

Negotiating Liberty: The Use of Political Opportunities and Civil Society by Barbary State Captives and Guantánamo Bay Detainees

Cynthia Banham and Brett Goodin

Australian Journal of Politics and History, Vol. 62, No. 2 (June 2016): 171-185

Abstract

This article contrasts two distinct sets of prisoners who were held by foreign governments: sailors from the United States held captive in Algiers in the late eighteenth century and British citizens detained in Guantánamo Bay in the early twenty-first century. The article uses social movement theory to examine and compare the campaigns orchestrated by these men and their supporters, and the role of those campaigns in securing their freedom. It demonstrates the utility of social movement theory in comparing cases of foreign detention that transcend centuries, regions and communication technologies. We find that successful campaigns on behalf of citizens held captive abroad, and the timeline of those successes, are contingent on the exploitation of domestic political opportunities and an external event to trigger government action on behalf of the captives.

Introduction

In the years following American independence, between 500 and 700 sailors from the United States were taken captive by corsairs and detained (some for a decade) in the North African “Barbary States” of Tripoli, Algiers, Morocco and Tunis. Two centuries later, nearly 800 non-American nationals, among them British citizens, were (and some are still) incarcerated by the United States at Guantánamo Bay, Cuba, outside the norms of international law. It took over a decade for the US government to pay a ransom to secure the liberty of its citizens detained in the Barbary States, while the United Kingdom agreed to intervene for its nationals at Guantánamo two years into their detention. This article seeks to understand outcomes in cases of international detention and, in particular, why some states are more responsive to the campaigns of their citizens while others take longer to respond.

We investigate this question through the cases of two situations of detention that arose in vastly different historical periods: one in the 18th century and the other in the 21st century. This is in order to ascertain whether — despite the distances of space and time, and changes in political institutions and communications technology — common features can be identified to explain how and why states are ultimately persuaded to act to secure the liberty of their citizens.¹

Domestic politics, we argue, in particular the ability of detained citizens to attract influential, highly skilled supporters from civil society, holds the key to understanding the behaviour of states on the international detention of citizens. Changes in government policy regarding the detained citizens were brought about by a series of critical external and internal events, the timing of which determined when this change occurred in each case. Critically, however, had civil society not already been organized and engaged in heavy lobbying, these events that we identify as ultimately precipitating the governments' decisions to intervene and secure the release of citizens would not have resulted in such an outcome at that time. We proceed by locating our theoretical argument in the liberal international relations literature, with its key insight that domestic politics can help explain the preferences of states in global politics. We argue, that the explanatory power of liberal theory is limited because it is confined to generalizations about the international behaviour of similarly organized polities. We overcome these limitations by applying the concept of political opportunity structure, which highlights how the often-temporary dimensions of political environments provide incentives (or disincentives) for collective action on contentious political issues. We provide background on the circumstances of detention in each case, and then use the idea of political opportunity structure to analyse and compare the campaigns of the detainees and their supporters to secure their freedom, as well as the effect

¹ Philippe Sands, *Lawless World* (New York: Penguin Books 2005).

these campaigns had on the citizens' national governments and the particular events that ultimately acted as a trigger to spark a change in official policy.²

Using Political Opportunities for Mobilizing from Overseas Detention

We agree with liberal theorists, like Robert Putnam, that domestic politics holds the key to understanding the actions of states in this international dilemma. Our particular interests, however, lie in the processes, supporters, and mechanisms used by captives and detainees of foreign powers to pursue their campaigns to secure their freedom – a subject more nuanced than traditional international relations theories attempt to explain. Social movement literature provides a way to conceptualize such campaigns, since it emphasizes the role political opportunity structures play in enabling or constraining civil society in mobilizing on political issues.³

Political opportunity structures can be defined as “consistent – but not necessarily formal or permanent – dimensions of political environment that provide incentives for collective action by affecting people’s expectations for success or failure.” The core idea behind the concept of political opportunity is the opening and closing of political space. Political opportunity structure “affects the prospects for mobilization and their influence and thereby what activists think they can or should do.” It provides resources, constraints, claims, routes and rules for getting things done. Political opportunities change over time, and can include the degree of openness or closure of a polity to institutional participation;

² Andrew Moravcsik, “The New Liberalism”, in *The Oxford Handbook of International Relations*, eds. Christian Reus-Smit and Duncan Snidal (Oxford: Oxford University Press, 2008) 234; William A. Gamson and David S. Meyer, “Framing Political Opportunity,” in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, eds. Doug McAdam, John D. McCarthy, Mayer N. Zald (Cambridge: Cambridge University Press, 1996), 277; David S. Meyer, “National Human Rights Institutions, Opportunities, and Activism,” in *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, eds. Ryan Goodman and Thomas Pegram (Cambridge: Cambridge University Press 2012), 329.

³ Robert Putnam, “Diplomacy and Domestic Politics: the Logic of Two-Level Games,” *International Organization* 42 (summer 1988), 427.

the stability or instability of political alignments; the presence or absence of allies and support groups; and divisions within the elite that challengers can take advantage of.⁴

In the campaigns of Barbary captives and Guantánamo detainees, the men and their allies were forced to work within the opportunities and constraints of their respective times. These opportunities and constraints directed their choices, particularly as to the professional groups the men targeted as potential supporters, the means by which the prisoners and their allies sought to convey messages to their home government and the public, and how those messages were framed.

