

Remembering the British soldier in Iraq and Afghanistan

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On 28 June 2004, Private Gordon Gentle of the Royal Highland Fusiliers died when a roadside bomb exploded in Basra next to his Snatch Land Rover. He was only a few weeks out of basic training. His mother, Rose, spent the night before his funeral by his body in the bedroom of their Glasgow home.¹ Later that year Mrs Gentle established the campaign group Military Families Against the War, with Reginald Keys, the father of Lance Corporal Tom Keys, a member of the Royal Military Police killed by a mob in June 2003. They felt that Labour prime minister Tony Blair had taken Britain into Iraq against international law. There had been no weapons of mass destruction (WMD), as he had claimed. Bereaved families could never have the comfort of knowing their sons died in a just war. Gentle and Keys campaigned for a public inquiry into the decisions that led up to the war and Gentle also pursued an inquiry into the use of Snatch Land Rovers, which were deemed inadequate to protect troops against explosive devices. Their campaigning led ultimately to the government's agreement in 2009 to establish the Chilcot Inquiry to consider Britain's involvement in Iraq.

On 14 September 2003, Baha Mousa, a twenty-six-year-old hotel receptionist was arrested along with six other men in Basra and taken to a British military base. Mousa and nine other civilian detainees 'had their heads encased in sandbags and their wrists bound by plastic handcuffs and were kicked and punched with sustained cruelty'.² The next day, Mousa was dead on the floor of a latrine, a knee in his back and his throat possibly constricted by the rough hem of his hood. He had 93 injuries, including fractured ribs and a broken nose,

¹ Deborah Anderson, 'Grieving Mother of Glasgow Soldier will Fight to Stop Tony Blair Knighthood', *The Herald*.

² Andrew T. Williams, *A Very British Killing: The Death of Baha Mousa* (London: Jonathan Cape, 2013), p. 1.

and the pathologist flown from London to examine him judged he had died of 'positional asphyxia'.³ His father, Daoud Mousa, campaigned for a public inquiry into the circumstances of his death. Mousa's campaigning led to a court martial of four British soldiers in 2005 and a public inquiry in 2008.

On 14 July 2009, people lined the streets of Wootton Bassett in Wiltshire to pay their respects at the procession of eight hearses containing the bodies of soldiers killed in Helmand Province, in the deadliest twenty-four hours of the conflict in Afghanistan. Five of the dead were killed rescuing comrades from a roadside bomb when a second device exploded. Three of the men were eighteen years old. The brother of one of the soldiers pushed through the crowds at the roadside to tie a rose to the rack of his brother's carriage and hammered on the window, and the crowd started to clap.⁴

Two years later, on 15 September 2011, a Taliban fighter in Afghanistan, already wounded, probably fatally so, died as a Royal Marine shot him, turned to his men and said, 'I've just broken the Geneva Convention'. The action was caught on headcam, and in September 2013 Marine A was sentenced to life imprisonment and told he would serve ten years. His wife campaigned to reduce his sentence and, at the appeal hearing in 2017, his sentence was lessened to manslaughter on grounds of serious psychological stress and he was released from jail.

These deaths, some of which have been referred to in other chapters in this book, came to define how the public viewed British soldiers during the wars in Iraq and Afghanistan. The period from the entry into Iraq in March 2003, until the winding-down of operations in Afghanistan in 2014, was one of unprecedented visibility for the armed services. The days of restrained wartime mourning that characterized the Second World War, and the days of the MOD's 'unassailable supremacy and secrecy', in the words of one of the solicitors who brought charges against it, had largely disappeared. Instead, politicians, press and public paid far greater attention to the deaths of individual soldiers and to the feelings of their families. Further, although it was often slow, difficult and opaque, individuals could and did use the legal process to contest the decisions and actions of the state. These deaths brought the British soldier into the public mind in new ways and shaped political and public reactions to these contemporary conflicts.

This chapter explores, firstly, the politics of sending Britain to war in Iraq and families' demands for a public inquiry; secondly, the repatriation ceremonies at

³ Ibid., p. 3.

⁴ 'From All Corners, Britain Turns Out for its Dead', *The Times*, p. 1.

Wootton Bassett; and, thirdly, allegations of criminality committed by British troops and their impact. By focusing on reactions to these particular deaths, the chapter traces the evolution of public attitudes towards British soldiers during this time and suggests that the wars in Iraq and Afghanistan were a watershed in civil-military relations. In a more individualized society, where fewer people had personal experience of military life, the collective values of the military were poorly understood. Further, the traditional view that the armed services served the state, as represented by the elected government in Parliament with legislative authority over military deployment, was questioned. The public came to display sympathy with individual soldiers but suspicion of the politicians who had ordered the war and, over time, even hostility towards an anonymous bureaucratic ‘establishment’ that sought to obstruct ‘ordinary’ people doing their best in difficult circumstances. The extent to which these changes were a specific response to the politics of the wars in Iraq and Afghanistan, or whether they denoted a deeper social or political shift, is still uncertain.

