

Irregular Conflict on the Kansas-Missouri Border: Union Policies, Indiscriminate Violence and Insurrection

A Monograph

by

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2018

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REPORT DOCUMENTATION PAGEForm Approved
OMB No. 0704-0188

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1. REPORT DATE (DD-MM-YYYY) 24-05-18		2. REPORT TYPE Master's Thesis		3. DATES COVERED (From - To) JUN 17 – MAY 18	
4. TITLE AND SUBTITLE Irregular Conflict on the Kansas-Missouri Border: Union Policies, Indiscriminate Violence and Insurrection				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) MAJ Casey M. Fulton				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army Command and General Staff College ATTN: ATZL-SWD-GD Fort Leavenworth, KS 66027-2301				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) Advanced Military Studies Program				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Approved for Public Release; Distribution is Unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT The state of Missouri was the site of the most bloody and violent insurgency during the American Civil War. Although Missouri never seceded from the Union, the struggle between Union occupying forces and irregulars quickly degraded to a violent contest for control with the civilian population caught in the middle. This study examines the impact of Union policies and actions on the cycle of violence between the occupying and irregular forces. By comparing Winfield Scott's counterinsurgency program during the Mexican-American War to the policies of Union leadership, Union planning appears nonexistent. Without an overarching plan, Union reliance on coercive counter measures and pressure on the civilian population intensified the retaliatory violence of both Federal troops and irregular forces. For students of irregular war, this study demonstrates not just the unintended impact of occupying forces on an environment, but the importance of holistic planning and self-awareness when dealing with complex civilian based conflicts.					
15. SUBJECT TERMS Missouri; American Civil War; Mexican-American War; Irregular Conflict					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT (U)	18. NUMBER OF PAGES 72	19a. NAME OF RESPONSIBLE PERSON Maj Casey M Fulton
a. REPORT (U)	b. ABSTRACT (U)	c. THIS PAGE (U)			19b. TELEPHONE NUMBER (include area code) 913-309-3813

Monograph Approval Page

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Monograph Title: Irregular Conflict on the Kansas-Missouri Border: Union Policies, Indiscriminate Violence and Insurrection

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Abstract

Irregular Conflict on the Kansas-Missouri Border: Union Policies, Indiscriminate Violence and Insurrection, by MAJ Casey M Fulton, US Army, 45 pages.

The state of Missouri was the site of the most bloody and violent insurgency during the American Civil War. Although Missouri never seceded from the Union, the struggle between Union occupying forces and irregulars quickly degraded to a violent contest for control with the civilian population caught in the middle. This study examines the impact of Union policies and actions on the cycle of violence between occupying and irregular forces. By comparing Winfield Scott's successful counterinsurgency program during the Mexican-American War to the policies of Union leadership, Union planning appears nonexistent. Without an overarching plan, Union reliance on coercive counter measures and pressure on the civilian population intensified the retaliatory violence of both federal troops and irregular forces. For students of irregular war, this study demonstrates not just the unintended impact of occupying forces on an environment, but the importance of holistic planning, and self-awareness when dealing with complex civilian based conflicts.

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Acknowledgement

There are several people that deserve recognition for their assistance in this project. To my peers and friends in Coterie 6, thank you for all your help. The dialogue and discourse within the seminar over this past year has been a complete joy. Colonel Strickland, thank you for both your leadership and your constructive feedback always. Thank you, Dr. Herrera, for suffering through every unintelligible draft and effusive prose. To my dear friends Melissa, Pat, Larry and John, thank you for keeping me well-balanced through the year. Lastly, to my family, thank you for your constant loving support.

Acronyms

JP	Joint Publication
US	United States

The story of the border is the history of preliminary forays and the shock of the army upon army in the national contest. It covers ten years. In the wealth of romantic incidents, stirring adventures, hair-breadth escapes, sanguinary ambushes, deadly encounters, individual vengeance, relentless desolation of towns and communities, and bloody murder, no other part of America can compare with it. Some future Scott will make himself immortal by telling this wonderful story.¹

— William Elsey Connelley, 1909

As day broke the moonless night of 21 August 1863, 450 guerrillas at full gallop stormed into the town of Lawrence, Kansas. The guerrillas charged down the main street brandishing their revolvers and firing wildly. The insurgents fanned out to commence the widespread destruction of the town, robbing residents, banks and looting stores. Drunk from their plundered liquor, the band of guerrillas terrorized the residents with their murderous spree while setting fires all over town. Over the course of about four hours, the band of guerrillas murdered over 150 people and burned all but two businesses. The massacre in Lawrence, Kansas carried out by the notorious guerrilla leader William Quantrill and his band of bushwhackers, marked the height of insurgent violence along the Kansas-Missouri border during the American Civil War.² As the predominant form of warfare during the twenty first century, insurgencies throughout history provide the opportunity to study the dynamic cycle of violence between an occupying force and a rebelling population. The irregular conflict on the Kansas-Missouri border still provides insight on how the policies and actions of an occupying force can aggravate rather than control an insurgency.

The origin of the insurgent conflict can be traced back to the Kansas-Nebraska Act of 1854, where political differences over the definition of individual liberties and popular sovereignty turned the issue of slavery into a violent contest.³ The establishment of Kansas as a

¹ William E. Connelley, *Quantrill and the Border Wars* (Cedar Rapids, IA: Torch Press, 1910), 5. William Connelley's description of the Lawrence massacre provided the basis for this rendition of the event.

² *Ibid.*, 314-385.

³ Nicole, Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), 6-7.

free state on 29 January 1861 settled the issue, but the American Civil War reignited the rivalry.⁴ After conventional hostilities began, Free State “Jayhawkers” from Kansas and pro-slavery “Bushwhackers” from Missouri terrorized the populace with a brutal insurgency. Both sides took turns raiding and plundering along the border with perceived impunity.

The official federal policy toward the Border States at the start of the Civil War was conciliatory, but Union leadership in the Kansas-Missouri region almost immediately implemented a series of harsh counterinsurgency measures focused on eroding the civilian support base of the insurgents. The United States imposed increasingly harsh counterinsurgency measures targeting the Missouri population that culminated in the issue of General Order Number 11, by Brigadier General John Schofield. The order directed the expulsion of almost twenty-thousand people from four districts in Western Missouri.⁵ However, none of the counterinsurgency measures were effective. The insurgency continued to grow and only became more savage until the end of the war.

Ironically, when the Civil War began, Missouri was a unionist state with a small slaveholding community.⁶ Yet this state turned into the most notorious insurgent stronghold of the entire conflict. The policies and actions of the Union forces had a significant impact on the enmity of the people. By inaccurately viewing all Missourians as secessionists, Union leadership broke from the official US policy of reconciliation by implementing counterinsurgency methods targeting the people of Missouri without any planning or strategy. The indiscriminate targeting of civilians and the lack of cohesion was due in part to the dispersion of forces and the quick

⁴ Albert, Castel, *A Frontier State at War: Kansas 1861-1865* (Lawrence: Kansas Heritage Press, 1958), 1.

⁵ Clay, Mountcastle, *Punitive War: Confederate Guerrillas and Union Reprisals* (Lawrence: University Press of Kansas, 2009), 52.

⁶ David, Holstead, “Guerrilla War in “Little Dixie”: Understanding Conflict Escalation in Missouri during the American Civil War” (Fort Leavenworth, KS: School of Advanced Military Studies, US Army Command and General Staff College, 2014), 12-13.

changing of commanders in the region, but most importantly it was due to a lack of any kind of overarching plan to defeat the insurgency.