Similarity and Difference in Captivity and Detention

The Barbary States and Guantánamo cases are united by the fact that individuals were detained by a foreign power, outside the usual norms of the Western legal system, though the circumstances of their detention differed greatly. The captives in the Barbary States were held by a foreign power which was an adversary of their home state, unlike in the Guantánamo case, where the detaining power was an ally of the detainees' national government and detained citizens were perceived as enemies of The West. The Barbary captives were viewed in a more benign light at home; as captives they were afforded greater liberties in their movements and communications; and there existed a regularized exit strategy – captives simply paid a ransom – while there was no such established protocol for the Guantánamo men to get home. We sought out case studies with striking differences to test for consistencies in successful campaigns for redeeming captive citizens from abroad. For example, as detailed below, it is reasonable to expect that the status of Barbary captives as US citizens in good standing would expedite efforts of their government to free them, yet

⁴ Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge: Cambridge University Press, 2nd ed, 1998), 76-77; Gamson and Meyer, "Framing Political Opportunity," 277; Meyer, "National Human Rights Institutions, Opportunities, and Activism," 329; Sidney Tarrow, "National Politics and Collective Action: Recent Theory and Research in Western Europe and the United States," *Annual Review of Sociology* 14 (1988), 429; Tarrow, "Aiming at a Moving Target," *PS: Political Science and Politics*, 15.

this was not the case. Instead, civil society and political elites flocked to the case of “enemies of the state” held in Guantánamo Bay sooner than they did for the Barbary captives. This unexpected outcome supports our argument that it is less significant who the captives were, where and when they were held, than it is that they fostered a successful and sustained civil society campaign and waited for an external event to exploit. Civil society in the Guantánamo case was, because of the modern forces of globalization and the blurring of the boundaries of domestic and international politics, more highly networked.⁵ We argue, however, that while this difference may explain why civil society in the Guantánamo case succeeded in shifting government policy on detainees more quickly than in the Barbary case, the fundamental ingredients to securing that change remained the same across the time periods. They were: finding effective supporters who identified political opportunities and used them to influence public opinion and pressure the government to act on behalf of their nationals detained abroad. The detention of American merchant and Navy sailors by the Barbary States arose out of a diplomatic crisis stretching from 1784 to 1815. Based on incomplete slave counts and informed speculation, between the early 16th and late 18th centuries there were approximately one million Europeans held captive in Barbary. The years 1784 to 1815, however, were the last gasp of Mediterranean corsairs. In that time, 500-700 American merchant and Navy sailors were held for ransom. Among the American captives were Richard O’Brien and James Cathcart, both veterans of the Revolutionary War who were held in Algiers from 1785 to 1795-96, and on whose cases this article focuses. O’Brien and Cathcart, though both non-military sailors and not on a defined battlefield, were nevertheless captured in a loosely defined war (an *al-jihad fi’l-bahr*, or holy war at sea). O’Brien was captaining the Philadelphia merchant ship *Dauphin* when it was captured by Algerian corsairs 240 miles off Cabo da Roca, the westernmost point of Portugal. O’Brien’s

⁵ Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders* (New York: Cornell University Press, 1998); Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge: Polity, 2003).

rank afforded him perks in captivity and was responsible for his becoming the leader and spokesman of the American captives. Cathcart was an 18-year-old common sailor when his Boston merchant ship, the *Maria*, was captured by corsairs three miles off Cape St. Vincent, the south westernmost point of Portugal, days before O'Brien's capture. Although Cathcart lacked O'Brien's rank, he won favour with influential Algerians and fellow captives and amassed sufficient wealth to spend his captivity in comparative comfort. He ultimately used this influence to help negotiate America's treaty with Algiers in 1795, which secured the release of the captives a year later.⁶

For some, the circumstances of captivity in Algiers were quite liberal when compared to Guantánamo Bay. While in captivity, the ships' officers were billeted with consuls of Christian nations and permitted to roam the city if they paid a monthly fee. All were encouraged to write to friends, family, churches and governments to solicit ransom. These solicitations to government were met with an unwavering strategic disinterest for a decade. Secretary of State Thomas Jefferson surmised government policy most succinctly in privately remarking that the US must "wear the appearance of neglecting them [the captives]" to secure a lower ransom and disincentivise future captures.⁷

The Guantánamo detainees, on the other hand, were captured in the "war on terror," which began in response to the hijacking by al Qaeda terrorists of four commercial jet liners on September 11, 2001. These captives were viewed as a threat by their captors and home governments, which inform the unsympathetic way detainees were perceived at home. Following the terrorist attacks the US invaded Afghanistan, where it accused the ruling Taliban regime of harbouring al Qaeda operatives. The US began rounding up large

⁶ Frank Lambert, *The Barbary Wars: American Independence in the Atlantic World* (New York: Hill and Wang, 2005); Robert C. Davis, *Christian Slaves, Muslim Masters: White Slavery in the Mediterranean, the Barbary Coast, and Italy, 1500-1800* (New York: Palgrave Macmillan, 2003), chapter 1; Robert C. Davis, "Counting European Slaves on the Barbary Coast," *Past & Present*, no. 172 (August 2001), 118.

⁷ Christine E. Sears, *American Slaves and African Masters: Algiers and the Western Sahara, 1776-1820* (New York: Palgrave MacMillan, 2012), 8-10, 48, 68; Walter Lowrie & Matthew St. Clair Clarke et al., eds. *American State Papers: Documents, Legislative and Executive, of the Congress of the United States, Foreign Relations* (Washington, Gales and Seaton, 1833), I: 290.

numbers of people suspected of belonging to either group, mainly in Afghanistan but also across the border in Pakistan and beyond. The first detainees arrived at the US naval base at Guantánamo Bay in January 2002 and the last in March 2008. The war on terror was described by the Bush Administration as being “unlike any other we have ever seen,” a central feature of which was that detainees were not to be treated according to the traditional rules of war governed by the *Geneva Conventions*. They were, said President George W. Bush, “bad people.” This characterization of detainees was subsequently defended by British Prime Minister Tony Blair. Detainees were held at Guantánamo Bay because the Bush Administration considered it to be outside US legal jurisdiction and individuals would have no right to challenge the legality or conditions of their potentially indefinite detention. By 2003, international concerns were raised that detainees at Guantánamo Bay were being mistreated, and even tortured.⁸

Among the prisoners held at Guantánamo Bay were nine British citizens, most of whom were captured in Afghanistan and Pakistan. The UK initially supported the detention of its nationals at Guantánamo Bay. We have selected the cases of two particular British detainees for discussion because, as with Cathcart and O’Brien, their campaigns are illustrative of the tactics used by detainees at the time. Moazzam Begg was British-born, and was arrested at his home in Pakistan in January 2002 by American and Pakistani officials. He was first sent to Afghanistan and then to Guantánamo. Feroz Abbasi was Ugandan-born,

