

Facing US Extraterritorial Pressure: American Troops in Foreign Courts during the Cold War

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The United States often applies its laws to conduct or persons in foreign countries. How do these countries respond to US extraterritorial pressure? This study examines a central case of extraterritoriality: the protection of US troops from criminal justice in troop-hosting countries. I argue that greater security dependence on the United States brings hosts to comply with US pressure—when such compliance receives limited public attention. This argument is tested through a microlevel analysis of host countries' treatment of US personnel who committed criminal offenses during the Cold War (1954–70). The results suggest that in countries dependent on US-provided security, American troops were less likely to face trial. Yet if troops indeed stood trial, the host's dependence on the United States did not bias verdicts or sentences, since those were public. The data also show that the involvement of US troops in crime was far greater than previously known.

One of the striking features of post-World War II American hegemony has been the permanent stationing abroad of an enormous number of military bases and troops. Overseas US bases perform a variety of strategic and geopolitical roles: from deterring aggression and strengthening alliances to providing global logistics networks and facilitating smooth resource flows, from supplying intelligence to creating a stable environment that encourages trade and investment (Gresh 2015; Posen 2003). Yet, the American troops performing these missions sometimes commit crimes against local citizens in base-hosting countries. The United States' long-standing goal, since the early days of the Cold War, has been to shield its troops from local criminal proceedings in host countries, as those might be unfair or inconsistent with US legal standards (International Security Advisory Board 2015). Instead, the United States has sought to bring as many such criminal cases as possible under US extraterritorial jurisdiction. For host countries, this American policy has constituted an infringement of their legal sovereignty that could result in impunity for crime. To what extent have hosts accommodated the American wish to protect troops from local criminal responsibility? Consider the following figures, based on data collected

for this study. Between 1954 and 1970, at the height of the Cold War, foreign legal authorities filed 361,487 criminal cases against US personnel—primarily American troops, as well as civilian employees of the military and dependents. Of this total, only 121,717 criminal cases (one-third) reached trial before host country courts, with the rate of prosecution varying significantly across host countries: some hosts prosecuted the majority of alleged US offenders, while others prosecuted few. How can we explain this variation? Furthermore, why is it that the vast majority of Americans on trial were ultimately convicted, with a smaller variation in conviction rates across host countries?

By answering these questions, I shed light on the politics of extraterritoriality, which has attracted growing scholarly attention (Hock 2020; Kaczmarek and Newman 2011; Putnam 2016; Raustiala 2009). Extraterritoriality means the application of a country's laws to conduct or persons outside the country's borders. While many countries occasionally apply their laws extraterritorially, the United States has done so far more consistently and extensively, taking advantage of its hegemonic status. US authorities have sought to apply US laws—rather than local laws—to American troops who committed crimes in foreign countries; they have also applied American

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regulatory statutes or criminal prohibitions to foreign actors or to conduct abroad. While existing research has identified patterns in the American use of extraterritoriality (Putnam 2016; Raustiala 2009), we know little about the response of those countries who find their sovereignty violated by the intrusion of US laws. When do they acquiesce to the American exercise of legal authority over their territory or citizens, and when do they resist it (Suda 2013)? Answering this question carries broad implications, since conflicts over jurisdiction occur frequently in the era of globalization. As legal cases increasingly involve cross-border interaction, they may come under the purview of multiple legal systems, requiring each system to make a choice: Should we exercise our legal authority over the case, or should we accept the exercise of jurisdiction by another country (Efrat and Newman 2016, 2020; Efrat and Tomasina 2018)?

This study examines how countries hosting American troops made this choice in the face of American extraterritorial pressure: Did hosts hold US offenders legally responsible before their courts, or did they allow troops to escape local criminal responsibility, as the United States wanted? The jurisdiction over American troops abroad is a case of much substantive importance, since military deployments overseas have been central to the US policy of deterrence and to the maintenance of the international liberal order (Allen et al. 2020, 326). The case of US troops abroad also allows us to examine how US extraterritoriality played out in a large and diverse set of countries over a significant period of time. Furthermore, by examining the legal treatment of US troops by host countries, this essay contributes to a growing body of literature on base politics—the politics of overseas US bases. This literature generally shows that an American military presence generates significant contestation in the domestic arena of host countries. Many local communities have come to see the American bases not as a source of security, but as an inconvenience, a nuisance, or worse: as a source of insecurity and threat. As a result, the status, terms, and effects of US deployment regularly spark controversy in host countries, sometimes leading to popular protests (Calder 2007; Gresh 2015; Kawato 2015; Yeo 2011). The analysis here offers a novel perspective on base politics by focusing on the legal arena and examining how hosts' domestic pressures interact with US extraterritorial pressure.

In this interaction, I argue, greater dependence on the United States for security will lead hosts to yield to US pressure—as long as this can be kept hidden from the public so as not to provoke domestic anger. Decisions not to prosecute US personnel are not generally visible to the public, and here we would expect hosts to more easily cede jurisdiction to the United States. But if a local trial is held, its outcomes—the

verdict and the punishment—are publicly known, and this constrains hosts from treating US personnel leniently, as the United States would have liked.

These expectations are examined empirically by looking at how legal systems in 44 host countries worldwide treated US personnel who committed criminal offenses during the early period of the American deployment overseas: 1954–70.¹ The US military and the Department of Defense (DoD) collected detailed data on such treatment—from the count of troops involved in criminal offenses in each country through the number of trials held and their outcomes—and these data are examined here. I find that US personnel are less likely to stand trial before host country courts where the host relies more heavily on the United States for security. By contrast, dependence on US-provided security seems not to affect the rate of acquittals of US personnel or the rate of prison sentences imposed on them. The public visibility of the acquittal and sentencing decisions blunts the impact of US pressure.

This study offers several contributions. Crimes committed by US troops overseas have long been the subject of anecdotes with little hard data. This is the first study to present fine-grained, systematic data on crimes committed by American troops during the Cold War. These data suggest that the problem was much greater in magnitude and severity than previously known. By analyzing how host countries dealt with these crimes, we gain insight into an essential and highly controversial feature of US global military presence: the desire to evade local criminal responsibility for alleged offenders. Furthermore, this study is among the first to offer fine-grained statistical evidence of the impact of US military presence on domestic institutions in foreign countries, resulting in a more nuanced understanding of US overseas basing. Finally, we get an intimate look at states' response to US extraterritoriality and their attempts to balance domestic and international pressures in the legal arena. States, it turns out, are willing to limit their legal sovereignty and accept the application of US laws, as long as they avoid paying a domestic political price.