At the beginning of the war, there was no official policy on the prosecution of insurgents, and the Jominian doctrine that most military officers followed offered little in the way of instruction on counterinsurgency operations. Of the major doctrinal publications available at the time, neither publication covered counterinsurgency operations. Dennis Hart Mahan, “America’s foremost military theorist” and professor at the United States Military Academy, West Point revised the military engineering curriculum to incorporate Jominian theory, American tactics and the French combat method.⁷ While Mahan’s publication, *An Elementary Treatise on Advanced Guard, Out-Post, and Detachment Service of Troops* covered the use of partisans to carry out small unit actions like reconnaissance and raids, it only referred to the use of partisans as an enabling force to support conventional operations.⁸ Mahan’s *Elementary Treatise* did not cover how to counter irregular forces.⁹

The other doctrinal publication available to military officers at the beginning of the Civil War was written by Mahan’s “protégé,” Major General Henry H. Halleck.¹⁰ Like Mahan’s work, Halleck’s *Elements of Military Art and Science*, was derivative covering similar topics of Mahan’s *Elementary Treatise* and Jominian theory.¹¹ The two additional subjects that Halleck included was sea defenses and just war theory.¹² While both publications provided an intellectual framework to guide officers on the conduct of conventional operations, they provided little to no

⁷ Michael A. Bonura, *Under the Shadow of Napoleon: French Influence on the American Way of Warfare from the War of 1812 to the Outbreak of WWII* (New York: New York University Press, 2012), 103-104.

⁸ Andrew J. Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine, 1860-1941* (Washington, DC: Center of Military History, 1998), 15.

⁹ Ibid

¹⁰ Bonura, *Under the Shadow of Napoleon*, 107.

¹¹ Ibid.

¹² Ibid.

guidance on counterinsurgency operations. However, Halleck did publish *International Law* in 1861, which “drew upon Scott’s actions in Mexico” and “reiterated the dual principles of moderation and retaliation that had been taught at West Point and implemented by Scott.”¹³ Halleck warned of the unintended consequences that result from the maltreatment of locals by unrestrained forces, but also pointed out that guerrillas were not “legitimate belligerents but criminals.”¹⁴ Moreover, Halleck highlighted the widely held belief that communities that sheltered guerrillas could be collectively punished like “Scott had done in Mexico.”¹⁵ Although military doctrine on irregular forces existed, it was inadequate to guide the actions of Union leaders on counterinsurgency operations. The ideas that supported international law were more relevant to the insurgency that developed in Missouri, but the conflict was domestic and international law did not apply.

By 1863 the “Lieber Code,” the official guideline from the War Department on the prosecution of insurgents was published, but by that time the contents of that publication made little difference to the trajectory of the insurgent conflict in Missouri. While Federal leaders could choose from the myriad of examples of irregular warfare in American history and Napoleonic wars their view remained narrowly focused on the most recent conflict in their historical memory which was the Mexican-American War. While the context of the two conflicts was clearly different, Union Major General Henry H. Halleck specifically referenced Winfield Scott’s methodology when implementing martial law which invites a comparison analysis to highlight the differences in the level of thought and planning involved in maintaining control in Mexico versus Missouri.¹⁶

¹³ Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, 17.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Unlike Winfield Scott during the Mexican-American War, the Union leaders in the Kansas-Missouri region did not implement a comprehensive plan which included coercion and reconciliation.¹⁷ Instead, Union leaders continually levied punitive measures against the civilian population, which created the template for the hard or total war exacted against the population of the southern states much later in the conflict.¹⁸ By comparing the historical example of Winfield Scott and his pacification program during the Mexican-American War with the policies implemented along the Kansas-Missouri border during the American Civil War, it becomes obvious that there was and is a clear connection between the impact of military actions and the enmity of the civilian population during conflict. Moreover, there is a benefit to leaders in examining an environmental system holistically to create a comprehensive plan to defeat an insurgency. Without an overarching counterinsurgency plan, the Union's policies and actions only fueled the partisan conflict to uncontrollable levels which in turn caused the Union to escalate, using ever stricter, yet ineffective, policies as punishment on the local populace creating a cycle which eventually turned civilians into legitimate military targets.

Historiographical Review

While there is no shortage of works on the American Civil War, much of it is concentrated on the large battles conducted in the Eastern Theater. Largely ignored by historians, the Western Theater only garnered the attention of historians toward the latter part of the twentieth century. The irregular conflict that occurred in the border states of the Western Theater gained even less attention from historians as the topic remained as contextual background to the

¹⁶ *The War of the Rebellion: A Compilation of the Official Records of the Union and the Confederate Armies*, ser. 1, vol. 8 (Washington, DC: Government Printing Office, 1883), 476-477. Hereafter, *OR*.

¹⁷ Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, 17.

¹⁸ Mark, Grimsley, *The Hard Hand of War: Union Military Policy toward Southern Civilians, 1861-1865* (New York: Cambridge University Press, 1995), 151.

historical interpretations of conventional operations. Recent increased interest in the irregular conflict during the Civil War has been the result of evolving trends in historiography and changes in world events.

Even before the war ended, soldiers and civilians began writing memoirs of their experiences. While these accounts provided much in the way of details and context of the irregular conflict, the authors were often predisposed to justify their actions and present themselves in a favorable light. Those authors that wrote of the irregular conflict on the Kansas-Missouri border tended to either promote glamorized characterizations of guerrilla leaders or tell tales of terror and destruction. John N. Edwards for example, wrote, *Noted Guerrillas* in 1877 which, although not entirely fictional, clearly exaggerated the exploits of the notorious William Quantrill and his band of irregulars.¹⁹ Conversely other writers, such as William E. Connelley, who published *Quantrill and the Border Wars* wrote a seemingly more historically accurate narrative which was clearly biased against Quantrill's bushwhackers.²⁰ Overshadowing any local or regional histories were the tales of great commanders and battles, popularized in publications such as *Battles and Leaders of the Civil War*, published by Century Magazine and edited by Robert Underwood Johnson, and Clarence Clough Buel. Although the multi-volume publication provides valuable insight on battles from leaders on both sides, very little is mentioned about the irregular side of the conflict.

During the mid-nineteen fifties, historians began writing on the irregular conflict in the West. Jay Monaghan's *Civil War on the Western Border 1854- 1865* traces the Kansas-Missouri conflict from an abolitionist versus pro-slavery standpoint from the 1850s through to the end of

¹⁹ Joseph M. Beilein Jr, "Whiskey, Wild Men and Missouri's Guerilla War," *The Guerrilla Hunters: Irregular Conflicts during the Civil War* (Baton Rouge: Louisiana State University Press, 2017), 248.

²⁰ Matthew C. Hulbert, "Larkin M. Skaggs and the Massacres at Lawrence," *The Guerrilla Hunters: Irregular Conflicts during the Civil War* (Baton Rouge: Louisiana State University Press, 2017), 267.

the Civil War. Focused mostly on conventional military operations and the impact of politics, Monaghan's treatment was very much in line with traditional military history. Similar to Monaghan's work, Albert Castel's, *A Frontier State at War: Kansas 1861-1865*, is an attempt to fill gaps in historical literature by analyzing the conflict on the Kansas-Missouri border with an emphasis on Kansas.²¹ While Castel acknowledges Monaghan's work as important to the body of knowledge, he also critiques Monaghan's accuracy and interpretations as erroneous.²² Despite Castel's objections to Monaghan's historical interpretation, Monaghan's work called attention to a neglected area of study. Richard S. Brownlee's *Gray Ghosts of the Confederacy*, provides an analysis of irregular warfare on the Kansas-Missouri border highlighting the key events which he characterized as insurrection and military tyranny.²³ Brownlee's work heavily influenced historians during the nineteen nineties and served as an example for much of the history written during that.²⁴

During the latter part of the twentieth century, the increase in insurgencies around the world created a renewed interest in the irregular conflict by historians. Starting with Michael Fellman's, *Inside War: The Guerrilla Conflict in Missouri During the American Civil War*, historians began to deviate from traditional military history to consider the nature and complexity of the insurgency by examining the "physical, emotional and moral experiences of Americans" during the war.²⁵ Stephen Nash's, *When the Yankees Came Conflict and Chaos in the Occupied*

²¹ Castel, *Frontier State*, vii.