⁸ Jonathan Hafetz, *Habeas Corpus After 9/11: Confronting America’s New Global Detention System* (New York: New York University Press 2011), 11, 28-30; Philippe Sands, *Lawless World* (New York: Penguin Books 2005), 155; United States Department of Defense, “DoD News Briefing – Secretary Rumsfeld and Gen. Myers,” 27 December 2001 (Donald Rumsfeld) <<http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2696>>; Human Rights First, “Guantánamo by the Numbers”, (Human Rights First, Fact Sheet, 13 March 2014) http://www.humanrightsfirst.org/wp-content/uploads/pdf/gtmo_by_the_numbers.pdf; George W. Bush, “Address to a Joint Session of Congress and the American People” (Address delivered to US Congress, Washington DC, 20 September 2001) <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>; George W. Bush, “President Bush, Prime Minister Blair Discuss War on Terrorism” (Press Conference of President Bush and British Prime Minister Tony Blair, Washington DC, 17 July 2003) <<http://georgewbush-whitehouse.archives.gov/news/releases/2003/07/20030717-9.html>>; Nicholas Watt and Julian Borger, “Blair Accepts Military Trial for Britons – US Warnings Shift View on Guantánamo Bay Prisoners,” *The Guardian*, July 21, 2003, 7; Neil A Lewis, “Red Cross Finds Detainee Abuse in Guantánamo Bay,” *The New York Times*, November 30, 2004 <http://www.nytimes.com/2004/11/30/politics/30gitmo.html?pagewanted=1&_r=0>

captured by the Northern Alliance in Afghanistan in December 2001, and handed over to the Americans who transported him to Guantánamo. After initially taking the view that the UK “should not stand in the way of the US transferring British nationals to Guantánamo,” the British government intervened in the cases of its citizens in 2004 and requested they be brought home.⁹

Campaigning For Freedom

While the campaigns of the Barbary captives and Guantánamo detainees were carried out across vastly different historical periods, core elements were common to both. These included the identification of amenable allies to their cause; the careful framing of their pleas for liberty so as to evoke maximum sympathy from the public and bring pressure on the government; and the avenues they used to communicate those pleas. The campaigns of the two groups were, however, conducted within a different set of practical and political opportunities and constraints. This was reflected in the particular professional ranks from which they drew their allies, as well as in how they framed and communicated their demands.

In Algiers, the captive American sailors were given newspapers by friendly European consuls and the captives carefully read of ongoing political debates, which they exploited to build an international network of correspondents and cannily assert their role in the evolving narrative of American nationhood. O’Brien and Cathcart opened dialogue almost exclusively with individuals who they hoped might be able to improve the conditions of their captivity or ultimately deliver their ransom. These individuals included American

⁹ The Detainee Inquiry, “The Report of the Detainee Inquiry,” December 2013, 76; Andrew Tyrie, Roger Gough, Stuart McCracken, *Account Rendered: Extraordinary Rendition and Britain’s Role* (London: Biteback Publishing 2011), 93; Moazzam Begg, *Enemy Combatant* (London: Pocket Books 2006), 1, 2, 8, 108-112; *The Queen on the Application of Abbasi & Anor v Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for the Home Department* [2002] EWCA Civ 1598 (6 November 2002).

diplomats David Humphreys and Thomas Jefferson, supportive foreign consuls in Algiers and even the British abolitionist William Wilberforce.¹⁰

By periodically providing thorough analyses of current affairs and any potential impact the captives may have on American negotiations with Algiers, O'Brien hoped to increase the chances of a successful negotiation between governments. His correspondence and more lengthy reports channelled republican sensibility and consisted of three identifiable themes: 1) the supply of dispassionate information about the situation of the captives and how other nations have conducted negotiations with Algiers, 2) policy advice based on that information, and 3) sentimental requests for assistance or full ransom. O'Brien pled for a hastened ransom to free his crew from a life "under the lash of their task masters, beat in such a manner as to shock humanity & called all the bad names that those villains can invent to torture & make slavery two fold worse...". Meanwhile, Cathcart kept a detailed journal that was "at once a diplomatic correspondence and a Barbary captivity narrative, straddling the line between official document and autobiographical writing... kept with circulation, if not publication, explicitly in mind." Cathcart sent his journal and correspondence unsolicited to President John Adams and diplomats David Humphreys and Joseph Donaldson.¹¹

Jefferson's reports to Congress as Secretary of State suggest that O'Brien's multifaceted approach to self-advocacy was successful in creating a narrow window of political opportunity for winning support of government, even if it took a decade to achieve the

¹⁰ For just a few examples of correspondence with these individuals see Cathcart to William Wilberforce, January 12, 1794, FO 95/1/3, United Kingdom National Archives; O'Brien to Humphreys, November 12, 1793 in Lowrie & Clarke et al., eds. *American State Papers*, I: 417; O'Brien to Jefferson, June 8, 1786, in Knox ed., *Naval Documents Related to the United States Wars with the Barbary Powers*, I: 1-6.

