e need to understand the Muslim world better, or we will risk undermining the force of our own argument, as I have sometimes done when using the labels 'moderate' and 'extremist'; we need to hold fast to our own values and support those who seek to apply them, or we will be guilty of hypocrisy; and we need shared effort to address the grievances, socio-economic and political, that are perceived to keep Muslims down, and in fact do.[17]

If a state or the international community chooses not to engage with a group which uses human rights grievances as building blocks, that does not preclude those same actors from taking serious, positive steps to remedy injustices. Crenshaw notes, "ending terrorism may require a change in the motivations of the individuals involved."[18] Cronin adds a cautionary note that while states have the ability to engage in reforms, which can be positive, undermining grievances, care should be taken not to raise and frustrate expectations.[19]

The demonization of terrorists has been part and parcel of many counterterrorism campaigns, including those against the IRA and Hamas. For example, at the time of the Gaza War, former Israeli Minister of Foreign affairs Tzipi Livni repeatedly referred to Hamas as illegitimate, extremist, and terrorist. She said Israel's struggle against Hamas was on behalf of

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16 President Barack Obama, "Remarks by the President on a New Beginning," June 4, 2009, Cairo University, Cairo, Egypt, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/. Last accessed December 5, 2010.
17 David Miliband, "Our Shared Future: Building Coalitions and Wining Consent," May 21, 2009, Oxford University, Oxford, England, UK, http://www.davidmiliband.info/speeches/speeches_09_06.htm. Last accessed December 5, 2010.
18 Martha Crenshaw, *Terrorism in Context* (University Park, PA: Penn State U.P., 1995), 23.

the "free world."[20] Less than a week prior, Israeli Ambassador to the United Nations, Gabriela Shalev said that the "international community must make it clear that a terrorist organization can never be a legitimate leadership."[21]

Demonization has also been part of the United States "Global War on Terror" (GWOT). Hagopian details the international and domestic consequences of this campaign, which includes attacks on civil rights in the United States and erroneous foreign policy decisions.[22] Referring to the GWOT, eminent jurist Bassiouni says, "For sure, throughout our history, there have been many miscarriages of justice against individuals and classes of people, particularly people of color, but never before has there been such an insidious and systematic undermining of the rule of law and due process of law."[23]

Because of these international and domestic processes whereby terrorists are rendered one-dimensional, as only individuals capable of committing acts of terror, there is a need to rehabilitate and rehumanize these actors if we are to engender a sustainable, positive peace in areas once rife with conflict. One rationale behind this approach is that,

> There is a growing appreciation in the counter-terrorism environment that there is a broader value and need to draw lessons from dealing with people who have

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19 Cronin, "How Terrorist Campaigns End."
20 Israeli Ministry of Foreign Affairs, "FM Livni Briefs Israeli Ambassadors Abroad," January 4 2009, http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2009/Press+releases/FM_Livni_briefs_Israeli_ambassadors_14-Jan-2009.htm. Last accessed December 6, 2009.
21 Israeli Ministry of Foreign Affairs, "Statement by Amb. Shalev to the UN Security Council," January 8, 2009, http://www.mfa.gov.il/MFA/Foreign+Relations/Israel+and+the+UN/Speeches+-+statements/Amb_Shalev_UN_Security_Council_8-Jan-2009.htm.
22 Elaine Hagopian, *Civil Rights in Peril* (Chicago: Haymarket Press, 2004).
23 Id at 4-5.

> joined terrorist groups or participated in terrorist acts, both with a view to bringing them back into society and to enlisting their help to dissuade others from taking a similar course.[24]

Shirlow and McEvoy, in studying former political prisoners in Northern Ireland note that changes in perceptions of the "other" must come not only from "moderates," but also those "who are most secure and confident in their identities" – the extremists.[25] Former "hardliners" Martin McGuinness (from the IRA and Sinn Féin) and Ian Paisley (Democratic Unionist Party) being termed the "chuckle brothers" is but one example of former enemies coming together. Make no mistake, Northern Ireland is not yet at peace, but it is in the process of transforming.

If, as Benedict Anderson states, nations are imagined communities, there exists an opportunity to influence those who are doing the imagining. The nationalist entrepreneurs studied herein are rational actors who make choices and those choices exist in a context. Human rights building blocks can be used to create sustainable communities that embrace diversity or they can be used to craft narratives in opposition that enhance discordance and can encourage violence. Those who are concerned about ending state violations of human rights and resistance movement violence have an opportunity to influence that context.

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24 Richard Barrett and Laila Bokhari, "Deradicalization and Rehabilitation Programmes Targeting Religious Terrorists and Extremists in the Muslim World," in *Leaving Terrorism Behind*, eds. Tore Bjorgo and John Horgan (New York: Routledge, 2009) 173.
25 Peter Shirlow and Kieran McEvoy, *Beyond the Wire* (Ann Arbor: Pluto Press, 2009), 10.

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