²² *Ibid*, viii.

²³ Richard S. Brownlee, *Gray Ghosts of the Confederacy: Guerrilla Warfare in the West, 1861-1865* (Baton Rouge: Louisiana State University Press, 1958), viii.

²⁴ Robert Mackey, *The Uncivil War: Irregular Warfare in the Upper South, 1861-1865* (Norman: University of Oklahoma Press, 2004), 20.

²⁵ Fellman, *Inside War*, vi.

South, 1861- 1865, was one of the many books during this time which examined not only the evolution of the Union policies but the experience of occupation.²⁶

Following the trend of evaluating Union policies, Mark Grimsley's *The Hard Hand of War*, traces the evolution of US policies through three phases from conciliatory, to pragmatic, to the hard measures implemented at the end of the war.²⁷ Other historians, like Robert Mackey, examined the insurgency through a doctrinal and operational lens arguing the Confederacy fought an irregular conflict by design and lost.²⁸ Other important historical research during the mid-nineteen nineties on the irregular conflict includes Andrew J. Birtle's *U.S. Army Counterinsurgency and Contingency Operations Doctrine 1860-1941*. In his work, Birtle traces the evolution of US military counterinsurgency intellectual framework from the Civil War through the Second World War.²⁹ Birtle specifically highlighted Winfield Scott, and Henry Halleck as having provided the conceptual foundation for counterinsurgency policies.³⁰ The war provided a generation of soldiers with experiential knowledge and practical application.³¹ Together, the conceptual and practical knowledge achieved during the war influenced the Army's conduct of counterinsurgency operations well into the next century.³² This particular work is also important because it is one of the few that makes the connection between Union policies

²⁶ Stephen Ash, *When the Yankees Came: Conflict and Chaos in the Occupied South* (Chapel Hill: University of North Carolina Press, 1995), v.

²⁷ Grimsley, *The Hard Hand of War*, 3-5.

²⁸ Mackey, *The Uncivil War*, 2.

²⁹ Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, vii.

³⁰ *Ibid*, 18.

³¹ *Ibid*.

³² *Ibid*.

implemented early in the war with those used by Winfield Scott during the Mexican-American War.³³

The increasing interest in irregular warfare and insurgencies during the latter part of the twentieth century by historians parallels the frequency with which unconventional conflicts occur throughout the world. The interest in these conflicts by historians also follows historiographical trends which highlight previously marginalized voices. For example, Clay Mountcastle's *Punitive War: Confederate Guerrillas and Union Reprisals*, examined attitudes, actions and experiences of soldiers and civilians to present an argument that the Union waged a war meant to punish the Southern population.³⁴ The focus of historians on the experiences of individual soldiers, and civilians follows the trend of "new" military historians in weaving social perspectives into their interpretations. Historian Daniel E. Sutherland often produces research which blends social and military history together. Sutherland's, *Savage Conflict: The Decisive Role of Guerrillas in the American Civil War*, moves beyond state or regional studies, comprehensively studying both irregular operations and practitioners as well as the decisive effects on the Southern war effort.³⁵

Most recently, works like *Lincoln's Code* by John Fabian Watt, reexamine the evolution of Union war policies, highlighting the importance of the Lieber Code in support of the Emancipation Proclamation.³⁶ Other works such as *Guerrilla Hunters: Irregular Conflicts during the Civil War* highlight and fill historical gaps on the insurgencies during the Civil War. This collection of essays also reexamines previous historical interpretations using new computer generated analytical tools and uncovers recurring narratives on well-known events such as the

³³ Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, 28-29.

³⁴ Mountcastle, *Punitive War*, 2-6.

³⁵ Daniel E. Sutherland, *A Savage Conflict: The Decisive Role of Guerillas in the American Civil War* (Chapel Hill: The University of North Carolina Press, 2009), x.

³⁶ John Fabian Witt, *Lincoln's Code* (New York: Free Press, 2012), 8.

massacre in Lawrence, Kansas. These recent works demonstrate that there is still much to investigate on the irregular conflict.

The Start of the Irregular Conflict

On the morning of 10 May 1861, Captain Nathaniel Lyon (later promoted to brigadier general) an “aggressive Unionist” with anti-Southern leanings, led a battalion to surround and force the surrender of a pro-Confederate militia camp preventing the capture of the St. Louis arsenal.³⁷ While marching the prisoners through the city of St. Louis, a large crowd gathered and jeered the soldiers calling them “Hessians,” throwing stones and brandishing pistols.³⁸ The crowd grew increasingly out of control until finally, someone from the crowd shot at an officer.³⁹ The soldiers fired back killing over thirty civilians.⁴⁰ The Union forces were not off to good start with the civilian population of Missouri. The incident with Captain Lyon’s battalion of the 2nd US Infantry was just one of the many incidents which turned the civilian population against Union forces. A good number of Unionists altered their stance to support secession after this event, including the legislature and “former Governor Sterling Price who took command of pro-southern troops.”⁴¹ This singular event marked the beginning of an increasingly dysfunctional relationship between the Missourians and Union forces.

It is important to note that at the start of the Civil War, the population of Missouri did not resemble its reputation as a “hotbed of radical, violent, pro-slavery people.”⁴² Nonetheless,

³⁷ James M. McPherson, *Ordeal by Fire: The Civil War and Reconstruction* (New York: McGraw Hill, 1982), 169.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Brownlee, *Gray Ghosts*, 9-10.

this undeserved reputation spread throughout the North beyond the border between Kansas and Missouri.⁴³ In reality, the slave holding population of Missouri was a minority. While much of the Missouri population had familial connections to Southern states, the slave population in the state was only nine percent compared to fifty seven percent in South Carolina or fifty five in Mississippi.⁴⁴ While slave holders in Missouri only owned one or two slaves, those slaveholders who resided in the central part of Missouri known as “Little Dixie.”⁴⁵

Not only were slave owners a minority of the Missouri population, but prior to the war it was clearly a Unionist state.⁴⁶ In 1860, Missourians had elected Democrat Claiborne F. Jackson as governor. During his campaign, Jackson had run on a platform which supported preservation of the Union.⁴⁷ The votes tallied in that election demonstrated that a large majority of Missourians favored “maintenance the Union” to the issue of slavery expansion.⁴⁸ Although Jackson turned out to be a secret advocate for secession, the Missouri General Assembly resisted the new governor’s seditious recommendations to reconsider Missouri’s relationship to the Union by passing legislation through a convention bill which would require a vote of the people.⁴⁹ When the delegates voted, the small but influential secessionist candidates lost, so the decision was that Missouri would stay in the Union.⁵⁰ Moreover, during the war, “80,000 white Missourians served in the Union armies, while 30,000 joined the Confederacy and another 3,000 or more fought as

⁴³ Brownlee, *Gray Ghosts*, 9.

⁴⁴ “Map Showing the Distribution of the Slave Population of the Southern States, Compiled from the Census of 1860” (Washington, DC: US Census Bureau, 1861).

⁴⁵ Brownlee, *Gray Ghosts*, 5.

⁴⁶ *Ibid*, 10.

⁴⁷ *Ibid*, 10-11.

⁴⁸ *Ibid*, 11

⁴⁹ *Ibid*, 11.

⁵⁰ *Ibid*. 11-12.

Southern guerrillas.”⁵¹ It is not wholly surprising that an insurgency developed in Missouri as most of the Border States had irregular activity during the Civil War. What is surprising however, is how Missouri a state with a population primarily interested in preservation of the Union transformed into a stronghold of secessionist insurgency.