The politics of deployment in Iraq

On 24 September 2002, the government published a dossier, based partly on intelligence, with a foreword from Prime Minister Tony Blair. This said: ‘The document discloses that his [Saddam Hussein’s] military planning allows for some of the Weapons of Mass Destruction (WMD) to be ready within 45 minutes of an order to use them.’⁵ The dossier prompted some of the press to report that Britain, or at least, British military bases in Cyprus, were ‘just 45 minutes from attack’.⁶ A year later, the *Sunday Times* correspondent Andrew Gilligan reported on the BBC Radio 4 *Today* programme that the so-called ‘45-minute claim’ was included in the dossier at the insistence of Alastair Campbell, Blair’s director of communications. Gilligan’s source might have been Dr David Kelly, one of the chief weapons inspectors at the United Nations (UN). Kelly committed suicide shortly afterwards and, at the Hutton Inquiry into his death, the chair of the Joint Intelligence Committee, John Scarlett, said that the report could have made clearer that the 45-minute claim referred to battlefield munitions and not to longer-range strategic weapons.⁷ The intelligence community did not

⁵ ‘Labour MPs Split Over Iraq Dossier’, *The Times*, 25 September 2002.

⁶ For instance, this was the headline in the *London Evening Standard*, and *The Sun* said ‘Brits 45 Minutes from Doom’.

⁷ Mary Ann Sieghart, ‘There was No Crime, but Hoon is Guilty of it’, *The Times*, 12 September 2003.

consider Saddam Hussein to be an ‘imminent’ threat to the United Kingdom.⁸ Neither Defence Secretary Geoff Hoon nor Scarlett corrected the reporting of the ‘45-minute claim’, although Hoon recognized that its rendering was ‘more dramatic than the material upon which it is based’.⁹

The 45-minute claim, and the emphasis on Iraq’s WMD, demonstrated the significance of national defence to the political and public legitimization of committing British forces to war. In fact, the government’s motives for entering Iraq were not primarily to do with defending the British nation from immediate attack by another state. Rather, Blair was motivated in several ways: partly by the ideal of pursuing New Labour’s ‘ethical’ or ‘humanitarian’ foreign policy and therefore of using British forces to protect people from ‘evil’ dictatorship; partly by his world view, influenced by President Bush, especially after the 9/11 attacks in the United States, that ‘rogue states’ or the ‘axis of evil’ threatened British interests everywhere because such states might undermine the spread of liberal democracy and globalization, or might sponsor terrorist attack on a massive scale, particularly if WMD were available to them; and partly by his conception of Britain’s historic role of standing ‘shoulder to shoulder’ with the United States, strengthening Britain’s international influence by forming a lynchpin or a pivot in the American–European relationship and the Atlantic Alliance.¹⁰

The deployment of British military forces to a pre-emptive attempt to depose Saddam Hussein, without a second UN resolution specifically authorizing the action, was therefore unprecedented. It indicated that Britain would use its armed forces ostensibly to protect people in another country from the iniquity of their president, rather than in a narrow conception of national defence. That said, the action was driven by the US administration, and Britain’s choice was the extent to which it backed this. Bush told Blair that Britain could stand outside the combat phase of the war but, as Blair noted in his diary at Christmas 2002, he felt that if Britain was ‘in’, it was better to go in fully.¹¹ In a vote in the House of Commons on 18 March 2003, the Conservatives voted with the Labour Party in favour of using armed force to enter Iraq. The former foreign secretary Robin Cook, one of the architects of New Labour’s ‘ethical’ foreign policy, resigned the previous day, and a quarter of Labour MPs voted against the proposal. Blair

⁸ Report of the Inquiry into the Circumstances surrounding the death of Dr David Kelly C. M. G., by Lord Hutton, 28 January 2004, HMSO. (Hutton Inquiry), paragraph 221, 920173PAG1 (fas.org)

⁹ Report of Hutton Inquiry, paragraph 225, reporting Hoon’s evidence on 22 September 2003. 920173PAG1 (fas.org)

¹⁰ See, for instance, David Coates and Joel Krieger, *Blair’s War* (Cambridge: Polity Press, 2004).

¹¹ Tony Blair, *A Journey* (London: Arrow Books, 2011).

made the vote into a *de facto* vote of confidence into his prime ministership and it passed easily by 412 votes to 149.¹²

By the summer of 2003, the fact that weapons of mass destruction had not been found in Iraq intensified questions about the basis under which the government had taken Britain to war. On 29 May, Gilligan reported that the government had 'sexed up' the September document, specifically regarding the claim that Iraq's weapons would be ready in 45 minutes.¹³ After Kelly's suicide on 17 July, the government established an inquiry led by Lord Hutton, which reported in January 2004. He concluded that Gilligan's claims could not be substantiated. There was not enough evidence that the government had deliberately embellished the case for war. Nevertheless, although the Inquiry did not adjudicate on whether the government had a sufficient case to go to war, it focused attention on the issue of Iraq's WMD. In the debate after Hutton reported, Blair said that when he asked the Commons to vote on 18 March on whether to go to war, he did not know that the '45-minute claim' referred only to battlefield munitions. Robin Cook said he found this unlikely: 'I find it difficult to reconcile what I knew and what I am sure the Prime Minister knew at the time we had the vote in March.'¹⁴