FOREIGN CRIMINAL JURISDICTION OVER US PERSONNEL: AN OVERVIEW

A sovereign state typically possesses exclusive jurisdiction to punish offenses against its laws within its borders—and such territorial jurisdiction extends to foreigners. An important

1. I employ the broad term “US personnel,” rather than “troops” because the data analyzed also include offenses committed by civilian employees of the US military or dependents. Yet, in the vast majority of cases—more than 90%—the offenders were troops.

exception to this rule concerns foreign military forces present on one's territory. Prior to 1945, visiting military forces enjoyed sovereign immunity under "the law of the flag." Under this doctrine, a military force operating on foreign soil is not subject to the territorial sovereign. Rather, it exercises exclusive jurisdiction over its members (Egan 2006, 295; Erickson 1994, 138).

Law-of-the-flag theory began to crumble following World War II. Both a growing sense of national sovereignty and pride in countries hosting US forces and the open-ended duration of the American presence, made it difficult for the United States to keep insisting that its troops abroad be subject exclusively to its criminal jurisdiction (Egan 2006, 297; Raustiala 2009, 139). The North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA), signed in 1951 by the United States and its NATO allies, marked the American recognition of the need to relinquish some jurisdictional authority over US troops. At the same time, the NATO SOFA, and SOFAs signed with other countries, sought to minimize the exposure of US troops to foreign jurisdiction and to prevent US military personnel from being subject to unfair criminal or civil justice systems. This was seen as important not only for US service members themselves, but also because US willingness to deploy forces abroad—and public support for such deployments—could decline significantly if US personnel were at risk of being tried or punished by legal systems that depart fundamentally from basic US concepts of legal fairness (Cha 2010, 501; International Security Advisory Board 2015, 12–13; Levie 1958).

The NATO SOFA reflects this logic in its key provision, Article VII, which allocates criminal jurisdiction over US personnel between host countries and the United States (referred to as the "sending State" in the agreement) and thereby establishes US extraterritorial jurisdiction. Article VII places certain criminal cases under the exclusive jurisdiction of the United States or the exclusive jurisdiction of the host country. When the act in question comes within the criminal or disciplinary jurisdiction of the United States, as well as the criminal jurisdiction of the host country ("concurrent jurisdiction"), either the United States or the host country will hold the primary right to exercise jurisdiction—that is, the right to prosecute first—depending on the nature of the alleged crime. The United States has primary jurisdiction over offenses against its property or security or where the perpetrator and victim are both citizens of the United States (e.g., an offense committed by a US service member against another service member). The United States also enjoys primary jurisdiction over acts or omissions done in the performance of official duty. In all other cases—and these are the majority of cases in the period considered here—the host country holds the primary right to exercise jurisdiction. Practically speaking, these are offenses that are civilian in nature and committed while off

duty, ranging from traffic offenses to bar fights to rape and murder. Yet, Article VII also establishes the option of waiving the primary right to exercise jurisdiction in concurrent cases. The state holding the primary right in a specific case must give "sympathetic consideration" to a request from the other state for a waiver of its right if the other state considers such waiver to be particularly important (Egan 2006, 299–302). In practice, the United States considers every case in which an American troop may be tried by a foreign court to be of particular importance and typically requests a waiver in cases of concurrent jurisdiction (Cooley 2008, 44). The persistent goal of US authorities has been to secure extraterritorial jurisdiction over as many criminal cases involving American troops as possible and to evade local criminal responsibility for alleged offenders (Lepper 1994, 179). The following section theorizes host countries' response to the American pressure.

THE HOST COUNTRY'S CONUNDRUM: BALANCING US AND DOMESTIC PRESSURES

How might a host country treat offending US troops, given the American preference for exercising extraterritorial jurisdiction over them? The interaction between the host country and US military authorities takes the shape of a two-level game. At the international level, host country officials interact with US representatives. At the domestic level, host country officials seek to maximize their own political gains and maintain their office (Calder 2007, 67; Cooley 2008, 10; Kawato 2015, 7; Yeo 2011, 2). Domestic calculations thus figure into the hosts' international interaction with the United States: host countries will seek to manage their relations with US authorities in a manner that will satisfy domestic constituencies or, at least, avoid significant domestic costs.

Let us begin from the international-level calculations. Here, the host government's attitude toward US military presence reflects the benefits it derives from that presence. The most crucial benefit that the host country expects is security. The deployment of American troops should make the host country more secure, allowing it to reduce its own defense efforts (Allen, VanDusky-Allen, and Flynn 2016; Lake 2009, 143; Martinez Machain and Morgan 2013). If the host country is an ally of the United States, a US military presence can reinforce the alliance and enhance its credibility: stationing troops in the host country signals US resolve to fight alongside its ally. If deterrence fails, the prepositioning of US troops and equipment in the host country can facilitate and speed up the response to aggression. Yet, reaping these benefits of US military presence comes at a cost. It requires the host government to maintain good relations with American military authorities by ceding its jurisdiction over offending troops and allowing US extraterritorial jurisdiction. We expect that the host

government's willingness to make such a concession will vary with the importance of the security that the United States provides (Cooley 2008, 13; Gresh 2015; Lake 2009, 169–72). The greater the importance of US-provided security for the country and the greater the benefits it provides, the stronger the willingness of the host government to give up its own jurisdiction in favor of the United States.

At the same time, the anticipated domestic response might mitigate the host government's willingness to yield to US authorities. US military presence in host countries has been a constant source of controversy and contestation. Some host country citizens see long-term foreign military presence as an infringement of national sovereignty. Other citizens and groups have questioned whether the US presence indeed contributes to the security of their community or country. Some fear that US military bases might provoke other countries and become targets of external attack, thereby creating, rather than preventing, tensions and conflicts. Others go further, suggesting that US bases themselves are the source of insecurity and threat to adjacent communities. By-products of the American presence include military aircraft accidents, car accidents involving US personnel, noise and environmental pollution, criminal offenses committed by US troops, demand for prostitution, and the risks arising from the transit and storage of nuclear weapons (Calder 2007, 84; Hohn and Moon 2010).

Crimes committed by US troops—and their handling by local authorities—are particularly likely to trigger a domestic backlash. First, at the symbolic level, criminal jurisdiction is tightly bound with sovereignty (Gioia 2006, 1096). Prosecuting and punishing individuals who committed offenses on the national territory are duties and prerogatives of the sovereign. By failing to discharge its responsibility to punish offenders, the host government might be seen as giving up a part of its sovereignty. Second, criminal offenses of US troops cause direct, tangible harm to the host community. Whether this harm involves the loss of life, bodily damage, or damage to property, it leads host communities to view US troops not as defenders against a threat, but as a threat in themselves. By failing to act against this threat and refusing to hold US troops accountable, the host's institutions might appear weak and subservient to the United States. They could be seen as complicit in allowing US offenders to escape the law (International Security Advisory Board 2015, 17; McConnell 2006, 171). Third, criminal cases that do not satisfy the local demand for justice might trigger public outrage and protest. Protests might follow serious offenses, such as the rape of a Japanese schoolgirl by three US servicemen in 1995 (Angst 2001) or the accidental killing of two South Korean schoolgirls by two soldiers driving an armored vehicle in 2002 (Kirk 2002). However, even minor incidents might whip up resentment and anger against US

presence (McConnell 2006, 166). Such concerns about a domestic backlash could mitigate the host's incentives to comply with US wishes regarding the treatment of offending troops. Seeking to ensure their own political survival and to maintain public support for US presence (Kawato 2015), host governments will attempt to save face and avoid the appearance of bowing to US pressure.

