

Fighting Unfair to Legitimize the “Political Machine”

David Galula wrote that counterinsurgents must strengthen their “political machine” “preventively” and not “when the insurgent has already seized control of the population. Such a strategy...represents the principle course of action for the counterinsurgent because it leaves the least to chance and makes full use of the counterinsurgent’s possibilities.”¹ Since these wars are really contests between systems, the political system must be strong enough to defeat other systems which challenge it in the eyes of the population.

The current WOT commands the world’s attention, but only within the narrow sphere of Iraq and Afghanistan. Recognizing the al Qaeda’s global insurgency challenges regimes all over the world, including Jordan, Pakistan, Uzbekistan, Saudi Arabia, and Egypt among others, targeted regimes should consider the pre-emptive establishment of legal possibilities to engage insurgents within their borders and abroad. Allies of these targets—like the United States—should also consider reviewing legal possibilities to engage insurgents wherever they reside, to include its own role vis-à-vis International Law.

Al Qaeda and other insurgents will commit illegal acts to accomplish their goals, violating the international and domestic laws at will. In general, counterinsurgents should not be surprised by an insurgent’s criminality—after all, the insurgent has already renounced the current system which creates and enforces the laws he disobeys. The temptation for counterinsurgents— notwithstanding the moral debates—is to “fight fire with fire,” claiming that if insurgents refuse to fight within the law, then so should targeted regimes. Herein the insurgent has set a political ambush for the regime.

The insurgent’s challenge to the regime claims that the regime’s system is incapable of meeting the social, political, and/or economic demands of the population. Before the insurgent can convince the population that his system is better, he must first convince inhabitants (or reinforce their perceptions) that the regime’s current system is insufficient. This two-step process characterizes the insurgent’s fundamental approach to legitimizing his own system. Thus, the insurgent can excuse his lawlessness by (1) claiming he is justified within his own system and/or (2) blaming his decisions on the failures of the regime.

If the regime responds illegally, then the regime compromises its legitimacy regardless of its success against the insurgency. First, the regime’s illegal actions are hypocritical: the insurgents and others are held accountable to a system’s laws that the regime itself neglects. Rule of law is lost, and legal claims against the insurgent become impotent. Second, the regime’s actions validate the insurgent’s claim that the regime’s system is incapable of solving social problems. Insurgents will claim—and rightfully so—that if the current system had offered a legal solution to the security problem, then the regime would have implemented it. Since the regime chose an illegal option, then either the system is inadequate or the leadership is criminal. Either conclusion validates the insurgent’s lawlessness.

Insurgents will prey on holes in any system to create or exacerbate doubt in a regime’s legitimacy. Therefore, counterinsurgents should conduct proactive legal reviews of their own systems with an even greater zeal than that of the insurgents, identifying and filling those holes before insurgents can spring a political ambush. Included in this review are identifying legal methods to conduct clandestine and covert activities against insurgencies who cloak themselves in ambiguous methods that leave little (1) time for legal action or (2) margin for error. In the

¹ Galula, David, *Counterinsurgency Warfare: Theory and Practice*, (London: Praeger, 1964) 80-81.

1950s both Malaya and Kenya declared states of emergency, and within those declarations were specific legal authorities that empowered the regimes against their insurgencies, denying their enemies political ambushes at the strategic and tactical levels. Iraq today is also in a state of emergency.

The counterinsurgent must fight legally against the insurgent or risk more harm to his own legitimacy than that which may come from any illegal action of the insurgent. Changing the laws after serious threats develop wages the government's legitimacy against potential perceptions that the government changes its own rules whenever it needs to justify otherwise illegal activity. Therefore, Galula's prescription for preventive "strengthening" of the "political machine" is good advice.

Nothing obligates the counterinsurgent to fight fairly against the insurgent. Regimes should preemptively develop and implement legal but unfair opportunities to engage insurgents who challenge their system. Understanding the need for legal action must reach the individual soldier because although he or she operates at the tactical level, he or she represents the government and its system at the strategic level. Illegal tactical activities hint that strategic systems are ill-equipped to deal with the tactical problems that the population is enduring. Soldiers at all levels should fight legally and unfairly to defeat the insurgency, discredit its political and social systems, and embolden the existing system.

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