Later that year, in November 2004, doubts about the legality of the war encouraged bereaved parents Rose Gentle and Reg Keys to create the group Military Families Against the War. In March 2005, a Freedom of Information request led the Foreign and Commonwealth Office (FCO) to release the resignation letter of Elizabeth Wilmshurst, the erstwhile deputy legal adviser to the FCO, who had resigned in March 2003. Her letter showed that she did not believe the war with Iraq was legal without a second UN Security Council resolution. It suggested that the FCO agreed with her and that Attorney General Lord Goldsmith had changed his mind.¹⁵ In April, political speculation forced Blair to release in full Goldsmith's legal advice. Although Goldsmith had said there was a reasonable legal justification for the war, the publication showed that on 7 March he had given advice that was full of 'clarifications and warnings', as leader of the opposition Michael Howard put it in the Commons. Contrary to Blair's assurances, Goldsmith's legal advice had changed, and there was no apparent basis on which it had done so.¹⁶

¹² Coates and Krieger, *Blair's War*, p. 60.

¹³ Transcript of *Today* programme, 29 May 2003. bbc_1_0004to0017.pdf (guardian.co.uk).

¹⁴ Philip Webster, David Charter, and Gabriel Rozenberg, 'Blair Admits Dossier Confusion', *The Times*, 5 February 2004.

¹⁵ Frances Gibb, 'Attorney Changed Mind Twice', *The Times*, 24 March 2005; 'The Attorney General's Advice on the Iraq War', *The Independent*, 24 April 2005. The Attorney General's advice on the Iraq war | The Independent | The Independent

¹⁶ David Charter and Rosemary Bennett, 'After Iraq Advice u-turn', *The Times*, 29 April 2005.

This evidence galvanized Military Families Against the War to press for a public inquiry. To draw attention to their cause, Keys stood against Blair in his Sedgefield constituency in the May 2005 general election and Gentle against the armed forces minister Adam Ingram in East Kilbride, Strathaven and Lesmahagow. Gentle said that they had been told that Britain was fighting a war justified in international law. Now they knew that 'their military orders were unlawful and the war was illegal'. As time went on, she indicated, the military families believed that Blair had lied. If the government did not announce a public inquiry within fourteen days they would make an immediate application for judicial review.¹⁷ Bringing their case to the High Court, Gentle and Keys stressed that they would not be there if WMD had been found and if the Attorney General had not changed his advice.¹⁸

The families lost that legal challenge in December 2005 but, in July 2006, won the right to bring a judicial review to the Court of Appeal. On 10 April 2008, that challenge again failed. Led by Rabinder Singh QC, the case was that under the European Convention of Human Rights, if the state was involved in the use of lethal force, an inquiry was mandatory. However, the nine Supreme Court judges ruled that this could not apply: '[T]he proud sovereign states of Europe [would not have] bound themselves legally to establish an independent public inquiry into the process by which a decision might have been made to commit the state's armed forces to war.'¹⁹

Despite this, the challenges to the legality of the war in Iraq weakened Blair and, on 27 June 2007, he stepped down and Gordon Brown took over as prime minister. Two years later, Brown bowed to public and political pressure and agreed to an inquiry. Initially he wanted this to be in private, but he rapidly backtracked and Sir John Chilcot, chosen to lead it, stated that it should take place in public.²⁰ Parts of the press criticized the Chilcot Inquiry for taking too long. The inquiry stopped taking evidence in 2011, but the report was not published until July 2016, partly because of 'Maxwellization', which allowed anyone criticized to have a chance to respond, but also because of the time it took to declassify, gather and analyse the large volume of written evidence.²¹

When Chilcot did report, however, the results were damning. The Inquiry found that the decision to commit British forces was made on the 'basis of

¹⁷ Michael Evans, 'Families of Dead Soldiers Challenge the Legality of the War', *The Times*, 4 May 2005.

¹⁸ Michael Horsnell, 'Families in High Court Fight for Iraq War Inquiry', *The Times*, 18 August 2005.

¹⁹ Frances Gibb, 'Dead Soldiers' Mothers Fail to Force Inquiry into Legality of Iraq Invasion', *The Times*, 10 April 2008.

²⁰ 'Iraq Inquiry Must be Public, Says Chairman', *The Times*, 23 June 2009.

²¹ 'Damaging Delay', *The Times*, 21 August 2015.

flawed intelligence assessments', because nobody seriously considered that Saddam Hussein might have destroyed his weapons stocks.²² Intelligence 'was not challenged and should have been' and therefore the threat posed by Saddam Hussein had been overstated. Blair committed himself to the American president – 'I'm with you whatever' – before the case for war had been made and there was no basis for Goldsmith's change of heart when he advised the war was lawful. Further, there was inadequate planning for the aftermath of the invasion.²³ Blair apologized to the families of the dead but repeated that he believed the moral cause for going to war was justified and therefore he had done the right thing.²⁴

Remembering the dead: Wootton Bassett

Military Families Against the War focused on the politics of deployment in Iraq. However, it was the dead of Helmand Province in Afghanistan who stimulated a transformation in the conventions of remembering British war dead. That transformation was most visible as people came to the town of Wootton Bassett in the summer of 2009 to line the route of the hearses containing repatriated bodies of service personnel. Initially, following the tradition established after the 1982 Falklands War, when bodies were repatriated for the first time, there was little political or public ceremony. On arrival in the United Kingdom, there would be a military ceremony to which the family was invited. A coroner would then hold an inquest, the body would be conveyed to the family's funeral director and the funeral arranged as per the family's wishes.