How does the government reconcile the conflicting incentives? When will it comply with the American wish for extraterritoriality and when will it exercise its own criminal justice authority over American troops? The answer may hinge on the public visibility of the matter. As the literature on crisis diplomacy has shown, secrecy insulates leaders from domestic political pressures and makes it easier for them to make concessions to the opponent and strike a bargain (Brown and Marcum 2011; Carson 2016). Similarly, host country institutions are more likely to conform to US extraterritorial pressure when such behavior receives little media or public attention. When the matter is outside the public view, the domestic political cost of complying with US wishes is lower. By contrast, the host's institutions are more likely to assert their legal authority on issues with a high public visibility, since publicly yielding to the United States would attract criticism and make the government appear weak.

Let us examine how publicity, and with it the response to US extraterritorial pressure, vary across the three stages of the criminal justice process: the decision to hold a trial for the alleged American offender, the verdict (acquittal or conviction), and the sentence. Once an American is charged with a crime, host country authorities must decide whether to prosecute that person. The host country might choose not to go ahead with a trial and, instead, release the alleged offender to US authorities. This is, of course, the most desirable outcome from the American point of view, and it would directly satisfy the preference for US extraterritorial jurisdiction. Host country authorities may reach this outcome by waiving their jurisdiction pursuant to an official waiver request from the United States or by dismissing the case and handing over the offender without a formal request. Concerns about domestic criticism are unlikely to affect the host's calculations at this stage. In most cases, the decision about prosecution is made before the matter attracts public attention. While major criminal cases might receive pretrial publicity (Ruva, Guenther, and Yarbrough 2011), most cases come into public view only at the trial, and this leaves significant maneuvering room in decisions about prosecution—including the decision to drop the case in line with US wishes (Davis 2009). This means that decisions on the holding of a trial are susceptible to US pressure, especially when the host is more dependent on the United States for security. The greater that dependence, the more likely the host is to

avoid a trial for the alleged American offender—while still being able to save face, given the nonpublic nature of the decision.

H1. US personnel are less likely to stand trial for criminal offenses where the host country relies more heavily on the United States for security.

Can US extraterritorial pressure also shape the outcomes of trials, if hosts hold them? A criminal trial results in two possible outcomes: the decision to acquit or convict the defendant and, in case of a conviction, the sentence. The United States naturally prefers acquittals and no prison sentence for US service members (Cha 2010, 501). While such outcomes fall short of completely shielding American troops from local criminal justice, they substantially blunt its impact. The main purpose of extraterritoriality—protecting American troops from unfair or harsh foreign justice—is de facto achieved if locally prosecuted troops are acquitted or if they receive a light sentence. If US extraterritorial pressure does influence trial outcomes, we would expect more acquittals of US personnel and fewer prison sentences as the host's dependence on US-provided security increases. However, it may be difficult for host countries to satisfy the American preferences while saving face before domestic audiences. Once an American stands trial, the matter comes into public view and its outcome is for all to see. Acquittals of American troops will likely become widely known, perhaps triggering criticism and protest (Kim 2003). The same applies to light sentences without prison time following a conviction. The public might consider both outcomes as a failure to hold American troops accountable and a sign of surrender to the United States. Host countries may thus be less susceptible to US pressure when it comes to trial outcomes for fear of triggering an angry domestic response. Dependence on the United States for security would not affect verdicts or sentences.

H2a. US troops are more likely to be acquitted where the host country relies more heavily on the United States for security.

H2b. The likelihood of US troops being acquitted is unrelated to the host's dependence on the United States for security.

H3a. US troops are less likely to receive a prison sentence where the host country relies more heavily on the United States for security.

H3b. The likelihood of US troops receiving prison sentences is unrelated to the host's dependence on the United States for security.

US PERSONNEL BEFORE HOST COUNTRIES' LEGAL SYSTEMS: DESCRIPTIVE EVIDENCE

The US Senate ratified the NATO SOFA in 1953, but concerns about the treatment of US troops by foreign legal systems lingered. In 1955, the Senate Committee on Armed Services established a Subcommittee to Review Operation of Article VII of the NATO Status of Forces Treaty (hereafter NATO SOFA subcommittee). In fact, the subcommittee's mandate extended beyond the NATO SOFA to include arrangements with other countries regarding criminal jurisdiction over US troops. When the committee began its work, the United States had some type of jurisdictional arrangement with roughly 60 countries, although the NATO countries were the principal ones, given the massive US presence in Europe. The subcommittee's task was to review the operation of criminal jurisdictional arrangements with foreign countries and the effect of such arrangements on the morale and efficiency of American troops. The review was based on statistical information provided to the subcommittee annually by the DoD and the army judge advocate general, the latter being tasked with compiling reports on foreign jurisdictional arrangements over American troops in all the services.² The data provided cover the period 1954–70, and they appear in the subcommittee's annual reports and in hearings before the subcommittee (see the online app. for details).

Figure 1 provides an overall picture of the exercise of foreign criminal jurisdiction over US personnel worldwide for the period 1954–70: the span during which Congress received annual reporting from the DoD and the army. The data cover NATO countries and other host countries where US personnel were charged with criminal offenses: from Japan and the Philippines through Morocco to Mexico.

Overall, during the period examined here, a total of 361,487 criminal cases involving US personnel, both military and civilian, came under the primary or exclusive jurisdiction of host countries. The vast majority of cases—more than 90%—were charged against military personnel. Some of the charges against military personnel were subject to hosts' exclusive foreign jurisdiction, since they involved only violations of local law. All such cases, in principle, should have been tried in host-country courts, but in some cases, local legal authorities released the alleged offenders to US military authorities for administrative or other appropriate disposition. Most military cases, however, were concurrent-jurisdiction offenses involving alleged violations of both US military law and host country law, over which the host had the primary right to exercise jurisdiction. In

2. *Operation of Article VII, NATO Status of Forces Treaty [Senate report]*, 84th Cong. 1 (1955).