¹¹ O'Brien to Jefferson, April 28, 1787, "Dispatches from U.S. Consuls in Algiers," M23, Roll 1, National Archives, College Park, hereinafter NACP; O'Brien to Humphreys, November 12, 1793, "Despatches from U.S. Ministers to Portugal, M43," Roll 3, NACP; O'Brien to William Carmichael, February 19, 1790, *Remarks and Observations in Algiers*, Pennsylvania Historical Society; Martha Elena Rojas, "'Insults Unpunished' Barbary Captives, American Slaves, and the Negotiation of Liberty," *Early American Studies*, 1 (Fall 2003), 163, 181; Cathcart, *Diplomatic Journal*, 327-328, 436; Sears, *American Slaves and African Masters*, 34; Christine E. Sears, "Slavery as Social Mobility? Western Slaves in Late Eighteenth Century Algiers," *Research in Maritime History*, no. 44 (2010), 209; Cathcart, *The Captives*, 171.

ultimate goal of redemption. He quickly established himself as a credible source of information and the primary intermediary between the captives and the US. The reports to Congress referred to O'Brien as "a very sensible man, and to whom we are indebted for very minute information...". Jefferson later advised Humphreys to correspond with O'Brien above all the other captives, as he "is a sensible man, and whose conduct since he has been there [in Algiers] has been particularly meritorious." This "meritorious" conduct was O'Brien's default leadership of the captives and his crafted communications with American officials.¹²

Humphreys, the US minister to Spain, is an ideal subject through which to gauge the extent of sensibility as a tool used by the captives to leverage opportunity structures and lobby for their cause. He embodied the idea of the Revolutionary era's multi-talented, romantic, idealistic and industrious "man of learning." He was a Yale graduate, an aide-de-camp to Washington during the Revolution, a junior diplomat and secretary to Jefferson in Paris, and a member of a federalist group of satirists called "the Connecticut Wits." The captives' relationship with Humphreys also painfully demonstrates that, although the public was highly informed and impassioned about the captives' plight and embraced it as a nationalistic struggle, the captives' success in engaging civil society and sympathetic individuals in the diplomatic corps did not in itself translate into government action.¹³

A decade of O'Brien's petitions and reports through formal channels failed to instigate a change in America's official Algerian policy. Humphreys was another matter. Since his days as a poet with the Connecticut Wits in the 1780s and 1790s, Humphreys had known and written about the American captives in Algiers. They were first mentioned in his epic poem *On the Happiness of America*, which was published in October 1786, just a year

¹² Jefferson, "Report of the Secretary of State relative to the Mediterranean Trade," in Lowrie & Clarke eds., *American State Papers*, I: 105; Jefferson to Humphreys, July 13, 1791 in Lowrie & Clarke eds., *American State Papers*, I: 290.

¹³ Frank Landon Humphreys, *Life and Times of David Humphreys*, (2 vols., New York: G. P. Putnam's Sons, 1917).

after O'Brien's and Cathcart's capture. In this poem, Humphreys shared O'Brien's opinion that Barbary threatened the freedom of US commerce and the young nation's hope to become a benevolent "empire of liberty." Just two years later he published *A Poem on the Future Glory of the United States of America*, which coincided with the first wave of the captives' correspondence to appear in American newspapers and began to stir public sympathy for the captives as a project in republican sensibility. Humphreys still shared the prevailing view of the US government and public, that paying ransom and tribute was dishonourable, that it incentivized future captive-taking and impeded commerce in and around the Mediterranean. However, the passion that Humphreys showed for the captives in this later poem foreshadowed his future departure from government policy that officials should feign disinterest in the captives in order to lower Algerian ransom and tribute demands. Aided by direct appeals from captives and their families in the late 1780s and early 1790s, the captives began to be seen as more than abstract policy problems. They were effectively framed as symbols of American military and commercial impotence, and the romantic victims of an unfinished quest for liberty.¹⁴

In late 1793, O'Brien wrote to Humphreys of his horror at witnessing ten more American ships captured by Algerian corsairs, bringing the number of American captives to 112. For almost nine years, O'Brien had been one of just a handful of surviving American captives until this latest haul. He had repeatedly warned that a delayed Algerian-American truce would leave free the oceans for corsairs "to go on to the coasts of America; then, honored sirs, what would be the fatal consequences – what would be the alarm!" This letter to Humphreys marks the culmination of a slow transformation in O'Brien's approach to self-advocacy and his initial resistance to fully using tactics of fear and the language of republican sensibility as tools to force open political opportunities. O'Brien strategically

¹⁴ David Humphreys, *The Miscellaneous Works of David Humphreys* (New York: T. and J. Swords, 1804), 41, 54; David Dzurec, "'A Speedy Release To Our Suffering Captive Brethren in Algiers': Captives, Debate, and Public Opinion in the Early American Republic," *Historian*, 71 (Winter 2009).

played on Humphreys' patriotic and poetic sensibilities. He evoked guilt by framing American governmental neglect as "perhaps unprecedented in the annals of tyranny," and equated the neglect of his advice to occupational negligence, reminding Humphreys that "I have forewarned them of this misfortune; but men in adversity are generally paid little or no attention to.." ¹⁵

The captives' slow and deliberate cultivation of Humphreys' sensibility and nationalistic obligations to the captives culminated in his remarkable decision to abandon his post and return to America to personally lobby for them, and also to write an unauthorized "Address" to the American people. The Address fundamentally conflicted with the administration's steadfast approach of appearing to neglect the captives. It suggested the government conduct a lottery to raise ransom money and, as O'Brien had often counselled, it disputed the government's position that they must first negotiate a national treaty before the captives could be ransomed. It also emphasized the patriotic and humanitarian duty of freeing "our brave fellow citizens whom," like Cathcart and O'Brien, "fought the battles which established our Independence [and] are literally in chains."

Humphreys wrote the Address as if he were an informed private citizen using his pen to influence policy through public discourse, and it reads like a departing British ambassador's candid "valedictory despatche," or a contemporary op-ed. The Address was reprinted in several newspapers, mainly in New York and Massachusetts, before Secretary of State Edmund Randolph quashed it – but not before Humphreys' suggestion of a national lottery sparked a series of citizen-driven donation drives and theatre benefits in late-1794 in cities and towns from Philadelphia to Charleston and from Baltimore to Augusta, Georgia. Some earlier drives even presaged Humphreys' invocation of the captives' Revolutionary War service as a call to arms – or rather a call to empty their purses and "repay the debt" to

¹⁵ O'Brien to Humphreys, November 9, 1794, "Dispatches from U.S. Consuls in Algiers," M23, Roll 1, NACP; O'Brien to William Carmichael, April 28, 1791, in Lowrie & Clarke eds., *American State Papers*, I: 129; O'Brien to Humphreys, December 6, 1793 in Lowrie & Clarke eds., *American State Papers*, I: 419-420.

the captive veterans. Jefferson's personal scrapbook of newspaper clippings includes a poem read at one such Philadelphia benefit that was timed to coincide with and influence the delegates of the Grand Convention in mid-1787, which drafted the new Constitution. The benefit pleaded on behalf of the veterans in captivity:

Those veterans perhaps, whose patriot toil,
Gave independence to their native soil,
Lost in the sad vicissitudes of fate,
Call on their country to repay the debt.¹⁶

Clearly the captives and their supporters enjoyed periodic successes in the public sphere, leveraging their limited political opportunities to mobilize allies on their behalf, even if freedom remained elusive.