The journey of the hearses through the town of Wootton Bassett had begun in 2007 when flights started to land at RAF Lyneham because of a problem with the runway at RAF Brize Norton, and Wootton Bassett found itself on the route from the airfield to the mortuary. Three members of the British Legion spotted the carriages and asked the airbase to notify them in advance. On a subsequent occasion, the hearse's journey coincided with a bell-ringing practice at the local church and a custom developed of tolling the bells for the dead.²⁵ On 15 July 2009, as eight hearses passed through, Wootton Bassett made front page news

²² Sean O'Neill, 'Spy Chiefs were Too Eager to Please with Flawed Weapons Intelligence', *The Times*, 7 July 2016.

²³ 'Catalogue of Failure', *The Times*, 7 July 2016.

²⁴ Lucy Fisher, 'I'm Deeply Sorry but I did the Right Thing', *The Times*, 7 July 2016.

²⁵ Will Pavia, 'Town that Paid Respects with Dignity Becomes Grief Tourism's Front Line', *The Times*, 29 July 2009.

with increasing numbers of people going to the town to pay their respects or show their grief.²⁶

The practice of crowds lining the route in Wootton Bassett probably then grew because of the growing number of dead. Following deployment of British forces to Helmand in 2006, and the increase in their number in spring 2008, deaths in Afghanistan peaked at more than 100 in 2009 and 2010, and reduced again to just over 40 in 2011, before beginning to tail off from 2013. Further, as deaths mounted, the unpopularity of the campaign in Afghanistan increased. The British were accustomed to understanding death in war in terms of eventual victory, but forces in Afghanistan seemed to be facing defeat.²⁷ Challenged about its policies, the government might have welcomed this public display of support for the armed forces.²⁸ By 2009, one poll showed that the conflict's unpopularity had grown from 31 per cent to 'somewhere between 51 and 56 per cent' of respondents.²⁹ Some people maintained that British forces were redeployed to Helmand to compensate for failure in Basra and therefore some of the unpopularity of the Iraq War transferred to the campaign in Afghanistan. Others saw Helmand in terms of British overstretch. The House of Commons Defence Select Committee suggested in July 2011 that 'given the demanding nature of the situation in Iraq, we do not consider that the implications of the decision to move UK armed forces into the South of Afghanistan in early 2006 were fully thought through, in particular, the potential risk to UK armed forces personnel'.³⁰ Some relatives of the dead believed that their sons or husbands had been under-equipped. Margaret Evison's son Lieutenant Mark Evison died on 12 May 2009 from wounds sustained on patrol in Helmand. She suggested that poor radio equipment and delays in helicopter evacuation contributed to Mark's death.³¹ One reporter attending a repatriation ceremony in November reported that the crowd favoured British retreat from Afghanistan.³² Some have suggested that soldiers were now seen as victims, and repatriation ceremonies 'a silent protest to a war that most ordinary people did not support nor want'.³³

²⁶ *The Times*, From all corners, Britain turns out for its dead, p. 1.

²⁷ Hew Strachan and Susan Schulman, 'The Town that Weeps: Commemorating Life and Loss in Wootton Bassett', *The RUSI Journal*, December 2010, 155, p. 6.

²⁸ K. Neil Jenkins, Nick Megoran, Rachel Woodward, and Daniel Bos, 'Wootton Bassett and the Political Spaces of Remembrance and Mourning', *Area*, 2012, 44(3), pp. 356–63, 361.

²⁹ Cited in Michael Clarke, 'The Helmand Decision', *Whitehall Papers*, 2011, 77(1), p. 5.

³⁰ House of Commons, Defence Select Committee, Operations in Helmand 2006, paragraph 28, 11 July 2011. House of Commons – Operations in Afghanistan – Defence Committee (parliament.uk).

³¹ Margaret Evison, *Death of a Soldier: A Mother's Story* (London: Biteback, 2012), pp. 171–209.

³² Valentine Low, 'More sad Homecomings but Public Mood is Changing', *The Times*, 11 November 2009.

³³ Sandra Walklate, Gabe Mythen, and Ross McGarry, 'Witnessing Wootton Bassett: An Exploration in Cultural Victimology', *Crime, Media, Culture*, 2011, 7(2), p. 163.

However, people did not line the streets in Wootton Bassett to protest against the war. Rather, following traditions of war commemoration, they wanted to pay their respects to the dead. But the new practice showed the public viewed soldiers in a new way. Soldiers came to be remembered increasingly as individuals, killed less for Queen and country or campaign, but doing a job at which they excelled, mourned by loving families. That professionalization and domestication of their memories muted criticism of soldiers and of the armed services. Anthony King called this 'postmodern memory'. Soldiers were no longer regarded as purveyors of state-sanctioned violence, as they might have been in the 1970s and early 1980s. Instead, the public could support the armed services and show sympathy and respect for soldiers but criticize the government who had sent them to war.³⁴

This postmodern memory reflected social change. Fewer people had personal experience of armed service, and hence the experience, particularly of combat, came to be more revered. Traditional class structures had eroded, leading to less public distaste towards infantry soldiers, particularly those in the ranks. Society had become more individualized and confessional, making public expression of emotion, particularly by men, more acceptable.³⁵ But postmodern memory also derived from the specific political circumstances of these conflicts and of twenty-first-century Britain. If the soldiers were victims, then they were victims not of war. Rather, they were victims of a government that did not have to pay its own personal price for the conflicts it authorized; and they were victims of government decisions that put the army in a position where it could not triumph, and of government resourcing that did not prioritize its troops sufficiently. In that sense, remembrance at Wootton Bassett looked back to a previous era, in which the armed services had greater influence and more resources, and in which Britain had more global presence.