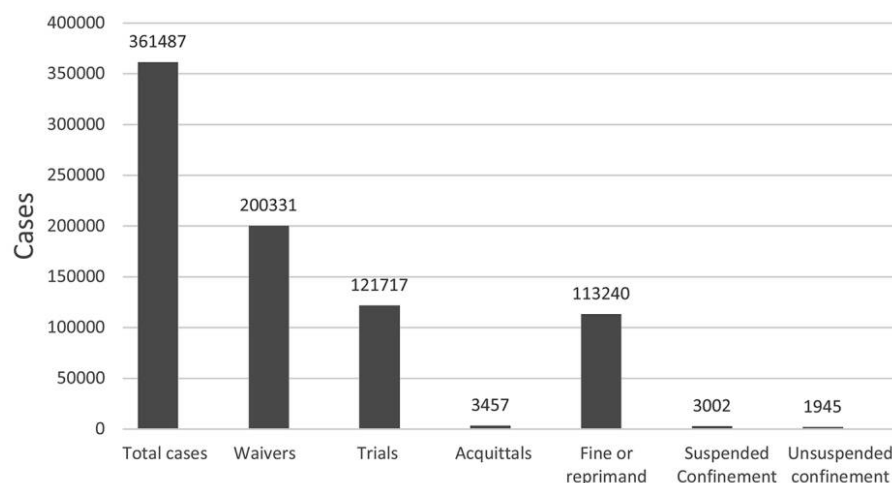


Figure 1. Exercise of criminal jurisdiction by host country courts over US personnel worldwide, 1954–70

those cases, US military authorities did their utmost to secure waivers from the host's jurisdiction and avoid trials before local courts. Over the period 1954–70, 200,331 waivers were obtained. In other words, foreign authorities agreed to waive their jurisdiction in the majority of concurrent-jurisdiction cases. For example, in 1968, 16,977 waivers were obtained in 20,341 cases of concurrent jurisdiction, a waiver rate of 83.5%.

During the period 1954–70, host country courts held 121,717 trials of US personnel (33.7% of all cases). Only 3,457 of these trials—slightly less than 3%—resulted in acquittals. This means that the vast majority of US personnel who stood trial in foreign courts were convicted. Yet those convicted typically received a light punishment. Of all the trials, 113,240 (93%) ended only with a fine or reprimand (typically, a fine). Three thousand and two received a suspended sentence to confinement; 1,945 individuals (1.6% of all trials) received an unsuspended sentence to confinement—that is, they were actually sent to prison. Figures 2 and 3 break down the criminal cases involving US personnel by the type of offense.

During the period 1959–70, US personnel were charged with 301,806 offenses.³ The majority of offenses were minor (fig. 2): first and foremost, traffic offenses, as well as simple assault, violation of economic control law (e.g., bringing cigarettes into the country, contrary to local regulations), and disorderly conduct. Yet, as figure 3 shows, US personnel were also charged with 24,878 serious offenses (8.2% of all offenses): murder (199 cases), rape (2,107 cases), manslaughter (1,946 cases), arson, robbery and larceny, burglary, forgery, and aggravated assault.

3. In the data provided to the NATO SOFA subcommittee, the breakdown of offenses by type appears starting in 1959.

The outcome of greatest concern for US authorities was an American behind bars in a foreign prison. The data provided by DoD and the army tracked this outcome closely. During the period 1955–70, host country courts meted out 1,868 sentences of unsuspended confinement for US personnel. Figure 4 breaks them down by length. Of these sentences, 1,124 (60%) were for a short period of less than a year; 121 sentences (6.5%) were longer than five years.

Figure 5 shows the number of US personnel in posttrial confinement in foreign prisons as of November 30 of each year during the period 1955–70. The number of American prisoners ranged from a low of 36 in 1962 to a high of 114 in 1969 and 1970, with the mean at 78. This is, of course, a small number compared with the total number of US troops abroad. During 1955–70, US deployment overseas averaged 747,907 troops (Kane 2004). Yet even a few dozen American troops locked up in foreign prisons were of great significance and concern for US authorities.⁴

EMPIRICAL ANALYSIS: DATA AND METHOD

The data provided to the Senate by the DoD and the army break down the legal treatment of US personnel by host country for the period 1954–70. Included here are 44 host countries in which US personnel were charged with crime. From these data come our three dependent variables: the annual number of criminal trials of US personnel in the host country, the annual number of trials that resulted in the acquittal of US personnel, and the annual number of US

4. See, e.g., DoD Directive 5510.4, "Treatment and Disposition of United States Military Personnel Confined in Foreign Penal Institutions" (October 19, 1954).

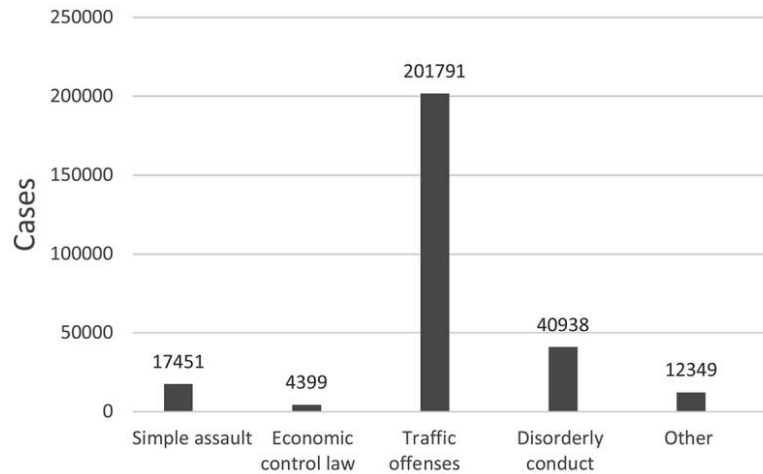


Figure 2. Minor criminal cases involving US personnel worldwide, 1959-70

personnel who received unsuspended sentences to confinement (that is, were sent to prison).

This study measures the key independent variable—host countries’ dependence on US-provided security—through the indexes constructed by Lake (2009). Lake proposes two basic indexes. First, an index of military personnel: total active duty US military personnel stationed in each host country is divided by that country’s total population and normalized to 1 by the highest value in 1995. The greater the ratio of US troops to local population, the more dependent the host is on the United States for its security. A second index of independent alliances looks at the alliance partners of the host that are not also alliance partners of the United States. Independent alliances are *prima facie* evidence of foreign policy autonomy: the host is

not dependent on the United States or its allies for assistance (Lake 2009, 70). Lake then produces an aggregate index of security hierarchy by summing up the indexes of military personnel and independent alliances, normalized to 1 by the highest value in 1995. This aggregate hierarchy index captures the host’s dependence on US-provided security both through troop presence and alliances. We expect a negative association between security dependence and the number of trials of US offenders; by contrast, acquittals and prison sentences should not correlate with the extent of security dependence.