In the Guantánamo cases, the purpose behind the men's campaigns was identical to the Barbary cases – to secure their freedom by persuading their own governments to intervene. Certain features of their campaigns, however, differed. The Guantánamo detainees' campaigns placed a significant emphasis on legal processes and lawyers, which reflected modern notions of individual rights and the post-World War II international legal regime. Whereas in the Barbary cases individual diplomats became the allies of the American captives, by the 21st century the British diplomatic corps were highly professionalized and severely curtailed by their political masters from making public commentary regarding the cases of nationals in trouble abroad. This was especially so in a

¹⁶ For publications of the Address in period newspapers see Albany (NY) *Albany Gazette*, November 3, 1794, 2; Catskill (NY) *Catskill Packet & Western Mail*, III, November 8, 1794, 1-2; Boston (MA) *Federal Orrery*, I, November 17, 1794, 33. Robert J. Allison, *The Crescent Obscured: The United States and the Muslim World 1776-1815* (New York: Oxford University Press, 1995), 130-151; "An Address: Delivered by Mr. Hallam, at the Theatre in Philadelphia, previous to an entertainment performed for the benefit of the American captives in Algiers," in *Scrapbooks of clippings compiled by Thomas Jefferson's family, 1800-1808*, Jefferson Library, Charlottesville, Virginia, microfilm.

politically contentious matter like Guantánamo Bay. The war on terror detainees were not a popular cause. Gareth Peirce, a London lawyer who acted for a number of British detainees, observed that there were no allies who were “capable of pushing and pulling the British government publicly or privately into seeing sense.” In addition, the Guantánamo detainees were subject to a secretive and restrictive form of detention that meant throughout the period of their confinement their ability to campaign for themselves was very limited, leaving it to their families and lawyers to organize on their behalf, in contrast to Barbary captors who actively encouraged their American captives to publicize their cause and elicit ransom. Until 2004, when the US Supreme Court in the case of *Rasul v Bush* established that Guantánamo Bay prisoners could obtain access to American courts to challenge their detention, detainees were not allowed to see lawyers, nor speak to or see their families.¹⁷ Consular access was limited, granted at the US government’s discretion, though British intelligence agencies were given liberal access to detainees.¹⁸

It was thus the legal profession that the men and their families sought to mobilize for support. In particular, a select group of sympathetic British and American lawyers, backed by professional legal organizations, as well as a few forthright judges, adopted high profile positions that were supportive of the detainees’ rights and critical of the UK and US governments’ actions. For example, within a couple of months of the British men’s detention at Guantánamo Bay, British lawyers spoke on behalf of the detainees’ families in the UK media and prepared legal proceedings against the Blair government demanding it intervene. Over the next three years these lawyers penned multiple op-eds and letters to the editor criticizing the British and American governments over Guantánamo Bay and the treatment of detainees, which were published in progressive newspapers such as *The*

¹⁷ *Rasul v Bush*, 542 US 446 (2004). This decision established that detainees at Guantánamo Bay had habeas corpus rights and could challenge their detention in US courts.

¹⁸ Gareth Peirce, *Dispatches from the Dark Side: On Torture and the Death of Justice* (London: Verso 2010), 72; Clive Stafford Smith, *Bad Men: Guantánamo Bay and the Secret Prisons* (London: Phoenix, 2007); Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* (New York: Simon & Schuster Paperbacks, 2006); 542 US 466 (2004); Sands, *Lawless World*, 159.

Guardian. For instance, in an op-ed in 2004 – the year revelations emerged that the US military had tortured Iraqi detainees at Abu Ghraib prison in Baghdad – lawyer Louise Christian wrote in emotional terms accusing the British government of “nothing less than a collusion in an international experiment in inhumanity,” over its policies regarding British citizens at Guantánamo. In a subsequent letter to the editor, Christian tempered her outrage but reiterated that: “I plead with the British government to do something for them in light of the latest allegations about torture by the US military.” The social movement literature emphasizes the role media play in defining for movement actors whether they are taken seriously as agents of possible change – in other words, in legitimizing or de-legitimizing their role and their cause. Media access and attention are crucial elements in defining political opportunities for mobilizing actors. *The Guardian*, in particular, played a prominent role in raising awareness of the UK Guantánamo detainees’ cases, and was singled out for this role by the 2012 the Leveson Inquiry into the culture, practices and ethics of the UK press.¹⁹

Meanwhile in the US a small group of concerned American lawyers launched litigation challenging the Bush Administration’s detention regime in 2002, at a time when many others in the US legal profession were afraid of a public backlash. In addition, in February 2002 the Law Society of England and Wales and the Bar Council, representing more than 100,000 lawyers in England and Wales, demanded Guantánamo detainees be given access to legal advice. Then in 2003, Lord Steyn, a Law Lord, described Guantánamo as a “monstrous failure of justice” and called on the Blair government to “make plain,

¹⁹ Clare Dyer, “Camp X-Ray Families Threaten Writ – Britain Accused of Aiding US in Unlawful Detention,” *The Guardian*, February 26, 2002, 2; Louise Christian, “Guantánamo Bay: A Global Experiment in Inhumanity,” *The Guardian*, January 10, 2004, 24; Louise Christian, “Comment and Analysis: Letters: My Tortured Clients,” *The Guardian*, September 15, 2004, 25; Gamson and Meyer, “Framing Political Opportunity,” *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, 285; Leveson, Lord Justice, *An Inquiry into the Culture, Practices and Ethics of the Press – Report*, (November 2012).