War crimes inquiries and trials

The conflicts in Iraq and Afghanistan drew attention to issues of ethics in the armed services as never before. In previous conflicts, reports of atrocity had usually been suppressed or handled by inquiries that shielded the institution from scrutiny. By contrast, in Iraq, investigations into allegations of abuse by British soldiers began early in the campaign. First, in May 2003, a British soldier

³⁴ Anthony King, 'The Afghan War and Postmodern Memory: Commemoration and the Dead of Helmand', *The British Journal of Sociology*, 2010, 61(1), pp. 1–25.

³⁵ Helen Parr, *Our Boys: The Story of a Paratrooper* (London: Allen Lane, 2018), pp. 287–93.

from the 1st Battalion, The Royal Regiment of Fusiliers, took his photographs of British troops abusing Iraqis in a detention centre – ‘Camp Breadbasket’ – to be developed in the English town of Tamworth. A shop worker, on seeing the photographs, reported him to the police. In February 2005, a court martial found three soldiers guilty and all were jailed, for eighteen months, two years and five months, respectively. The soldier whose photographs were discovered was tried in a separate court martial a month earlier. He pleaded guilty, had the charges dropped and was sentenced to eighteen months in a young offenders’ unit, which was reduced to nine months because he gave evidence against others.³⁶ At this point, there seemed to be little sympathy for the accused. The photographs of Iraqi prisoners being forced to simulate sex acts were shocking and echoed the scandal of the humiliation by American troops of detainees at Abu Ghraib prison, which broke in April 2004.³⁷ However, although the major in charge of the facility had given an order to round up and ‘work hard’ looters, no officers were charged, prompting comment from the defence counsel that the prosecuted soldiers were ‘scapegoats’.³⁸ Further, in May 2004, the editor of the *Daily Mirror*, Piers Morgan, was sacked after publishing photographs of abuse that were subsequently shown to be fake. His sacking illustrated that the *Daily Mirror* had been willing to expose such abuse, but also that subsequent evidence might lose its shock factor, find its authenticity called into question, or be embellished or fabricated.³⁹

As more allegations emerged, contestations about who, how and whether to prosecute also became more intense. First, in July 2004, a young private soldier with the King’s Own Scottish Borderers was charged with wounding a thirteen-year-old Iraqi at a checkpoint. His mother was angered: ‘Tony Blair makes the bullets and my boy fires them. The politicians sit in Westminster twiddling their thumbs while my son is out there risking his life.’⁴⁰ She spearheaded a campaign that reduced the charges to negligent discharge, although the MoD paid compensation to the victim.⁴¹ Second, following the death of Hassan Said during an attempted arrest in Basra, the investigating commanding officer of the 2nd Battalion, Royal Tank Regiment, found that no offence had been committed. In September 2004, Attorney General Lord Goldsmith overturned this judgement,

³⁶ ‘Four Soldiers Charged with Abusing Iraqis’, *The Times*, 15 June 2004; ‘Eighteen More Troops Face Iraq Abuse Trials’, *The Times*, 4 February 2005.

³⁷ ‘Abuse Pictures that Shame the British Army’, *The Scotsman*, 19 January 2005.

³⁸ ‘Eighteen More Troops Face Iraq Abuse Trials’, ‘Iraq Abuse Case Soldiers Jailed’, *BBC News*, 25 February 2005.

³⁹ ‘Piers Morgan Sacked from Daily Mirror’, *The Guardian*, 14 May 2004.

⁴⁰ ‘Soldier Charged with Wounding 13 Year Old Iraqi’, *The Times*, 3 July 2004.

⁴¹ ‘Record Damages for Iraqi Victim of Gunfire Incident’, *Daily Record*, 16 April 2008.

and Trooper Williams was charged with the murder.⁴² Subsequently, in April 2005, charges against Trooper Williams were dropped because, following evidence from senior commanders in Iraq, Mrs Justice Hallett judged that the legal test was the soldier's 'actual perception of danger'. Williams believed his life, and the life of his colleague, to be at risk, and therefore there was no chance of a prosecution.⁴³ Third, in February 2005, seven paratroopers were charged with the murder of an Iraqi civilian in a fatal roadside beating in May 2003.⁴⁴ In November 2005, charges against the paratroopers were also dropped, as the judge ruled that the evidence from Iraqi witnesses was unreliable, and one or more had been paid to lie in their witness testimony.⁴⁵ Fourth, three further soldiers, two from the Irish Guards and one from the Coldstream Guards, were also acquitted of manslaughter after an Iraqi boy they detained drowned in a canal.