All models control for a country’s population and gross domestic product (GDP) per capita (Lake 2009). They also control for a country’s level of democracy using a binary classification of regimes as democracies or dictatorship (Cheibub,

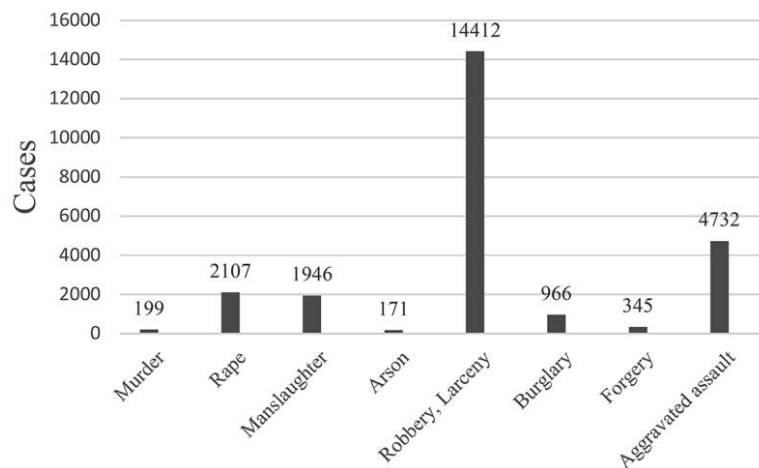


Figure 3. Serious criminal cases involving US personnel worldwide, 1959-70

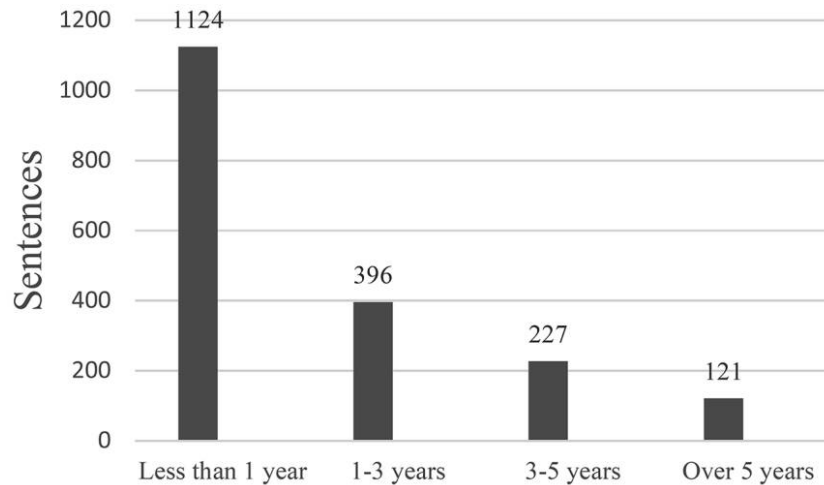


Figure 4. Unsuspended sentences to confinement imposed on US personnel by host country courts, 1955-70

Gandhi, and Vreeland 2010). Democracies and autocracies may exhibit different behavior toward US basing agreements (Cooley 2008). While democratic governments may come under public pressure to hold offending troops responsible, autocracies could enjoy greater maneuvering room in their treatment of US service members. In addition, democracies' commitment to the rule of law (Blum 2019, 749) could make it difficult for them to tolerate impunity for crime.

The local legal system's willingness to try, acquit, or imprison US personnel may also depend on the degree of judicial independence: an independent judiciary may find it easier to resist external pressures and to treat offending troops in accordance with the law. This analysis employs the measure of high-court independence from Varieties of Democracy

(V-Dem). This measure assesses the extent to which the high court in the judicial system, in salient cases, makes decisions that merely reflect government wishes regardless of its sincere view of the legal record (Coppedge et al. 2019). Beyond these standard controls, some of the models include additional controls.

In the models that examine the holding of trials for US personnel, I use a binary variable to indicate the nonexistence of a jurisdictional arrangement between the host country and the United States. In the period considered here, host countries fall into three groups: NATO allies whose jurisdiction over US troops is governed by the NATO SOFA; non-NATO countries where a jurisdictional arrangement with the United States exists; and countries with no jurisdictional arrangement (for

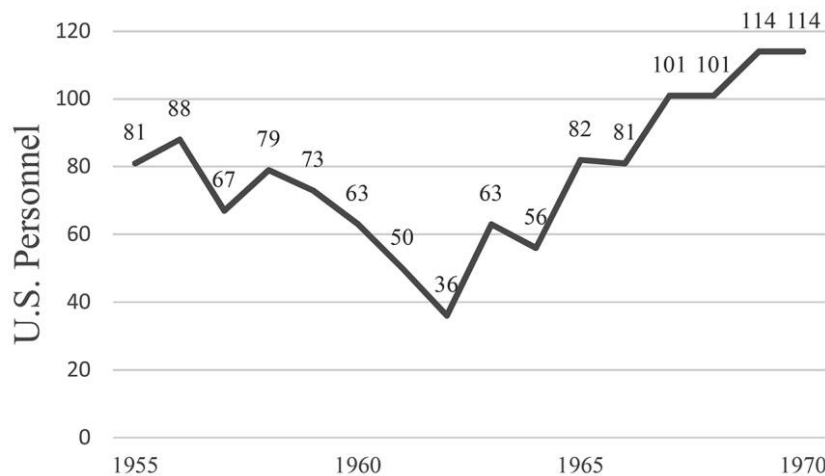


Figure 5. US personnel in posttrial confinement in host country prisons as of November 30 of each year, 1955-70

more information, see the reports of the NATO SOFA subcommittee, detailed in the app.). A jurisdictional arrangement allocates jurisdiction between the host country and the United States, outlining mandatory or discretionary cases in which the host would cede its jurisdiction over US troops. In the absence of a jurisdictional arrangement, without a commitment to give up legal authority, the host country should be able to exercise its jurisdiction and hold trials in more cases involving US personnel.

The legal outcomes examined here may be shaped by the legal tradition to which the host's legal system belongs, common law or civil law, as the two traditions differ in their criminal procedures (Bradley 1996). A binary variable indicates whether the legal system is based on the common law (La Porta, Lopez-de-Silanes, and Shleifer 2008). Another relevant domestic variable is veto players: institutional or partisan actors whose consent is required to change policy. Greater constraints on the host's policy making could make it harder to produce legal outcomes favorable to the United States (Henisz's Political Constraint Index). I also consider two security-related variables: the size of the host's military forces relative to the population (Lake 2009) and the host's threat environment: host countries facing greater external threat may be more lenient toward US troops that protect them from that threat (Allen, Flynn, and VanDusky-Allen 2017). See the appendix for full variable description and descriptive statistics.

Since the dependent variables are counts—of trials, acquittals, or prison sentences—our primary method of estimation involves a count model: mixed-effects negative binomial regression (that is, a regression that incorporates both fixed and random effects). The models include a random intercept for country and random slopes for the key independent variable: security dependence on the United States. In addition, I include robust standard errors. Yet the estimation must take into account the opportunity for the trials, verdicts, or sentences to happen. In modeling the number of trials, I consider the number of criminal cases involving US personnel subject to the host's jurisdiction: the cases from which trials may arise. Specifically, the models for local trials include the number of cases charged against US personnel as an exposure variable whose coefficient is constrained to equal one. This adjusts for the amount of opportunity for trials to occur. Similarly, in modeling acquittals or prison sentences, I include the number of trials held as the exposure variable, since trials are the opportunities for acquittals or prison sentences to occur. The negative binomial models report incidence rate ratios (IRR) to facilitate interpretation. An IRR between 0 and 1 represents a reduction in the expected rate, given a one-unit increase in the independent variable; values greater than 1 indicate an in-

crease in the expected rate. For example, an IRR of 0.75 means a decrease of 25% in the expected rate; an IRR of 1.25 means an increase of 25% in the expected rate.