publicly and unambiguously, our condemnation of the utter lawlessness” at the detention facility.²⁰

Some of the British detainees’ families played a crucial role in reaching out and providing legitimacy to campaigning lawyers in the detainees’ cases. For instance, Abbasi’s mother was outspoken from early 2002, attending a press conference with her lawyer, Christian, hosted by the Law Society in London, where she criticized the Foreign Office which had told her not to seek legal advice until her son was charged. Begg’s father also took a high profile position on his son’s detention. In January 2004, at the House of Commons, he helped launch the newly formed Guantanamo Human Rights Commission with British actor Corin Redgrave, and travelled – with the backing of the American Civil Liberties Union – to Washington to lobby for his son.²¹

These mobilizing efforts of lawyers and family members were vital because, until 2004, the detainees’ only means of contacting the outside world was through censored, and often heavily delayed, letters transmitted to their families by the International Committee of the Red Cross (ICRC). Following the US Supreme Court judgment of *Rasul v Bush*, the British detainee Begg received the first visit of any Guantánamo inmate from an American civilian lawyer, in August 2004. By this point five UK citizens had already been released. Begg then learnt for the first time, in a letter from his London lawyer Peirce, that his father had mounted a campaign for his release “so powerful there was hardly a household in Britain that hadn’t heard my name”.²²

²⁰ Michael Ratner, “From Guantánamo to Berlin: Protecting Human Rights After 9/11,” in *The United States and Torture: Interrogations, Incarceration, and Abuse*, ed. Marjorie Cohn, (New York: New York University Press 2011), 206; Clare Dyer, “Camp X-Ray Families Threaten Writ – Britain Accused of Aiding US in Unlawful Detention,” *The Guardian*, February 26, 2002, 2; Clare Dyer, “Law Lord Castigates US Justice,” *The Guardian*, November 26, 2003 <http://www.theguardian.com/politics/2003/nov/26/uk.lords>.

²¹ Clare Dyer, “Law Lord Castigates US Justice,” *The Guardian*, November 26, 2003 <http://www.theguardian.com/politics/2003/nov/26/uk.lords>; Tania Branigan, “Guantánamo Families to Take Fight to US: American Civil Liberties Group to Help British Detainees,” *The Guardian*, January 21, 2004, 4.

²² International Committee of the Red Cross, “The ICRC’s Work at Guantánamo Bay” (Press Release, 04/70, 30 November 2004) <http://www.icrc.org/eng/resources/documents/misc/678fk8.htm>; Moazzam Begg, *Enemy Combatant* (London: Pocket Books, 2006), 268, 272; The Detainee Inquiry, “The Report of the Detainee Inquiry,” December 2013.

Litigation was a key component of the detainees' and their supporters' arsenal for creating political opportunities and pressuring the US and UK governments. The November 2002 judgment of the UK Court of Appeal in *Abbasi v Secretary of State for Foreign and Commonwealth Affairs* was a critical mobilizing event for UK civil society. While finding for the government, declining to order it to make representations to the US on Abbasi's behalf, the Court issued a scathing critique of Guantánamo Bay, noting the British citizen was arbitrarily detained in a "legal black hole."²³

Although the detainees' letters home were heavily censored and delayed, when they did arrive, they were used to great effect by families and lawyers in the British media to draw attention to their plight. Through the letters the men described, however inadequately, their physical and mental conditions, which were then used by those campaigning at home to frame their cases in terms of fears for their failing health and rising level of desperation. For example, in February 2003 Begg's father told the media he feared his son might commit suicide after he had written a letter to his family in which he said he had "not seen the sun" in almost a year of captivity, and was "in a state of desperation." Campaigners also used the detainees' letters to humanize the men. For example, the media reported in July 2003 that Begg, "or detainee JJEEH#00558 to his captors", wrote letters home to his children in which he urged them to "work on their English spelling".²⁴ By 2003 and 2004, campaigners were emphasizing the weakness of the British government in failing to stand up for its citizens to its more powerful ally. This was reflected in a headline in *The Guardian* in 2003 referring to the men's families' views of Britain's failure to press the cases of its citizens at Guantánamo: "The Bitterest Betrayal". Christian wrote of allegations America was torturing

²³ *The Queen on the Application of Abbasi & Anor v Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for the Home Department* [2002] EWCA Civ 1598 (6 November 2002).

²⁴ Vikram Dodd, "Fears for Bagram Detainee – Briton says he was Kept in the Dark for a Year by Americans," *The Guardian*, February 13, 2003, 8; Tania Branigan, "Guantánamo Bay Prisoners Letter Claims he was Witness to Murders," *The Guardian*, October 2, 2004, 8; Branigan and Dodd, "The Bitterest Betrayal," *The Guardian*, July 19, 2003, 25.

detainees that: “If the British government were not so craven, it could be demanding a proper inquiry.”²⁵

In summary, the civil society allies of the two historically disparate groups of captives reflected their political times and context: sympathetic diplomats in the case of captives in the Barbary States, activist lawyers for Guantánamo detainees. While the Barbary captives had a greater level of freedom to communicate through letters with family, supporters, and the wider public at home, the Guantánamo detainees were more passive in their activism, and more reliant on actors outside Cuba to mobilize on their behalf. Politically, the Barbary captives were able to exploit burgeoning ideas about American republicanism and the state’s responsibility for its captive citizens, some of whom had fought for American independence. The Guantánamo campaigners meanwhile appealed to the hypocrisy of the US government in treating British citizens worse than its own (no Americans were detained in Cuba) under conditions that flouted the Western legal order the allies were fighting the war on terror to defend.