Confederate leader Sterling Price instigated the first acts of irregular activity in the form of harassment and sabotage of railroads during conventional operations in the summer months of 1861.⁵² Price’s fledgling forces proved no match for the Union and were quickly beaten back to the Southwestern portion of Missouri.⁵³ The irregular forces loosely associated with Price’s conventional forces, however, remained. The irregular forces during the latter part of 1861 were harassing in nature as acts of sabotage along rail lines was disruptive to both civilian life and military operations. However, the insurgency gained in momentum through the end of the year and into 1862 due to the policies targeting the population passed by Union leadership in Missouri.⁵⁴

Three Union leaders, all veterans of the Mexican-American War, shaped the transformation of the irregular conflict: Brigadier General John Pope, Major General John C. Fremont, and Major General Henry H. Halleck. All three leaders had some experience during the Mexican-American War in balancing local grievances and maintaining order. Generals Halleck and Fremont both served in California. As Secretary of State, Halleck organized the administrative function of his office by ruling on land claims, establishing regulations for customs

⁵¹ Mcpherson, *Ordeal by Fire*, 173.

⁵² Brownlee, *Gray Ghosts*, 23.

⁵³ Mountcastle, *Punitive War*, 23.

⁵⁴ Brownlee, *Gray Ghosts*, 50.

and mediating disagreements between native Indian tribes and settlers.⁵⁵ In addition to leading the Bear Flag Insurrection, Fremont also spent a short while as the self-appointed Governor of Los Angeles.⁵⁶ During Fremont's stint as governor, he restored peace and order by winning over the Californios. Fremont adopted their dress, promoted their culture, and engaged with local leaders, to the point of alienating many Americans.⁵⁷ Only General Pope, having been on Zachary Taylor's staff, had some degree of direct exposure to Winfield Scott's pacification policies based on the principles of "reconciliation and retribution" to maintain order during occupation.⁵⁸ Despite their experience in dealing with a local populace, none of these three leaders ever developed a plan to defeat the insurgency in Missouri with anything other than coercion. Clearly, the application of pressure differentiates how Winfield Scott planned to suppress an insurrection in Mexico and how Union leaders exacerbated one in Missouri.

Winfield Scott's Counterinsurgency Methods

Guerrillas were a major concern for Winfield Scott in Mexico because of the US Army's extended supply lines.⁵⁹ The forces under both Winfield Scott and Zachary Taylor had experienced harassing attacks on outposts, supply lines, and small detachments and disruption along the routes.⁶⁰ In addition to the harassing and disruptive effects of irregular activity, Scott also had to address the lack of discipline rampant in the army, especially within the volunteer

⁵⁵ John F. Marszalek, *Commander of All Lincoln's Armies: A Life of General Henry W. Halleck* (Cambridge, MA: Belknap Press of Harvard University Press, 2004), 56.

⁵⁶ John Mack Faragher, *Eternity Street: Violence and Justice in Frontier Los Angeles* (New York: W.W. Norton, 2017), 177-178.

⁵⁷ Ibid.

⁵⁸ Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, 17.

⁵⁹ Mountcastle, *Punitive War*, 14.

⁶⁰ Ibid, 14.

units.⁶¹ General Scott had issued General Order Number 20 on 19 February 1847 which declared martial law.⁶² Prior to his declaration of martial law, Scott's only legal tool came from the Articles of War which allowed for court-martial but only extended to soldiers and enemy spies.⁶³ The only offenses recognized under this jurisdiction were desertion or neglect of duty.⁶⁴

In Winfield Scott's declaration of martial law, he specified that the crimes normally prosecuted by civilian rule of law would instead be considered under martial law:

Assassination, murder, poisoning, rape, or the attempt to commit either; malicious stabbing or maiming; malicious assault and battery, robbery, theft; the wanton desecration of churches, cemeteries or other religious edifices and fixtures; the interruption of religious ceremonies and the destruction, except by order of a superior officer, of public or private property; are such offenses.⁶⁵

In his proclamation, Scott also extended his jurisdiction and authority to cover any location of the American military while "engaged in the prosecution of the existing war" and "any inhabitant of Mexico, sojourner, or traveler therein; any individual of the United States forces, retainer or follower of the same."⁶⁶ To maintain order, Winfield Scott had extended his authority to encompass everywhere and everyone in Mexico as he declared it was "not only for their own safety, but for the protection of the unoffending inhabitants and their property."⁶⁷

⁶¹ Timothy D. Johnson, *A Gallant Little Army: The Mexico City Campaign* (Lawrence: University Press of Kansas, 2007), 55.

⁶² *Ibid*, 55.

⁶³ Erika, Myers, "Conquering Peace: Military Commissions as a Lawfare Strategy in the Mexican War," *American Journal of Criminal Law* 35, no. 2 (Spring 2008): 206.

⁶⁴ *Ibid*, 206.

⁶⁵ Winfield Scott, *Memoirs of Lieut. General Scott, LL.D.* (New York: Sheldon, 1864), 541.

⁶⁶ *Ibid*, 543.

⁶⁷ *Ibid*, 542-543.

From the authorization provided by martial law, Scott created two types of military tribunals during the Mexican occupation.⁶⁸ The first was the military commissions which prosecuted common law offenses committed by the American military or Mexican civilians while the second, councils of war dealt with the prosecution of irregular forces.⁶⁹ It is important to note that while Scott had sent a copy of his martial law decree to Zachary Taylor, Taylor did not implement the military commissions until September of the same year, some six months later.⁷⁰ During the time between Taylor's receipt of the proclamation and the implementation of it, guerrilla activity was widespread and so were atrocities committed by his troops.⁷¹ Once Taylor implemented martial law, both of these activities abated.⁷²

While Scott was interested in the pacification of the Mexican people and maintaining order within his own ranks, he had little patience with guerrillas proclaiming:⁷³

No quarter will be given to known murderers or robbers, whether guerrillas or rancheros and whether serving under commissions or not. Offenders of this character, accidentally falling into the hands of American troops (that is, without knowing their character), will be momentarily held as prisoners, that is not put to death without due solemnity.⁷⁴

According to Scott, this declaration referred to the councils of war which required a trial by council of three officers.⁷⁵ The councils of war was a field expedient process to support the

⁶⁸ Myers, "Conquering Peace," 206.

⁶⁹ Ibid.

⁷⁰ Ibid, 226.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid, 228

⁷⁴ Scott, *Memoirs of Lieut, General Scott*, 575.

⁷⁵ Ibid.

anti-guerrilla brigades of the Texas Rangers.⁷⁶ Scott maintained the integrity of his pacification policies by both enabling counterinsurgency operations and restricting the application of violence by the Texas Rangers.⁷⁷

Scott never eliminated the insurgency completely, nor did he eradicate the misconduct of his own soldiers, but he did restrict the activity of both, which in turn prevented the escalation and protraction of the conflict.⁷⁸ Although the American military culturally looked down on the Mexican people as “ignorant and superstitious,” Scott promoted restraint and respect by US forces.⁷⁹ At the two ends of the spectrum of Scott’s methodology were the motivating method of restraint and the coercive use of war councils to support aggressive guerrilla targeting. In between were methods which were less aggressive yet still coercive such as the imposition of fines on the civilian population to hold the people responsible for irregular activity.⁸⁰ This measure could easily backfire so it was not used often by either Taylor or Scott as they worried that it would increase anti-American sentiment.⁸¹ Scott did also allow the torching of communities in retribution for guerrilla activity, but his ability to control his own troops and respect the civilian population maintained order overall.⁸²

⁷⁶ Myers, “Conquering Peace,” 232.