The persistence of the father of Baha Mousa, the hotel receptionist killed in detention in Basra in September 2003, ensured that his son's case came to dominate attention. In December 2004, Rabinder Singh QC, representing Iraqi families, won a case at the High Court that the Human Rights Act could be extended to British prisons abroad. This meant that Defence Secretary Geoff Hoon was in breach of the Human Rights Act by failing to conduct an independent inquiry into Mousa's death.⁴⁶ Subsequently, the Attorney General Lord Goldsmith judged that three men from the Queen's Lancashire Regiment would be the first Britons to be tried under the International Criminal Court Act of 2001, as this was the most up-to-date legislation. The soldiers charged included their commanding officer (CO), Lieutenant Colonel Jorge Mendonca. The regiment felt the prosecution of the CO was unfair because no officers had been charged in the 'Breadbasket' case referred to earlier. Mendonca was cleared at court martial in 2007. The judge argued that as his superiors had condoned the use of hooding and placing detainees in stress positions, he did not have a case to answer.⁴⁷ One soldier, Corporal Donald Payne, pleaded guilty to a charge of inhumane treatment and received a sentence, but he was acquitted of manslaughter and perverting the course of justice. Two other soldiers, and two intelligence officers, were also acquitted. The judge, Mr Justice McKinnon, said that some soldiers had not been charged 'because there is no evidence against

⁴² Michael Evans Horsnell, 'Army on Trial Over Murder Charge Soldier', *The Times*, 8 September 2004.

⁴³ Richard Norton-Taylor, 'Trooper's Murder Charge is Dropped', *The Guardian*, 8 April 2005.

⁴⁴ 'Soldiers Face Death Charge', *The Times*, 3 February 2005.

⁴⁵ 'Iraq Murder Trial Charges Dropped', *BBC*, 3 November 2005.

⁴⁶ 'Iraqi Wins Court Battle Over Death in British Jail', *The Times*, 14 December 2004.

⁴⁷ 'Judge Reveals Why he Acquitted Officer', *The Times*, 13 March 2007.

them as a result of a more or less obvious closing of ranks.⁴⁸ Subsequently, the head of the British Army, General Sir Richard Dannatt, said that the prosecuting authority and the Royal Military Police would consider whether a further investigation was appropriate as Mousa had died of asphyxiation and 93 injuries and this could not be considered misjudgement in the heat of the moment.⁴⁹ On 15 May 2008, the MOD bowed to pressure and agreed to hold a public inquiry.

That inquiry, led by the Rt Hon Sir William Gage, reported in September 2011. His verdict was damning. One *Times* reporter called it 'Britain's Abu Ghraib moment'.⁵⁰ The report showed widespread abuse by soldiers and looking away by superiors and criticised the CO either for not knowing that the abuse was happening or for turning a blind eye to it. In the House of Lords, the Conservative hereditary peer and Parliamentary Under-Secretary of State at the MoD, Lord Astor of Haver, called the events leading up to Mousa's death 'deplorable, shocking and shameful', and pointed to the failures of British command in not knowing that abusive techniques were banned and the lack of moral courage in not reporting what was happening.⁵¹ The Iraq Historical Allegations Team (IHAT) was to undertake further investigation. IHAT had begun work in November 2010 to ensure Britain's compliance with the European Convention of Human Rights (ECHR). Its role was to investigate allegations of unlawful killings and ill-treatment and to assess if they were credible. According to IHAT's website, about 70 per cent of claims were sifted out and never reached full investigation. If IHAT found credible evidence of potential criminal acts, they referred the case to the Director of Service Prosecutions in accordance with the Armed Forces Act 2006. If they did not find credible evidence but were still concerned, they could pass the case back to the MoD who could then refer it to the Iraq Fatality Investigations (IFI).⁵² The existence of IHAT and IFI prevented claims from being taken to the International Criminal Court (ICC) because it could not investigate if the national authority was doing so.

However, after this point, public and, to an extent, political opinion began to turn against the investigation of alleged abuse by British soldiers. In 2009, the government set up the al-Sweady Inquiry under Sir Thayne Forbes, because

⁴⁸ CM79/22/19-23, cited in The Report of the Baha Mousa Inquiry, The Rt Hon Sir William Gage, 8 September 2011. The Baha Mousa Public Inquiry Report HC 1452-I (publishing.service.gov.uk).

⁴⁹ Michael Evans, 'Acquitted Soldiers Face Army Inquiry into Prisoner Abuse', *The Times*, 2 May 2007.

⁵⁰ Deborah Haynes, 'Baha Mousa "Shame"', *The Times*, and Editorial, 'A Chastening Verdict: Baha Mousa's Death in Cold Blood, Not the Heat of Battle, is a Terrible Indictment of the British Armed Forces', 9 September 2011.

⁵¹ Hansard, House of Lords, vol.730, 8 September 2011, Baha Mousa Inquiry – Hansard – UK Parliament.