Alternatively, I can operationalize the legal outcomes considered here as fractions ranging from 0 to 1: the rate of trials can be measured as the ratio of trials to criminal cases. For robustness, the analysis employs this alternative operationalization of the dependent variable using a linear mixed model—with both fixed and random effects—that also includes robust standard errors.

RESULTS

Table 1 examines whether dependence on US-provided security correlates with host countries' willingness to hold trials for American personnel in cases subject to their jurisdiction.

In model 1, security dependence negatively correlates with the number of trials (incidence rate ratio < 1). That is, greater dependence on US-provided security translates to fewer trials for US personnel, consistent with hypothesis 1. The substantive effect is large: a one-unit increase along this index reduces the expected rate of trials by 80%. To give a sense of this magnitude, raising security dependence from the 25th percentile to the 75th percentile, with all other variables held constant, reduces the expected rate of trials by 43%. Figure 6 visually demonstrates this impact: as hosts become more dependent on the United States for security, fewer troops stand trial.

Note that the discussion above relates to the average effect of security dependence, as estimated in the mixed-effect model. A chi-square test for variance of the random slope indicates that the slope varies significantly between host countries ($X^2(2) = 12.879, p = .002$). In other words, almost all countries yield a negative effect for this key variable, but it is stronger for some countries and weaker for others. See the appendix for further details on the variance of the slopes.

Model 1 further identifies jurisdictional arrangements as an important influence on the prosecution of US personnel. In the absence of an arrangement, the expected rate of trials of US personnel would more than double. Apparently, without an agreement officially allocating jurisdiction, the United States has less leverage over hosts' prosecutorial decisions. Note that the democracy variable is not statistically significant. This means that, compared with autocracies, democratic audiences or democratic norms do not generate greater pressure to prosecute US troops.

Model 2 examines whether NATO members and non-NATO members handle trials of US personnel differently. NATO countries tend to be closer to the United States in

Table 1. Correlates of Criminal Trials of US Personnel in Foreign Courts

	Negative Binomial				Linear Model 5
	Model 1	Model 2	Model 3	Model 4	
Security dependence on US	.197** (.138)	.184*** (.118)	.207** (.143)	.2** (.14)	-.296*** (.101)
Population	1.004 (.104)	1.005 (.105)	.959 (.103)	1.164 (.213)	-.035 (.039)
GDP per capita	1.632 (.544)	1.632 (.582)	1.728 (.588)	1.696 (.602)	.08 (.061)
Democracy	1.027 (.157)	1.027 (.159)	.931 (.142)	.956 (.123)	-.053 (.065)
Judicial independence	1.106 (.205)	1.104 (.198)	1.064 (.199)	1.144 (.215)	.043 (.045)
No jurisdictional arrangement	2.342*** (.485)	2.346*** (.491)	2.35*** (.472)	2.016** (.568)	.264*** (.083)
NATO member		.987 (.537)			
NATO × Security dependence		1.162 (1.334)			
Veto players			1.678* (.515)		
Common law			1.275 (.444)		
Host's military personnel				.656** (.066)	
Threat environment				.427 (.263)	
Observations	394	394	388	353	394
No. of countries	44	44	42	43	44

Note. GDP = gross domestic product; NATO = North Atlantic Treaty Organization. Models 1–4 are mixed-effects negative binomial regressions with the number of criminal cases as an exposure variable. Incidence rate ratios are reported. Model 5 is a linear mixed model. Dependent variable is the ratio of trials to cases. Robust standard errors in parentheses. Constants are suppressed.

* $p < .1$.

** $p < .05$.

*** $p < .01$.

military and economic capabilities than most other host countries, and their relationship with the United States is more balanced (Allen et al. 2016, 2017). This may allow NATO members to resist US extraterritorial pressure. To identify the NATO impact, this model includes a binary variable indicating NATO membership, as well as an interaction between the NATO and security-dependence variables. With this addition, security dependence remains negative and statistically significant, yet the NATO-membership variable and the interaction term are not statistically significant. In other words, NATO countries do not handle trials of US personnel in a markedly different way from non-NATO members. When it comes to the legal fate of offending troops—a matter of much concern for the United States—NATO

countries respond to US pressure like other hosts, despite their relatively balanced relationship with the United States.

Model 3 examines the impact of veto players on the holding of trials of US personnel, using Henisz's Political Constraint Index. This measure is positive and statistically significant: the stronger the influence of veto players and the greater the constraints on the host's policy making, the more likely US service members are to stand trial for their offenses. In substantive terms, raising this index from the 25th percentile to the 75th percentile increases the expected rate of trials by 17%. This means that domestically constrained policy makers find it harder to change legal policy and relinquish jurisdiction over American troops. By contrast, the common law indicator is not statistically significant: common law systems

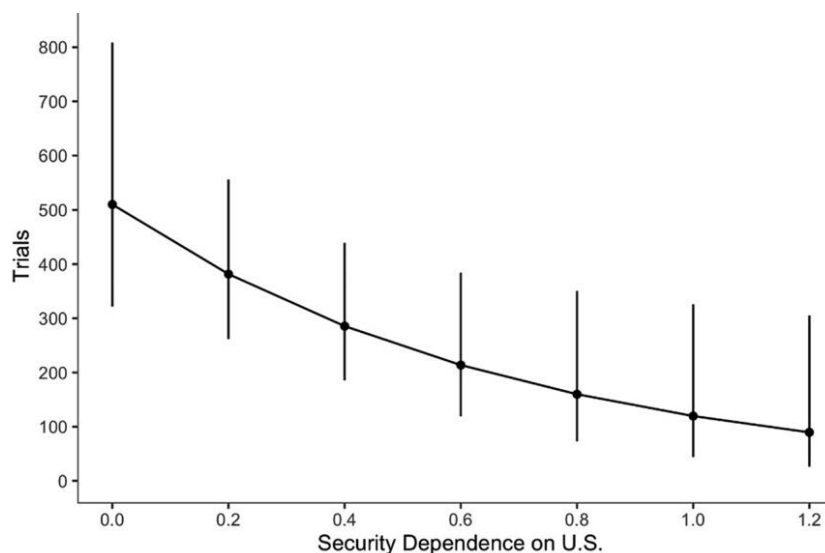


Figure 6. Expected trials of US personnel at different levels of security dependence on the United States, with 95% confidence intervals

do not differ from civil law systems in the rate of trials of US personnel.