Government Responses to Campaigning

The civil society-led campaigns run on behalf of the Barbary captives and the Guantánamo detainees, though framed differently and led by different professional groupings at home, were orchestrated with the same intent and executed with the same vigor. The timeline of their impacts on the governments of the detained citizens were, however, noticeably different. The prisoners’ home governments’ intransigent positions on the issue of their nationals imprisoned abroad shifted earlier in the Guantánamo case than the Barbary one. It took over a decade for the US government to negotiate and agree to a ransom for its citizens detained in the Barbary States; by comparison the British government reversed its position

²⁵ Branigan and Dodd, “The Bitterest Betrayal,” *The Guardian*, July 19, 2003, 25; Louise Christian, “Comment and Analysis: Letters: My Tortured Clients,” *The Guardian*, September 15, 2004, 25; Clive Stafford Smith, “US Censors Silenced me over the Gitmo Gulag,” *The Guardian*, December 20, 2004, 16.

on its nationals at Guantánamo in two to three years. The pace of these shifts in government policy can best be explained by reference to the confluence of political opportunities that emerged in the Guantánamo case, much sooner than occurred in the Barbary case.

In the Barbary case, centuries-old methods of raising ransom money, engaging civil society and indirectly pushing for government action included theatre benefits, lotteries and church appeals. Benefits were held throughout New England within two years of O'Brien's and Cathcart's capture. Yet the persistence of captives and the assistance of their champions in the public and the diplomatic corps did not change the US government's policy. Rather, it took a precipitating external event – namely, the capture of 110 crew from ten American merchant ships in November 1793, which led to a tenfold increase in the number of Americans being held captive in Algiers. This exponential increase in American captives and accompanying blow to the safe passage of American goods in the Mediterranean caused a spike in American newspaper articles about the long-suffering captives and redoubled efforts by civil society groups to secure their release. For example, during the first eight years of the Americans' captivity there were on average 542 mentions of "Algiers" in American newspaper articles, whereas during the last three years, from the 1793 captures until the captives' ultimate release, that number ballooned to an average of 2168 mentions per year. Rather than explicitly and singlehandedly forcing a change in government policy, the captives' use of opportunities at hand, their personal lobbying and their cultivation of civil society had all served as essential complementary measures. The government knew a treaty and ransom would be uncomfortably expensive, so when the capture of 110 more US sailors made a \$992,463 treaty both politically possible and necessary, the payment was made more palatable by years of advocacy by the captives and by others on their behalf.²⁶

²⁶ Based on search results of newspapers digitized by the Early American Newspapers database. The \$992,463 treaty represents approximately 15% of government revenue in 1795 and thus needed to be made as palatable as possible.

Another contributing factor to the belatedly successful treaty negotiation and ransom in 1795/1796 was Cathcart's rise to the position of Chief Christian Clerk to the Dey in 1794. The Chief Christian Clerk advised the Dey, the ruler of Algiers, on relations with Western nations and acted as an intermediary between the Dey and Western ambassadors. This was the highest position a Christian could hold in Algiers. Cathcart used his new status and access to the Dey to secure passage of Humphrey's deputy, Joseph Donaldson, to visit Algiers and finally negotiate America's treaty and ransom. Within 42 hours and with much help from Cathcart and O'Brien, Donaldson negotiated a treaty and ransom that secured the release of the languishing captives.²⁷

In the Guantánamo cases, where the UK government intervened much earlier for its citizens than the US government did for the Barbary captives, a number of key precipitating events occurred in 2003 that pushed the Blair government, already under mounting pressure from civil society, into changing its policies on detainees. These events provided more ammunition to the men's campaigners, saw new allies emerge for detainees, particularly in Parliament, and signaled to the UK government that its Guantánamo policy was becoming more untenable in the increasingly charged political climate of the time. One event was the deep unpopularity over Britain's role in the Iraq War, which worsened with the failure to find weapons of mass destruction. Blair suffered a loss of legitimacy over Iraq not only among the public and Parliament, but also from his own Labour MPs, eventually prompting a parliamentary backlash over his government's war on terror policies more generally. In practical terms, this meant the political elite was divided over Guantánamo Bay, providing openings in the political system that could be exploited by civil society campaigners wanting to intensify pressure on Blair's government.²⁸

²⁷ Frank E. Ross, "The Mission of Joseph Donaldson, Jr., to Algiers, 1795-97," *The Journal of Modern History*, VII (December 1935).

²⁸ Mark Shephard, "Parliamentary Scrutiny and Oversight of the British 'War on Terror': Surrendering Power to Parliament or *plus ça change?*," in *The "War on Terror" and the Growth of Executive Power*, eds John E. Owens and Riccardo Pelizzo (Oxon: Routledge, 2010), 99.

A second development in 2003 that assisted the Guantánamo detainees' cause was the Pentagon's listing of Abbasi and Begg for trial by military commissions according to legal rules that were out of step with the British justice system. Under the military system, detainees faced the possible death penalty, the President held the final power to determine guilt or innocence and, regardless of whether a conviction was made, the men could be held indefinitely. The Pentagon's decision to select Begg and Abbasi was based on the assumption they would provide a straight-forward conviction: both spoke English and had supposedly confessed to involvement with al Qaeda (confessions claimed by their lawyers to be false and obtained under coercion). The listing of Begg and Abbasi for trial unleashed a wave of public dissent in the UK from previously silent or reluctant family members, parliamentarians and other political elites. The nomination of the two Britons acted as a watershed event in turning public opinion similar to the rash of 1793 captures of 10 US merchant ships by Algiers. The media reported that Blair was "facing the most serious crisis in his relations with George Bush" after his own ministers had criticized the US President in Parliament, with one expressing "strong reservations about the military commission." More than 200 MPs signed a Commons motion calling for the Britons at Guantánamo Bay to be given a fair trial.²⁹

Once under such scrutiny at home, the British government commenced negotiations with the US over the military commission rules, with President Bush agreeing to suspend the cases against Begg and Abbasi as the UK Attorney-General, Lord Peter Goldsmith, began high level talks with American officials. Meanwhile, in October 2003, the ICRC, which had