⁷⁷ Ibid., 233

⁷⁸ Johnson, *A Gallant Little Army*, 57.

⁷⁹ Ibid, 58.

⁸⁰ Mountcastle, *Punitive War*, 16.

⁸¹ Ibid, 16.

⁸² Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, 17.

No Plan, No Restraint, No Control

There are two main reasons Scott's counterinsurgency methods did not work for Union leadership during the Civil War. The first is that none of these leaders implemented an overarching plan to defeat the insurgency. While Winfield Scott had applied pressure to multiple aspects of the environmental system of Mexico during the war through a plan which balanced coercion and motivation, Federal leaders in Missouri never created a similarly comprehensive plan. Instead they implemented martial law and other punitive methods in a piecemeal, fashion targeting the population. Making matters worse or possible emphasizing to the population the coercive nature of the counterinsurgency measures was the lack of unity and restraint displayed by Union troops from region to region and between echelons.⁸³ Part of the misunderstanding as to how to suppress an insurgency was partly related to their preconceived ideas on who the people of Missouri were and how war should be fought.

Maintaining a "historical image" of the population as secessionists, the federal leaders focused the blame and the coercive measures strictly against the population.⁸⁴ For Generals Pope and Halleck, who were trained in the military theory of Henri de Jomini's *Art of War* at the U.S. Military Academy at West Point, proper warfare was fought conventionally between uninformed soldiers not the irregular warfare they encountered in Missouri.⁸⁵ Moreover, the dominant Jominian theory did not address the conduct of the military in an irregular conflict except to acknowledge it as very difficult for the occupying force and condemn it as uncivilized.⁸⁶ Their

⁸³ Fellman, *Inside War*, 148-158.

⁸⁴ Holstead, "Guerrilla War in Little Dixie," 48.

⁸⁵ Bonura, *Under the Shadow of Napoleon*, 84, 90-91.

⁸⁶ Baron Antoine-Henri de Jomini, *The Art of War*, trans. by Capt. G.H. Mendell and Lieut. W.P. Craighill (Philadelphia: J.B. Lippincott, 1862), 31,35.

misunderstanding on how to suppress an insurgency is even more understandable considering they were not trained to view irregular activity with anything other than disdain.

Given Pope's, Fremont's and Halleck's positions during the Mexican War, there is no reason to assume that they would have had the perspective to completely understand the complexity of both the irregular conflict and Scott's pacification policy. For example, General Taylor's subordinate Brigadier General John E. Wool fined a Mexican community \$500 for supporting guerrilla attacks.⁸⁷ While General Pope may have been familiar with General Wool and the fine levying technique because he worked on General Taylor's staff, he might not have understood as well as Taylor and Scott the potential danger with upsetting the local population through the fining of whole communities⁸⁸ What Scott may have understood instinctually given his reluctance to use this technique was that indiscriminate punitive measures such as fine levying violated peoples sense of fairness which undermines the military's ability to maintain rightness of action.⁸⁹

The second reason that Union leadership were unsuccessful replicating the application of Scott's counterinsurgency measures is that while they employed multiple counterinsurgency methods, Union actions conflicted with the ideas of what current joint military doctrine refers to as *restraint* and *legitimacy*. Although these two principles have only been recently added to current joint military doctrine, based on recent experiences with insurgent based conflicts, Winfield Scott seemed to have understood their importance during the Mexican War. The Joint Publication *Operations*, states that "the purpose of restraint is to prevent the unnecessary use of

⁸⁷ Mountcastle, *Punitive War*, 16.

⁸⁸ Mountcastle, *Punitive War*, 16.

⁸⁹ Ibid.

force.”⁹⁰ The publication highlights the importance of restraint by stating “a single act could cause significant military and political consequences; therefore, judicious use of force is necessary. Excessive force antagonizes those parties involved, thereby damaging the legitimacy of the organization that uses it while potentially enhancing the legitimacy of the opposing party.”⁹¹

While this analysis uses a modern doctrinal lens to discuss the concept of restraint, it is not a new concept. Given the training of most military leaders at the time in the ideas that supported 18th century limited warfare, these concepts would not have been foreign to them. West Point graduates Halleck and Pope would certainly have been familiar, as the ideas of philosopher Emmerich Vattel and other just war theorists were part of the curriculum.⁹² In *The Law of Nations*, Vattel specifically address just actions in civil war warning:

If the sovereign believes himself justified in hanging the prisoners as rebels, the opposite party will retaliate; if he does not strictly observe the terms of surrender and all the agreements made with his enemies, they will cease to trust his word; if he burns and lays waste the country will do the same; and the war will become cruel, terrible, and daily more disastrous to the Nation.⁹³

All three officers likely understood the ideas of morality and justice that underpinned their sense of honor and guided their actions in war.⁹⁴ Despite their understanding of morality in

⁹⁰ US Department of Defense, Joint Staff, Joint Publication (JP) 3-0, *Joint Operations* (Washington, DC: Government Printing Office, 2017), A-4.

⁹¹ Ibid.

⁹² Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine*, 13.

⁹³ Gregory Reichberg, Henrick Syse, and Endre Begby, eds., *The Ethics of War: Classic and Contemporary Readings* (Malden, MA: Blackwell Publishing, 2006), 516.

⁹⁴ Ricardo A. Herrera, *For Liberty and the Republic: The American Citizen as Soldier, 1775-1861* (New York: New York University Press, 2015), 155.

warfare and the concept of restraint, their frustration on the growing insurgency led them to adjust their traditional perspective on the treatment of civilians during war.

It is important to note the relationship between the two principles of restraint and legitimacy. The joint publication states that “the purpose of legitimacy is to maintain legal and moral authority in the conduct of operations.”⁹⁵ The doctrine states that “legitimacy, which can be a decisive factor in operations, is based on the actual and perceived legality, morality, and rightness of the actions from the various perspectives of interested audiences.”⁹⁶ At the same time, the doctrine acknowledges that “restricting the use of force, restructuring the type of forces employed, protecting civilians, and ensuring the disciplined conduct of the forces involved may reinforce legitimacy.”⁹⁷ The interested audience in the state of Missouri was the civilian population and they perceived a lack of restraint on the part of Union forces. Despite these modern definitions, the concepts of morality and just actions in war were founding concepts to the limited warfare with which these Union military officers were most familiar.

Pope, Fremont and Halleck in Missouri

The lack of restraint demonstrated by Union forces in action is the clear difference between how Scott maintained control and legitimacy in Mexico and how Union forces lost control and legitimacy in Missouri. General Pope was the first Union leader to leverage Scott’s counterinsurgency methods against the people when in August of 1861 he ordered the people of Marion County, Missouri to give up the guerrillas operating in that county or he would impose fines.⁹⁸ When the people of northern Missouri failed to pay, Pope had them arrested and exacted

⁹⁵ US Joint Publication (JP) 3-0, *Joint Operations*, A-4.

⁹⁶ Ibid.

⁹⁷ US Joint Publication (JP) 3-0, *Joint Operations*, A-4.

⁹⁸ Fellman, *Inside War*, 94.

payment through the confiscation of property.⁹⁹ Not only was there a serious potential for this technique to make the situation worse, but by confiscating property from United States citizens in a Union state, Pope made it controversial as well.¹⁰⁰ Part of the controversy stemmed from the fact that Pope's hardline on the population was at odds with the dominant federal policy of conciliation.¹⁰¹ Pope operated in Northern Missouri as he would in enemy territory, much like invading Union forces operated in the South during the later years of the war.¹⁰² While Pope may have considered the use of fines as a mildly coercive counterinsurgency method, it was also an indiscriminately punitive measure which undermined the people's perception of Union rightness of action.¹⁰³

General John C. Fremont, General Pope's superior officer, had reservations about General Pope's methods but tacitly approved of them. Overwhelmed by several issues plaguing his command, Fremont made the controversial decision to proclaim martial law. Not only was the proclamation of martial law controversial at the time, it was also accompanied by serious depredations of Union regulars and Kansas state volunteers. When Fremont issued martial law as a method to gain control of the degrading irregular conflict in Missouri, he did so without permission from the government, without suspending habeas corpus, and emancipated slaves.¹⁰⁴ Besides the highly controversial inclusion of emancipation, he also authorized the use of a military commission to try and execute any person found in the possession of arms.¹⁰⁵ Since this

⁹⁹ Mountcastle, *Punitive War*, 25.