Model 4 confirms the key result while reaching an interesting finding: hosts with a larger military force hold fewer trials of US personnel. Large militaries may constitute a powerful interest group against criminal accountability of their troops (Simmons and Danner 2010, 244), and they may extend their anti-accountability preference to American troops that help them protect the country. Raising the local military variable from the 25th percentile to the 75th percentile is associated with a 35% reduction in the rate of trials. By contrast, the host country's threat environment appears unrelated to the holding of trials.

Model 5 also increases our confidence in the key result. This model operationalizes the dependent variable not as a count of trials, but as a fraction: the ratio of trials to criminal cases. The results of a linear mixed-effects model show that this ratio negatively correlates with security dependence. In other words, as countries grow more dependent on US-provided security, fewer cases result in trials.

We now know that security dependence on the United States affects the decision to put US troops on trial. Table 2 examines whether such dependence also affects the outcomes of trials.

Consistent with hypothesis 2b, in model 6, dependence on US-provided security appears unrelated to the rate of acquittals of US personnel: the security-dependence indicator is not statistically significant. By contrast, GDP per capita negatively correlates with acquittals and does achieve statistical significance. Richer countries tend to acquit fewer troops; that is, they have a higher rate of convictions. This may reflect greater legal capacity: richer countries have the resources to collect the evidence and bring the witnesses necessary for the conviction

of a US service member. Democracy, in this model, negatively correlates with acquittals, consistent with our expectation for this control variable: democracies find it harder to tolerate impunity for crime, resulting in fewer acquittals and more convictions of US personnel. In a democracy, the rate of acquittals is 18% lower than in a nondemocracy. Similar to model 4, model 7 finds that a larger local military force is associated with a more lenient treatment of US personnel—in this case, more acquittals. By contrast, the host's legal tradition—common law or civil law—fails to demonstrate a significant effect on the rate of acquittals.

Consistent with hypothesis 3b, in model 8, dependence on US-provided security seems unrelated to the rate of prison sentences: the security-dependence indicator is not statistically significant. By contrast, legal tradition appears to carry significant influence. Common law countries send considerably fewer US personnel to prison compared with civil law countries; more precisely, the rate of imprisonment is 77% lower. This finding echoes the senators who opposed the ratification of the NATO SOFA during the US Senate debate over the agreement in 1953. Pointing to various differences between the civil law systems of Europe and the common law system of the United States, those senators argued that US troops would not enjoy a fair trial in European courts and might receive more severe punishments.⁵ That civil law countries sent more US troops to prison seems consistent with the senators' concerns. Notably, judicial independence also gains significance in this model in the expected direction: independent judiciaries

5. *Hearings before the [Senate] Committee on Foreign Relations on Agreements Relating to the Status of the North Atlantic Treaty Organization, Armed Forces, and Military Headquarters*, 83rd Cong. 1 (1953).

Table 2. Correlates of Acquittals and Sentences of Unsuspended Confinement for US Personnel

	Acquittals		Confinement	
	Model 6	Model 7	Model 8	Model 9
Security dependence on US	1.237 (.32)	1.464 (.969)	.426 (.289)	.544 (.221)
Population	.841 (.222)	.691* (.148)	.914 (.182)	.842 (.191)
GDP per capita	.267*** (.119)	.261*** (.088)	.744 (.396)	.915 (.538)
Democracy	.815* (.09)	.909 (.128)	1.073 (.35)	.645 (.199)
Judicial independence	.971 (.214)	.973 (.185)	1.467* (.295)	1.148 (.306)
Host's military personnel		1.832** (.492)		
Common law		.535 (.375)	.229** (.172)	
Veto players				7.663*** (5.348)
Threat environment				.43 (.554)
Observations	337	312	304	295
No. of countries	38	37	35	34

Note. GDP = gross domestic product. Mixed-effects negative binomial regressions with the number of trials as an exposure variable. Incidence rate ratios are reported. Robust standard errors in parentheses. Constants are suppressed.

* $p < .1$.

** $p < .05$.

*** $p < .01$.

are more likely to withstand political pressures and send US troops to prison.

In model 9, veto players positively correlate with the rate of prison sentences (as was the case with the rate of trials): greater influence of veto players makes it harder to change penal policy and raises the pressure to hold US troops accountable by sending them to prison. The substantive effect is large: raising veto players from the 25th percentile to the 75th percentile increases the rate of prison sentences by 83%. Whereas domestic veto players affect the rate of prison sentences, the external threat environment does not.

In summary, matching the theoretical expectations, dependence on US-provided security makes American troops less likely to stand trial before local courts. If they do stand trial, security dependence does not affect the outcomes—neither acquittals nor prison sentences appear related to the host's dependence on the United States. This likely results from the public nature of the verdict and the sentence, which makes them less amenable to US pressure. In addition, the analysis

revealed a set of factors (veto players, democracy, and judicial independence) that produce legal outcomes less favorable to the United States, whereas other factors (a larger local military force and a common law-based system) are more favorable to American troops.

US EXTRATERRITORIAL PRESSURE: MODERN-DAY EXAMPLES

This article suggests that governments more easily yield to US extraterritorial pressure when they can keep this under wraps. In public, by contrast, they tend to assert their own jurisdiction. This fundamental logic applies more broadly, beyond US troop deployments and beyond the Cold War era. Two contemporary examples demonstrate a similar pattern.

The first case concerns the network of secret detention facilities—"black sites"—that the Central Intelligence Agency (CIA) established and ran in several countries worldwide between 2001 and 2006 as part of the War on Terror. These facilities amounted to "extraterritorial prisons" where the

United States exercised its enforcement authority by detaining and interrogating terrorist suspects.⁶ The secret nature of the prisons allowed the host governments to cooperate with the United States while avoiding a domestic backlash (Constitution Project 2013, 163–64). Once these facilities were publicly revealed, host countries—including Poland, Lithuania, Romania, and Thailand—responded with a denial of their existence (CNN 2009; Hodal 2014; Singh 2013, 105, 111). One can see a similar attempt of public disassociation in the CIA’s program of extraordinary rendition: the abduction and extrajudicial transfer of suspects to foreign sites for purposes of detention and (abusive) interrogation. Countries involved in this program cooperated with secret renditions and allowed the CIA to conduct covert extraterritorial operations on their soil (Constitution Project 2013, 172–75; Cordell 2017). Yet once the practice of extraordinary rendition was exposed, the public uproar led some of those countries—including Canada, Sweden, and Germany—to hold inquiries of cases concerning their citizens or the use of their territory (Council of Europe 2007, 60–65; Huq 2006; Singh 2013, 86). Under public pressure, governments switched from cooperating with US extraterritorial action to denouncing it—echoing our finding with respect to the legal treatment of US troops.