²⁹ United States Department of Defense, 'President Determines Enemy Combatants Subject to his Military Order' (News Release, No 485-03, 3 July 2003) <<http://www.defense.gov/releases/release.aspx?releaseid=5511>>; "Leading Article – Brought to Injustice – Britain Must Challenge US Lawlessness," *The Guardian*, July 9, 2003, 23; Leigh Sales, *Detainee 002: The Case of David Hicks* (Melbourne: Melbourne University Press, 2007), 83, 88; Richard Lutz, "With Bated Breath – For the Families of the Britons Being Held in Camp Delta, the Last Two Years Have..." *The Guardian*, August 25, 2003, 4; Nicholas Watt and Vikram Dodd, "MP's Fury at Secret US Trials of 'Terror' Britons – Minister Passes Commons Protest to Americans," *The Guardian*, July 8, 2003, 2; Branigan and Dodd, "The Bitterest Betrayal," *The Guardian*, July 19, 2003, 25; United Kingdom, *Parliamentary Debates*, House of Commons, 7 July 2003, CDVIII, col 752 (Michael Moore); United Kingdom, *Parliamentary Debates*, House of Commons, 7 July 2003, CDVIII, col 754 (Gerant Davies).

been visiting Guantánamo Bay since January 2002, broke with its traditional public silence and described as intolerable the fact that Guantánamo Bay was being used as “an investigation center, not a detention center.” In a clear signal of the high level of consternation felt by British parliamentarians over Guantánamo Bay, 175 members of both houses of the UK Parliament filed an *amicus curiae* brief (a submission made as “friend of the court”) in support of the petitioners in the US Supreme Court case, *Rasul v Bush*. This was the first time UK parliamentarians had ever made such a submission to the US Supreme Court, and was signed by peers and members from all political parties. It serves as a powerful illustration of the cumulative effect of political mobilization converging with the opportunity provided by the detainees’ trial.³⁰

In February 2004, the British Foreign Minister Jack Straw announced Goldsmith’s negotiations had reached a stalemate.” Straw also announced the UK and US had agreed on the repatriation of five of the nine British citizens. Adding to the global concern surrounding Guantánamo Bay were two further events in 2004: the revelations of Abu Ghraib torture allegations against the US military, and the landmark *Rasul v Bush* ruling which dealt a legal and moral blow to the Bush Administration’s Guantánamo detention regime. In June 2004, Goldsmith announced the US military commissions did not offer “sufficient guarantees of a fair trial in accordance with international standards.” Blair asked the US for the remaining four British citizens, including Abbasi and Begg, to be sent home.³¹

³⁰ Nicholas Watt, “Bush Aids Blair by Halting Trial of Britons in Guantánamo Bay,” *The Guardian*, July 19, 2003; Neil A Lewis, “Red Cross Criticizes Indefinite Detention in Guantánamo Bay,” *The New York Times*, October 10, 2003 <<http://www.nytimes.com/2003/10/10/us/red-cross-criticizes-indefinite-detention-in-guantanamo-bay.html>>; Ahmed and Others, “Brief of 175 Members of Both Houses of the Parliament of the United Kingdom of Great Britain and Northern Ireland as Amici Curiae in Support of Petitioners,” Submission in *Shafiq Rasul et al. v George W Bush et al.*, Nos. 03-343, 03-334, 14 January 2004; Clare Dyer, “MPs and Peers in Camp Delta Plea,” *The Guardian*, January 10, 2004, 2.

³¹ BBC News, “Straw’s Statement in Full”, *BBC*, 19 February 2004 <http://news.bbc.co.uk/2/hi/uk_news/politics/3504501.stm>; Tania Branigan, Steven Morris, Vikram Dodd, Julian Borger, “Guantánamo Britons Emerge from their Legal Purgatory – Five Likely to Walk Free, But Others Face Trial,” *The Guardian*, February 20, 2004 <<http://www.theguardian.com/world/2004/feb/20/terrorism.guantanamo2>>; CBS, “Abuse of Iraqi POWs By GIs Probes,” *60 Minutes II*, 28 April 2004 (Rebecca Leung) <www.cbsnews.com/stories/2004/04/27/60II/main614063.shtml?tag=contentMain;contentBody> and Philippe

The different government reactions in the Barbary and Guantánamo cases reflect the moments when their respective civil society campaigns were felt most acutely in the political sphere. These moments were a consequence of the timing of key political opportunities. Closed political opportunities conspired against detainees in the Barbary case. A young American nation-state initially lacked the tax revenue to pay ransom and treaty costs; the government continued to believe it could negotiate for unrealistic terms; and the number of captives was minimal until the eighth year of the crisis when their number grew tenfold. In the Guantánamo case, on the other hand, openings presented early and were successfully exploited by detainees and their campaigners, including, most dramatically, the growing disquiet over Blair's Iraq policy, and the listing of Abbasi and Begg by the Pentagon for trial by military commission.

Conclusion

To understand political outcomes in cases of international detention – and why some states respond sooner to their citizens' plights than others – we must pay attention to the priming effect of the detainees' campaigns on domestic politics and the public sphere. Our study shows, however, that — on their own — these campaigns were not sufficient to secure the release of the captives and detainees in either of our case studies. The mobilization of sophisticated and sustained civil society campaigns were a precondition, not the sole cause, of the detainees' release. In each case a timely political crisis provided an opportunity and tipping point for the established campaigns to exploit. This finding, that across time and space there remains a consistent pattern for freeing citizens detained abroad, provides new lessons for practitioners and new avenues of research for scholars in the fields of political

Sands, *Lawless World* (New York: Penguin Books, 2005), 172; BBC News, "Lord Goldsmith's Speech in Full," *BBC*, 25 June 2004 <http://news.bbc.co.uk/2/hi/uk_news/politics/3839153.stm>; Vikram Dodd, "Blair Makes Secret Plea to Bush on Guantánamo: Court Papers Reveal PM's Effort to Persuade US to Send Back Four British Prisoners," *The Guardian* (London), 26 June 2004 <<http://www.theguardian.com/politics/2004/jun/26/uk.usa>>.

mobilization and international detention. These lessons are particularly pertinent given the ongoing crises of foreigners routinely being held captive outside the scope of Western legal norms in North Africa, Somalia, the Middle East and Guantánamo Bay.