¹⁰⁰ Ibid.

¹⁰¹ Grimsley, *The Hard Hand of War*, 23.

¹⁰² Ibid, 36

¹⁰³ Grimsley, *The Hard Hand of War*, 38.

¹⁰⁴ Mountcastle, *Punitive War*, 30.

¹⁰⁵ Ibid, 29-30.

declaration far overstepped his authority, President Abraham Lincoln was not happy and ordered General Fremont to rescind the order.¹⁰⁶ A few months later, Fremont would be relieved of command and replaced by General Henry Halleck.¹⁰⁷

Prior to being relieved, General Fremont ordered several columns to march south to meet General Sterling Price's Missouri State Guard.¹⁰⁸ Included in this large force were James Henry Lane's forces, "Lanes Brigade," which consisted of the Third and Fourth Kansas Volunteer Infantry regiments, and the Fifth Kansas Cavalry.¹⁰⁹ While Lane publicly denounced any behavior associated with "Jayhawking," his force was known to steal and emancipate slaves.¹¹⁰ Lane followed Price's forces, marching south from Kansas City to Osceola passing out General Fremont's declaration of martial law which authorized the confiscation of property and the freeing of slaves.¹¹¹ Fremont's proclamation gave the "Jayhawker" forces such as "Lane's Brigade" the freedom to take advantage of the Union uniform to plunder what they considered secessionist territory, including homes of active duty Union military members.¹¹²

Many of the Kansas state volunteers consisted of radical abolitionists and criminals.¹¹³ Another notorious individual, Dr. Charles R. Jennison led the Seventh Kansas Volunteer Cavalry nicknamed Jennison's "Jayhawkers."¹¹⁴ Jennison's "Jayhawkers" created their own path of

¹⁰⁶ Mountcastle, *Punitive War*, 30.

¹⁰⁷ Ibid, 31-32.

¹⁰⁸ Bryce, J Benedict, *Jayhawkers: The Civil War Brigade of James Henry Lane* (University of Oklahoma Press, 2009), 118.

¹⁰⁹ Brownlee, *Gray Ghosts*, 38.

¹¹⁰ Benedict, *Jayhawkers*, 119.

¹¹¹ Brownlee, *Gray Ghosts*, 38-39.

¹¹² Ibid.

¹¹³ Ibid, 41.

¹¹⁴ Brownlee, *Gray Ghosts*, 41.

destruction while operating in Jackson County Missouri which consists of the southeastern part of Kansas City and Independence.¹¹⁵ The depredations of these forces on the civilian population in Missouri escalated the partisan violence exponentially as they traded “blows” with the irregular forces in Missouri along the border.¹¹⁶ Although the partisan conflict between the “Jayhawkers” and the “Bushwackers” stemmed from the “Bleeding Kansas” conflict, the “Jayhawkers” sought to legitimize their activity by donning the Union uniform. These depredations carried on through the end of the year as Union forces burned the town of Dayton, Missouri on 1 January 1862.¹¹⁷ They burned all forty six houses except for “the one Union house in town,” as the town was reported as a “depot for recruiting and supplying the rebels.”¹¹⁸

There is a clear correlation between the increase in insurgent activity between the fall of 1861 and the spring of 1862 and the lack of restraint exhibited by Union forces. Many of the insurgent members were either young men looking for adventure, or criminals, but a good portion joined for retribution. A commonly known anecdote that drives home the point is the story of Cole Younger, notorious “Bushwacker” and outlaw, who claimed his bushwacking career began out of revenge.¹¹⁹ Younger specifically cites the “shameful and cowardly murder” of his father, a Unionist, and “the cruel treatment of his mother at the hands of the Missouri Militia,” among other outrages involving family members.¹²⁰ General Halleck was made aware of the crimes perpetuated by “Jayhawker” type forces by way of public outcry, but little was done in the form

¹¹⁵ Brownlee, *Gray Ghosts*, 46-47.

¹¹⁶ *Ibid.*, 50.

¹¹⁷ Mountcastle, *Punitive War*, 31.

¹¹⁸ *OR*, ser. 1, 8:46.

¹¹⁹ Thomas, Goodrich, *Black Flag: Guerrilla Warfare on the Western Border, 1861-1865* (Bloomington: Indiana University Press, 1995), 35.

¹²⁰ Cole Younger, *The Story of Cole Younger by Himself* (Chicago: Henneberry, 1903), 4.

of discipline or example to any of the leadership, given their political connections.¹²¹ Some were relieved of command or transferred, but were later given additional commands, plus all their soldiers remained on duty.¹²² The Union leadership never supported the misconduct perpetrated by Union troops, but verbal condemnation did little to restrain Union soldiers from taking their frustrations out on the civilian populace.

The same day that Union forces burned Dayton, Missouri, General Halleck issued General Order No.1, 1 January 1862.¹²³ General Order No. 1 differentiated between the rights of a captured soldier of an enemy military and those of an insurgent. General Halleck invoked Scott's name when referring to the treatment of insurgents:

And, again while the code of war gives certain exemptions to a soldier regularly in the military service of an enemy, it is a well-established principle that insurgents, not militarily organized under the laws of the State, predatory partisans, and guerrilla bands are not entitled to such exemptions; such men are not legitimately in arms, and the military name and garb which they have assumed cannot give a military exemption to the crimes which they may commit. They are, in a legal sense, mere freebooters and banditti, and are liable to the same punishment which was imposed upon guerrilla bands by Napoleon in Spain and by Scott in Mexico.¹²⁴

The point to emphasize here is that General Halleck thought he was following the example of Winfield Scott imposing order using the legal tools available to him at the time. Two months later Halleck issued General Order No. 2 which declared martial law. In response to General Price's generation of insurgent forces, Halleck specifically stated in General Order No. 2 that "all persons are hereby warned that if they join any guerrilla band they will not, if captured, be treated as ordinary prisoners of war, but will be hung as robbers and murderers. Their lives

¹²¹ Brownlee, *Gray Ghosts*, 49.

¹²² *Ibid.*

¹²³ Mountcastle, *Punitive War*, 31.

¹²⁴ *OR*, ser. 1, 8:476-477.

shall atone for the barbarity of their general.”¹²⁵ Halleck was willing to summarily execute guerrillas for their crimes, yet he was unwilling to discipline or hold accountable his own troops for their misconduct against the civilian population.

Clearly, General Halleck was growing more frustrated with the insurgency. He was not the only one, as Union soldiers grew frustrated as well, becoming more hardened to the population.¹²⁶ Just like Generals Pope and Fremont, General Halleck’s perspective was always oriented outwards. So, all the punitive policies implemented were against the people, insurgent or otherwise, while undisciplined Union forces went unchecked. General Halleck, in a letter to Major General George B. McClellan, recognized both the lack of discipline and organization with his department stating that “everything is in such total disorganization and there is such a general lack of discipline that officers systematically neglect to answer either telegrams or letters of instruction.”¹²⁷ In that same letter, General Halleck explained that “the conduct of our troops under Fremont’s campaign, and especially the course pursued by those under Lane and Jennison, has turned against us many thousands who were formerly Union men...I am satisfied that the mass of the people here are against us, and that a single false step or defeat will ruin our cause.”¹²⁸

General Halleck’s letter to General McClellan was dated 10 December 1861, one month after Halleck took command. Within just one-month, General Halleck had already identified that a lack of restraint on the part of Union forces was undermining Federal legitimacy in Missouri. Halleck, remaining outwardly focused on the population, set up a “Board of Assessment to levy

¹²⁵ *OR*, ser. 1, 8:612.