Yet another example comes from a diplomatic incident between the US and British governments. On August 27, 2019, a British man named Harry Dunn was killed in a traffic accident about 60 miles northwest of London when his motorcycle collided with a car driving on the wrong side of the road. The driver of that car was Anne Sacoolas, the wife of a US government employee working at a US air force communications station in the United Kingdom. Sacoolas, supported by the US embassy in London, claimed diplomatic immunity. On September 16, 2019, with the knowledge of British authorities, she left the United Kingdom on her way back to the United States (Wintour 2020). That the UK government accepted a questionable claim of diplomatic immunity and acquiesced to Sacoolas’s departure amounts to the ceding of British jurisdiction over the case and impunity for the foreign offender—similar to the practice of jurisdictional waiver for offending US troops. This was politically possible, as UK authorities kept silent and the press was not informed of the case. “It is very hard to escape the conclusion that both British and American authorities wanted this story to go away quietly” (Waghorn 2019). The story finally received wide coverage in early October thanks to the efforts of Dunn’s family, and the resulting uproar forced the UK government to assert its jurisdiction

belatedly. Prime Minister Boris Johnson called on Sacoolas to return to Britain: “I do not think that it can be right to use the process of diplomatic immunity for this type of purpose, and I hope that Anne Sacoolas will come back and will engage properly with the processes of law as they are carried out in this country” (Magra and Landler 2019). In December, British authorities charged Sacoolas with causing death by dangerous driving, and the following month, they formally requested her extradition from the United States. On January 23, 2020, the State Department announced its rejection of the request (Peltier 2020). Overall, the episode demonstrates the fundamental logic this article lays out: relinquishment of local jurisdiction and acceptance of US extraterritorial jurisdiction outside the public eye, assertion of local jurisdiction when the matter becomes public.

CONCLUSION

This article carries important implications for our understanding of US military presence worldwide and the politics of extraterritoriality. Most directly, it sheds light on an overlooked aspect of American troop deployments: the involvement of US personnel in crime in countries hosting American bases. Previous accounts have focused on specific incidents or suggested that American troops fueled crime indirectly by providing demand for prostitution or drugs (e.g., Moon 1997; see Allen and Flynn 2013 for an overview of troops’ direct and indirect crime involvement). This study presents comprehensive and systematic crime data, credibly showing that, during the Cold War, crimes committed directly by American troops—from manslaughter and rape to robbery and assault—were a much more pervasive and extensive problem than previously known.

This article also contributes to our understanding of the politics of extraterritoriality by highlighting the tightrope that governments must walk when responding to US extraterritorial pressure. The desire for good relations with the United States and for maximizing the benefits of this relationship pushes governments to yield to the American pressure, yet domestic political considerations mitigate the incentive to yield and encourage governments to resist the US pressure. I suggest that governments more easily accept US extraterritoriality when it is hidden from view, while in public they will seek to assert their national legal sovereignty. The empirical patterns offer support for this argument. Host countries dependent on the United States for security could accept the US extraterritorial preference at the early stage of the legal process: they could decline to hold trials before cases came into public view. However, once cases became public at trial, their outcome was harder to manipulate to the US advantage.

These findings advance the literature on extraterritoriality in three ways. First, this literature tends to focus on the

6. *Extraordinary Rendition, Extraterritorial Detention and Treatment of Detainees: Hearing before the [Senate] Committee on Foreign Relations, 110th Cong. 1 (2007).*

American side of the equation: what brings the United States to apply its laws extraterritorially or avoid doing so (Dodge 2020; Parrish 2017; Putnam 2016; Raustiala 2009). This study looks at the countries facing US extraterritorial pressure and identifies the factors shaping their response. The analysis included a large number of countries from all regions of the world and thus presents a fuller picture than studies looking at a few countries within a specific region (e.g., Suda 2013). Second, this study explores how extraterritoriality plays out in the domestic political arena of target states. Previous work has already highlighted some spillover effects of extraterritorial cases that may alter the domestic political economy of regulation in the target (Kaczmarek and Newman 2011). The theoretical contribution of the current analysis is the focus on secrecy: the target government's response to US extraterritorial pressure may hinge on the ability to conceal its surrender of legal authority. Third, this study demonstrates that the response to extraterritorial pressure may vary across the different stages of the criminal justice process: prosecution, verdict, and sentence. Future work may wish to break down the legal process into its constituting parts rather than analyze it as a whole. Future research may also examine the generalizability of the findings to extraterritorial pressures that the United States applies in legal fields beyond criminal law. The area of antitrust, where the United States has long applied its rules to business conduct outside US territory, is a prime example (Griffin 1998; Knebel 2017).

The findings of this study fit nicely with the key insights of the literature on the politics of US bases. This literature emphasizes the contested nature of US overseas military presence and the American inability to control hosts. As Cooley (2008, 8–9) argues, “U.S. planners certainly try to influence base-related developments, but the historical record suggests that often they do not adequately apprehend or cannot exert influence over these internal political processes.” The current study indeed finds that US influence over host countries has limits: when it comes to the publicly visible parts of the legal process, dependence on US-provided security does not affect the treatment of troops. This study also identifies domestic political factors—especially veto players—that constrain policy making and make it harder for hosts to adopt a pro-US legal policy. At the same time, this study goes beyond the base politics literature, which offers a qualitative look at the political dynamic surrounding US bases (Calder 2007; Gresh 2015; Kawato 2015). The quantitative analysis of the current study provides a more precise and systematic assessment of US influence over host country institutions.

What has happened to US extraterritorial pressure over host countries? One might have expected the pressure to ease. Throughout the 1950s and 1960s, the US military annually

conveyed to Congress a positive evaluation of the arrangements with hosts: “Generally the criminal jurisdictional arrangements regarding United States troops abroad have operated satisfactorily and have not adversely affected during the reporting period the morale and discipline of our forces, nor have they had a detrimental effect on the accomplishment of our military missions in the various countries.”⁷ This satisfactory experience, and a growing familiarity with hosts' legal systems, should have perhaps increased the American willingness to subject troops to the hosts' jurisdiction. This, however, has not happened. To this day, in the majority of criminal cases involving troops, the United States secures jurisdiction by requesting a waiver. Furthermore, in concluding new SOFAs, US authorities aim for arrangements that go beyond the NATO SOFA model of jurisdiction that is shared between the United States and the host. Indeed, they would prefer to establish exclusive American jurisdiction over troops (Cooley 2008, 45; International Security Advisory Board 2015, 17–19). This may prove unacceptable to the host, but the key point is this: the United States continues to view foreign legal systems with suspicion and is adamant that US service members should not come under their jurisdiction (e.g., Stone 2006; Wexler 2008).

The persistent American attitude raises a host of questions for future research: How does the de facto immunity from local jurisdiction affect the conduct of US troops? How does it affect the host population's view of the American military presence? Will it be possible to maintain the long-standing US policy in an era of growing nationalism worldwide and an increasing reluctance to cede sovereignty (Snyder 2019)? The United States has already realized that “for a variety of reasons, other nations are less willing today than they were in the past to defer to U.S. wishes on status [of forces] issues” (International Security Advisory Board 2015, 48). That unwillingness to yield to US extraterritorial pressure may only intensify in an era that is seeing national pride and sovereignty on the rise.

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