⁵² Iraq Historic Allegations Team (IHAT) – GOV.UK (www.gov.uk).

the MoD had not properly investigated claims that British soldiers murdered twenty Iraqis and abused nine others at the Camp Abu Naji base. In 2014 the Inquiry reported that soldiers were guilty of mistreating detainees, but that the murder allegations were ‘wholly without foundation and entirely the product of deliberate lies, reckless speculation and ingrained hostility.’⁵³ Two years later, Phil Shiner, the human rights lawyer who had brought most of the cases to the ICC admitted using and paying intermediaries and changing some evidence about how the clients had been identified.⁵⁴ Shortly afterwards, Shiner was struck off.⁵⁵

Shiner’s misconduct gave force to a reaction in elements of the press against investigating soldiers. For instance, IFI had considered again the cases of Trooper Williams and the seven paratroopers who had been cleared of murder charges in 2005.⁵⁶ The *Daily Mail* reported that while Williams was ‘penniless and jobless after being repeatedly hounded by ambulance chasing lawyers’, the victim’s family could receive a large payout in compensation.⁵⁷ The newspaper also reported: ‘Cleared UK troops could face a war crimes trial: prosecutors in The Hague refuse to grant soldiers immunity from fresh charges.’ The presiding judge at IFI, Sir George Newman, commented that the article was substantially incorrect. The United Kingdom had a legal obligation to carry out the investigations just as the ICC, which was a court of last resort, had a legal obligation to examine claims lodged with them.⁵⁸ However, the idea that human rights legislation originating in Europe was making it impossible for soldiers to fight, and that opponents of Britain could use the courts to bring sometimes egregious claims, began to gain wider purchase.⁵⁹ In February 2017, Defence Secretary Michael Fallon closed IHAT. In June 2019, Jeremy Hunt and Boris Johnson, both contending for leadership of the Conservative Party, backed a

⁵³ Richard Norton-Taylor and Ian Cobain, ‘Al-Sweady Inquiry: Iraqis Mistreated but UK Troops did not Murder Insurgents’, *The Guardian*, 14 December 2014.

⁵⁴ ‘I was Wrong, Says Lawyer in Torture Cases Against the Army’, *The Times*, 9 December 2016.

⁵⁵ ‘Phil Shiner: Iraq Human Rights Lawyer Struck Off Over Misconduct’, *The Guardian*, 2 February 2017.

⁵⁶ ‘Soldiers were Still at war When Iraqi Died at Checkpoint’, *The Times*, 11 November 2014.

⁵⁷ ‘Betrayal of a Hero: Sgt Kevin Williams went Through 12 Years of Hell Before Being Cleared of Killing an Iraqi. Now he’s Jobless and broke . . . While the Dead Man’s Family are in Line for a Big Payout’, *Daily Mail*, 23 March 2015.

⁵⁸ Ian Drury and Larisa Brown, *Daily Mail*, 21 January 2015, <https://www.dailymail.co.uk/news/article-2919225/Cleared-UK-troops-face-war-crimes-trial-Prosecutors-Hague-refuse-grant-soldiers-immunity-fresh-charges.html>; Iraq Fatality Investigations, Consolidated report into the death of Nadheem Abdullah and Hassan Abbas Said, CM9023, March 2015. Iraq Fatalities Investigations: consolidated report into the death of Nadheem Abdullah and the death of Hassan Abbas Said (publishing.service.gov.uk).

⁵⁹ Tom Tugendhat, ‘Our Enemies are Using the Courts as a Weapon of War’, *The Times*, 19 December 2014; Melanie Philips, ‘Soldiers are Facing a Human Rights Minefield’, *The Times*, 27 September 2016.

report by the Policy Exchange think tank to amend the Human Rights Act to protect veterans from prosecution for anything that happened before the act took force in 2000. They also wanted specific legislation to protect soldiers who had served in Northern Ireland during the ‘Troubles’ after the prosecution of Soldier F for murder and attempted murder during Bloody Sunday in January 1972.⁶⁰

Public support also crystallized around ‘Marine A’ Sergeant Alexander Blackman.⁶¹ Blackman was charged with murder after headcam footage that surfaced in an unrelated investigation revealed him shooting a mortally wounded Taliban fighter in Afghanistan. He said: ‘shuffle off this mortal coil, you c***’, turned to his men and said ‘this goes no further. I’ve just broken the Geneva Convention’. In December 2013 at court martial Blackman was given a life sentence, told he would serve at least ten years, reduced to the ranks, and dismissed with disgrace. The judge said he had brought the armed services into disrepute. He was the first serviceman in modern times to be convicted of murder.⁶²

The campaign to reduce his sentence began immediately. His wife said the troops in Afghanistan were under strain unimaginable to civilians and that Blackman had believed the Afghan was already dead.⁶³ She maintained he had been let down by the chain of command and commented that he should be tried by a civilian jury, where he would be likely to receive more lenient treatment. Admiral Lord West, formerly First Sea Lord and Chief of Naval Staff, wrote to the *Times* to agree. At Blackman’s court martial, the 5-2 verdict was sufficient for conviction but in a civilian jury it would result in a retrial.⁶⁴ The author Frederick Forsyth and the brigadier who commanded 3 Commando Brigade during the Falklands War, Major General Julian Thompson, joined the campaign to reduce his sentence. Blackman told the *Daily Mail*: ‘I had been sent to a brutal battlefield to fight for my country in an unpopular war. And yet at the end of my trial, the establishment lined up to portray me as an evil scumbag.’⁶⁵ Forsyth, Richard Drax MP, Major General John Holmes and former Royal Marine John Davies each contributed £50,000 to the campaign, arguing that the court martial judge had failed to offer a manslaughter conviction. In March 2017, Blackman was

⁶⁰ Lucy Fisher, ‘Backing for New Law to Protect Soldiers’, *The Times*, 29 June 2019.