¹²⁶ Grimsley, *The Hard Hand of War*, 42.

¹²⁷ *OR*, ser. 1, 8:818.

¹²⁸ *Ibid.* 819.

war taxes on disloyal St. Louis residents that same month.”¹²⁹ By the summer of the following year, Halleck’s replacement General John Schofield extended the war taxes to encompass the whole state which led to widespread corruption by the administering civilian boards.¹³⁰ Although Union leadership may not have had training nor full understanding to appreciate the complexity of counterinsurgent operations at the beginning of the war, by the time General Halleck took over, the military was clearly identified as an aggravating actor to the environment of Missouri.

There are two theories which underpin the course of the irregular conflict in Missouri. The first is the “relative deprivation” theory and the second is the theory of selective violence. While these ideas may not have existed as stated theories during the Civil War nor the Mexican-American War, they provide retrospective understanding of why the indiscriminate counterinsurgency methods and lack of restraint by Union troops made the situation worse.

Selective Violence and Relative Deprivation

According to Stathis Kalyvas in his theory of selective violence, during an irregular conflict, selective violence is used to deter the activities of the insurgent group through accurate targeting.¹³¹ The Union had a very difficult time targeting the guerrillas partly because of their elusive tactics but also because information from the population was not forthcoming.¹³² There are a couple of assumptions and miscalculations that confused the Union leadership’s ability to maintain control. The first assumption was that by targeting whole communities, eventually the community would denounce the irregular actors so that the Union could target them effectively.

¹²⁹ Fellman, *Inside War*, 94.

¹³⁰ *Ibid.*

¹³¹ Stathis N. Kalyvas, *The Logic of Violence in Civil War* (New York: Cambridge University Press, 2006), 173.

¹³² Mountcastle, *Punitive War*, 22.

Selective violence is successful when there is enough accurate information from which to target the irregular forces.¹³³ Given the limitations on collection assets during the Civil War, “consensual provision” would have been one of the primary methods for the Union to gather information on irregular forces.¹³⁴ Without the information and resources required to chase down the elusive irregular forces, Union leaders indiscriminately held whole communities responsible through the levying of fines. While the levying of fines is not the same as selective violence, it is an indiscriminate punitive measure which violated the concept of fairness in the eyes of the population. Furthermore, the actual acts of violence perpetrated by Union forces often was levied against the population out of frustration in the form of indiscriminate violence as opposed to selective violence.¹³⁵ For selective violence to work, the population must perceive that there is a process for making the violence selective.¹³⁶

The indiscriminate violence was partly a result of the parity in control between Union forces and irregular forces.¹³⁷ According to Kalyvas, since the control was split between Union forces and irregular forces, the defection towards the opposing group is high, but no denunciation occurs.¹³⁸ There was a prevalent use of violence because of a lack of control but the lack of denunciation also means that the violence was often indiscriminate.¹³⁹ High levels of indiscriminate violence lead to “mass defection toward the rival actor.”¹⁴⁰ Ultimately,

¹³³ Kalyvas, *The Logic of Violence in Civil War*, 174.

¹³⁴ *Ibid.*, 176.

¹³⁵ Grimsley, *The Hard Hand of War*, 43, 45.

¹³⁶ Kalyvas, *The Logic of Violence in Civil War*, 192.

¹³⁷ *Ibid.*, 203.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

indiscriminate punitive measures and violence fueled the insurgency to higher levels as it forced more people to support the insurgency directly and indirectly.

The second miscalculation was the targeting of prominent secessionists. There was an assumption that prominent secessionists had more influence over the activities of the irregular forces than they ever did.¹⁴¹ This assumption highlights the core misunderstanding between Union forces and the civilian population, as Union leadership assumed that the general population was responsible for the activities of the irregular forces. However upset the general population might have been with the confiscation of their property, they were not willing to risk retribution by irregular forces by denouncing them to the Union.¹⁴² At the same time, a study on “relative deprivation” in Jackson County indicates that those who joined the insurgency came from the same class of citizens whose way of life was threatened by the occupation.¹⁴³

Jackson County was the center of insurgent activity on the Kansas-Missouri border with the highest number of instances of insurgent violence.¹⁴⁴ As one of the wealthier counties, there was a high concentration of prominent secessionist households.¹⁴⁵ It was also on key railroad lines and contained supply depots, required by the Union to move supplies so it also had a high concentration of Union troops.¹⁴⁶ The insurgents operating in Jackson County tended to be the “elder offspring of well-to-do, slave holding farmers,” lending credibility to Pope’s ideas towards

¹⁴¹ Grimsley, *The Hard Hand of War*, 38.

¹⁴² Mountcastle, *Punitive War*, 27.

¹⁴³ Don R. Bowen, “Guerrilla War in Western Missouri, 1862-1865: Historical Extensions of the Relative,” *Comparative Studies in Society and History*, 19, no. 1 (January 1977): 49.

¹⁴⁴ Andrew Fialka, “A Spatial Approach to Missouri’s Domestic Supply Line,” *The Guerrilla Hunters: Irregular Conflicts during the Civil War* (Baton Rouge: Louisiana State University Press, 2017), 289.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

levying taxes against the wealthy secessionist to control insurgent activity.¹⁴⁷ However, in the “relative deprivation” theory study, the results show that the “frustrating agent” was the military occupation by Union forces.¹⁴⁸ The study demonstrates how the concentration of Union forces in the same areas as the prominent secessionists threatened their way of life especially when under martial law and General Order 11.¹⁴⁹

It is important to point out that while Pope’s assessment of the correlation between insurgent activity and prominent secessionist household actually reflected understanding of the social environment in Missouri, it only took into account the tendency of the people to act only one way. While certainly the prominent secessionist might have been influential if they were related to the insurgents, but an alternative consideration is that the insurgents ramped up their acts of retribution towards Union forces for targeting their families. By combining the ideas from the study of relative deprivation in Jackson County with an understanding on how zones of control work with selective violence, the resulting analysis indicates that the harsh treatment of the local citizenry by the Union forces fueled the insurgency. Moreover, Jackson County was also the location where Jennison’s “Jayhawkers” created a swath of destruction and plundering while marching through the area subjecting the local population to indiscriminate violence in addition to indiscriminate punitive measures.¹⁵⁰ Ultimately, the indiscriminate punitive measures and violence towards the citizens in counties like Jackson would lead to the creation of a policy that reclassified civilians as legitimate combatants later in the war.¹⁵¹

¹⁴⁷ Bowen, “Guerrilla War in Western Missouri,” 49.

¹⁴⁸ Ibid, 50.

¹⁴⁹ Ibid.

¹⁵⁰ Brownlee, *Gray Ghosts*, 46-47.

¹⁵¹ Fialka, “A Spatial Approach to Missouri’s Domestic Supply Line,” 283.