⁶¹ See also Chapter 5 in this volume.

⁶² ‘Sorry Says Marine Jailed for Ten Years Over Afghan Killing’, *The Times*, 7 December 2013.

⁶³ Danielle Sheridan, ‘My Husband is No Murderer’, *The Times*, 14 December 2013.

⁶⁴ Richard Vinet, ‘We are Too Sentimental About Our Armed Forces’, *The Times*, 29 August 2014; Admiral Lord West, letter to the *Times*, 31 October 2015.

⁶⁵ ‘Campaign to Review Murder Sentence of Marine’, *The Times*, 12 September 2015.

released. His sentence was reduced to manslaughter and five appeal judges accepted he was suffering from a mental health disorder at the time of the killing, exacerbated by the dreadful conditions in which his patrol operated.⁶⁶

These examples illustrate the complexity of the legal and political environment in which allegations of abuse were brought to court martial and public inquiry. They suggest an evolution of public opinion, from an early horror at the treatment of Iraqi detainees and readiness to prosecute soldiers, to a growth in sympathy for soldiers who were cleared at court martial and re-questioned in inquiry. This was often a reaction to the form that inquiries took. Arguments were made that human rights legislation originating in the European Convention on Human Rights, which had been incorporated into British law in 1998 as part of New Labour's reforms of foreign policy, made the job of a soldier harder.

As the wars continued, the public response to Marine A's case began to suggest public views had evolved from 'postmodern memory' of support for the troops but disdain for the government as displayed at Wootton Bassett. The headcam evidence meant nobody could dispute Blackman had shot his adversary. During the campaign to reduce his sentence, he was portrayed as a courageous soldier who had been let down by his military superiors and was suffering under the psychological stresses of battle. It was wrong to single him out because, as a sergeant, his role in the army was limited and because civilians could not understand the daily dangers faced by service personnel. Public support developed at least in part because he was perceived as relatively powerless in the context of a military hierarchy, government decision-making machine and legal bureaucracy. If this is correct, it indicates a perception on the part of the public of a division between 'the establishment' – which might include senior military as well as politicians, lawyers and academics – and ordinary people, doing their best in the difficult circumstances in which they found themselves.

Conclusion

The wars in Iraq and Afghanistan were fought in a new era. Britain did not face an existential threat as it had done in the Second World War and the Cold War, although Tony Blair's argument that Saddam Hussein possessed WMD illustrated his awareness that such a defence mattered in the legitimization of war.⁶⁷ Rather,

⁶⁶ 'Marine A will Get Police Protection Once Released,' *The Times*, 29 March 2017.

⁶⁷ Alan Doig and Mark Phythian, 'The National Interest and the Politics of Threat Exaggeration: The Blair Government's Case for War Against Iraq,' *The Political Quarterly*, 2005, 76(3), pp. 368–76.

Blair sought to use British forces for what he saw as the greater international good, deposing a dictator and diminishing threats to a stable international order by promoting democracy overseas. The connection with the 9/11 terrorist attacks in the United States gave legitimacy to Britain's engagement in Afghanistan, at least in the early stages, and the wars were often framed in terms of defence against terrorists. However, the fact that WMD were not found in Iraq meant many service families questioned the legitimacy of the war when their relatives were killed, and this contributed to weakening support for Blair and the Labour government and to growing public sympathy for service personnel as the wars continued without meeting Britain's goals and as more of them died.

Responses to the death of service personnel also led to a change in commemorative practices, as they were understood less as representatives of a collective and more as individuals and professionals who died doing jobs they loved. The spontaneous repatriation ceremonies at Wootton Bassett suggested a tendency for the public to support the military and to sympathize with the individuals in it, but to blame the government for the fact that Britain was at war. The treatment of soldiers after allegations of abuse or criminality indicated a slightly different public attitude, as soldiers were seen not only as victims of government policy but also as pawns toyed with by a wider legal, military and political 'establishment'. The British Army and MOD's long-standing tendency towards 'put up, shut up, cover up' when it came to allegations contributed to the length and intensity of some of the inquiries. Social media and headcam technology meant the behaviour of soldiers was sometimes brought into public view and the new legal apparatus of the Human Rights Act 1998 and the International Criminal Court Act meant the MoD and armed services operated in a new environment. This stimulated a political, as well as public, reaction against the idea of 'hauling soldiers through the courts', particularly for alleged crimes committed before 1998.

The extent to which changes in commemorative practices might become permanent remains to be seen. The sympathy expressed for individual service personnel could add to the difficulties of committing British forces to high-profile operations, although different politics of deployment or outcomes on operation could change that. It is also uncertain how the armed services and government will respond to any future allegations of abuse. The armed services' reputation would surely be better served, however, by working to prevent abuses taking place at all and to address proficiently allegations of criminality in order to avoid them being drawn into the everyday politics of British national life.