Impact of Policies on the War

The insurgencies that developed during the Civil War brought into question the classification of legitimate military combatants.¹⁵² For further clarification on how to deal with the insurgent violence, General Halleck while serving as General in Chief turned to his friend and scholar of political philosophy Dr. Francis Lieber for his input.¹⁵³ Lieber wrote an essay entitled, “Guerrilla Parties Considered in Reference to the Laws and Usages of War,” in which he attempted to not only classify types of guerrillas but distinguish which type of guerrillas were entitled to protection by the laws of war.¹⁵⁴ Lieber cited three criteria that must be met for irregular forces to be protected by the laws of war: they must belong to an organized command structure that enforces discipline and the rules of combat, have the institutional capacity to take and keep prisoners and they must wear a uniform which Bushwhackers clearly did not.¹⁵⁵ Although Lieber’s essay provided little for practical application as it was written philosophically, Halleck distributed it across the army all the while pushing for a more “punitive approach to waging war.”¹⁵⁶

The following spring of 1863, Halleck again turned to Lieber to produce a new policy on the conduct of land warfare entitled, “*Instructions for the Government of Armies of the United States, in the Field*,” also known as the “Lieber Code.”¹⁵⁷ The Lieber Code supported the

¹⁵² Witt, *Lincoln’s Code*, 193.

¹⁵³ Mountcastle, *Punitive War*, 41.

¹⁵⁴ *Ibid.*, 42.

¹⁵⁵ Witt, *Lincoln’s Code*, 194.

¹⁵⁶ Mountcastle, *Punitive War*, 42.

¹⁵⁷ *Ibid.*

Emancipation Proclamation that was issued that year by providing guidance on how to treat enemy civilians and property.¹⁵⁸ While the code banned “wanton devastation” and “cruelty...for the sake of suffering or for revenge,” it made allowances for “military necessity” going so far as to allow retaliation as a means of protection.¹⁵⁹ Undoubtedly, the Lieber Code was the point of departure for the development of modern international law as it attempted to balance practical conduct of war with humanity.¹⁶⁰ However, the use of “military necessity” and the emphasis on commanders’ discretion did less to limit extreme or wanton acts of violence.¹⁶¹ Rather, the allowance for the destruction and confiscation of property and the vague references to the treatment of enemy civilians created an opportunity for the Union to implement a more punitive approach during the last two years of the war.¹⁶²

Halleck’s replacement General Schofield raised the bar on punitive measures targeting the population by ushering a period in which retaliatory burning of structures and communities became common place.¹⁶³ Not to be outdone by Union troops, the irregular forces joined in on the burning adding to the already substantial cycle of reprisals and destructive environment.¹⁶⁴ The most infamous guerrilla attack occurred during the summer of 1863 in Lawrence, Kansas, followed by one of the most extreme measures ever taken against American citizens in history, General Order No. 11.¹⁶⁵ Based on General Schofield’s assessment that the bushwhackers

¹⁵⁸ Grimsley, *Hard Hand of War*, 150.

¹⁵⁹ Francis Lieber, *Instructions for the Government of Armies of the United States in the Field*, (New York: Van Nostrand, 1863), 9.

¹⁶⁰ Grimsley, *Hard Hand of War*, 151.

¹⁶¹ *Ibid*, 150-151.

¹⁶² Grimsley, *Hard Hand of War*, 151.

¹⁶³ Mountcastle, *Punitive War*, 47.

¹⁶⁴ *Ibid*, 47.

¹⁶⁵ *Ibid*, 46, 49.

operating along the border with Kansas were “unquestionably encouraged, fed, and harbored by a very considerable portion of the people of those border counties,” he ordered the expulsion of twenty thousand people from Jackson, Cass, Bates, and Vernon counties.¹⁶⁶ Schofield had decided that, “there could be no cure for this evil short of the removal from those counties of all slaves entitled to their freedom, and of all the families of all men known to belong to these bands, and others known to sympathize with them.”¹⁶⁷

Immediately after the order was issued, both pro-southern and unionists alike condemned the order including Unionist painter politician George Caleb Bingham who immortalized the event in his famous painting entitled “Order No. 11.”¹⁶⁸ As historian Albert Castel points out, the order was by” mid-Victorian standards if not by modern standards, very cruel.”¹⁶⁹ While the order might have been cruel, the expulsion was within the guidelines of General Order 100 and the recognized laws of war.¹⁷⁰ However, even hardliners such as Halleck recognized the magnitude of expelling twenty thousand people while burning their homes and property, and quickly suspended the order.¹⁷¹ Even with forcible removal of thousands of people and laying waste to whole communities, the insurgent violence continued for the duration of the war.

Implications for Today and Conclusion

No matter how severely the Union targeted the civilian population, their counterinsurgency methods remained ineffective. Although US leaders at times looked to

¹⁶⁶ John, Schofield, *Forty-Six years in the Army* (New York: Century, 1897), 78.

¹⁶⁷ *Ibid*, 78.

¹⁶⁸ Albert Castel, *Winning and Losing in the Civil War: Essays and Stories* (Columbia: University of South Carolina Press, 1996), 54.

¹⁶⁹ Castel, *Winning and Losing*, 60.

¹⁷⁰ Mountcastle, *Punitive War*, 52.

¹⁷¹ *Ibid*, 52-53.

Winfield Scott for an example of an effective counterinsurgency applied only twelve years earlier, they never fully grasped the necessary level of thought and planning required to address a complex insurgency. While Scott looked at the whole environmental system and the interdependence between relationships between entities within that system to apply pressure, federal leaders could not see past their own biased lens to evaluate the system holistically. Moreover, Union leaders never were able to reframe the problem that they were dealing with to include the impact of their own actions on the environment.

Winfield Scott applied balanced pressure through his pacification program which used both coercion and motivation. He prioritized the respect of the culture, payment of property damage or confiscation while using martial law to maintain control, especially of his own troops. The Mexican-American War was contextually quite different than the American Civil War. However, Scott, having been trained in Napoleonic warfare, was no better prepared than the Union to fight an insurgency. Scott also had his own preconceived ideas about the Mexican people and American exceptionalism, viewing them as inferior. What he understood about an insurgency was that it would be a hindrance to his conventional combat operations especially with extended supply lines. His plan to address the insurgency was comprehensive, addressing as many aspects of the environmental system as he could to “pacify” the people, and suppress the emerging insurgency. Scott still employed aggressive counterinsurgency methods, but he balanced their impact with conciliatory measures.

Where Winfield Scott had a comprehensive plan to address the developing insurgency in Mexico, the Union leaders in Missouri had no such overarching plan. Since there was never an overarching plan to address the insurgency, there was no unity of effort across the region. Different commanders employed different techniques some heavy handed while others more judicious, but without unity of effort the selective violence applied to the population was perceived as indiscriminate. General Fremont’s incompetence and inability to restrain “Jayhawking” troops early on antagonized the situation, creating mass hostility amongst the

people. Generals Pope and Halleck only added fuel to the rising hostility by only employing only coercive countermeasures while failing to restrain their own troops. Frustrated by the growing insurgency, Union leadership in Missouri were the first to champion the idea of exacting punishment from the population for their support. Their experiences directly influenced the hard war measures carried out during the last two years of the war. Yet, those experiences were partly self-inflicted. Considering Missouri as the “proving ground” for the hard war carried out later, raises the counterfactual of what if Union leaders had employed a more balanced comprehensive approach to the insurgency, would it have changed the trajectory of the war?¹⁷² That is a question that will remain unanswered, but at a minimum is highlights the impact and possible consequences of the actions of an occupying force.

For military professionals, the comparison between the leadership during both conflicts provides both contextual and perspective-based understanding to dealing with irregular warfare. First, there is a level of self-awareness that must be achieved to not only look beyond individual or culture lenses but to reevaluate an organization’s impact on the environment. Throughout the Civil War, even when faced with evidence of the contrary, US leaders remained outwardly focused on the population as the source of friction. Second, a holistic evaluation of an environmental system complemented by self-awareness allows for a more balanced approach using multiple forms of pressure to create change. Ultimately, US leadership successfully retained Missouri in the Union, but not without an unnecessary amount of violence and bloodshed.

¹⁷² Mountcastle, *Punitive War*, 55.

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