

SEX AS A WEAPON: THE WAR ON TERROR
AND JUST WAR THEORY

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THE WAR ON TERROR AND JUST WAR THEORY

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TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION.....	1
II. JUST WAR THEORY	7
Justice in War.....	8
Principle of Proportionality	
Principle of Discrimination	
III. Can the War on Terror fit within the Confines of Just War Theory?	15
Jus in Bello: Terrorism, Torture & Interrogation.....	15
“Unlawful Combatants”	19
Legality and Ethics of Torture	23
IV. Just War Theory at Work: Ethics of Gender Biases and Woman in Military	31
“Woman as Soldiers”	31
“The War on Terror and Women”	34
“The Masculinization of the Military”	36
“Sex as Power”	40
V. Abu Ghraib: Torture, Prisoner Abuse & the Role of Women	44
“Women at Abu Ghraib”	44
“Systemic Chauvinism at Abu Ghraib”	51

Chapter	Page
VI. Military Culture, Gender And Systemic Chauvinism.....	55
“Weaponizing Soldiers vs. Weaponizing Gender”	56
“Humiliation as Punishment”	60
VII. CONCLUSION	62
REFERENCES	67

CHAPTER I

INTRODUCTION

The moral implications of the traditional theory for Just War have been grossly misinterpreted to fit political discourse as merely convenient ethical guidelines thrown out in the name of diplomacy. The morally relevant issues in the current climate of asymmetric warfare require the just war theory be re-evaluated in the context of international law and human rights. My argument will follow in five parts beginning with a broad application of *jus in bello* principles in contemporary asymmetric warfare. First, I will address the current status of just war theory, specifically *jus in bello* standards as they apply to asymmetric warfare. In evaluating *jus in bello* restrictions in contemporary war, I will introduce the principle of proportionality and the principle of discrimination. Then, I will focus on one consequence of the War on Terror that ignores the ethical effects of both the principle of proportionality and the principle of discrimination. Specifically, a case study of the Abu Ghraib scandal will highlight the status of *jus in bello* for the new classification of enemy combatants in the War on Terror and the treatment of such enemy combatants when imprisoned at detention centers like Abu Ghraib and Guantanamo Bay. I will then address the moral impermissibility of ignoring the *jus in bello* restrictions on detainee rights, the vilification of Islam, and the marginalization of female sexuality in intelligence gathering. Next, within the context of these gendered human rights violations, I will describe the role of women, first as general members of the military, then more explicitly in their roles as

“interrogative weapons,” for detainees from the Middle East. Finally, I contend that the use of gender as a way to torment detainees is ethically impermissible with respect to the prisoners and female interrogators.

In the framework of the just war theory, this thesis explores the controversy spawned by the release of the photographs taken by U.S. military personnel at the Abu Ghraib prison in Baghdad. I emphasize the portrayal of servicewomen engaged in various forms of prisoner abuse and the societal response to these photos. The role of female U.S. military personnel at Abu Ghraib illustrates the gendered nature of the military and raises questions of gender equality within the traditionally male-dominated institution. By referencing various official interrogation manuals, interviews, and investigative reports released in the wake of the scandal, I will explore the ethics of using servicewomen and sex as a weapon of war. By exploring what I call, the “self-marginalization” of a female soldier’s sexuality in interrogation, I will reveal how the systemic chauvinism of military culture reinforces barriers to gender equality in the armed services.

There are numerous reports of human rights abuse at Abu Ghraib and Guantanamo Bay in the years following the U.S. invasion of Iraq; many testimonies reveal that the most objectionable methodologies employed during detention were the forms of sexual abuse performed by female servicewomen. The Abu Ghraib photos depicting women as torturers, sexual aggressors and motivators of abuse, shattered societal gender expectations and exposed numerous illusions about the ethics of war. The media circulated stories of women aggressors as fascinating tales to shock and awe the public. Societal responsiveness to these reports in the midst of greater foreign and domestic policy concerns, like finding Al-Qaeda operatives and the supposed weapons of mass destruction in Iraq, typifies conflicting public sentiments on the women enlisted in U.S. armed forces and their behavior. Although attention was drawn to the gender differences and offenses of a select few servicewomen, this single scenario brought about differing notions of gender expectancies for female soldiers in general. Expectations of what it is to be a woman in combat as well as the use of sexuality as a weapon of war are new facets to the discussion of

ethics and justice in the War on Terror—specifically, women serving as interrogative weapons, appointed to perpetrate sexual assault on Arab men at Abu Ghraib.

The Abu Ghraib scandal photos exposed numerous questions on torture, human rights and gender expectations of those soldiers responsible for the interrogation of suspected terrorists. Specifically, the scandal brought attention to the ethics of weaponizing female sexuality in order to impair the cultural sanctity of Arab men. Such gendered practices, although aimed at ‘breaking’ prisoners by exploiting the female body in such a way as to culturally disparage the Arab prisoner, are detrimental to breaking the gendered barriers present in U.S. military culture and force existing servicewomen to reinforce such patriarchal controls. The cultural, sexual, and religious implications of such practices, the media’s reaction, and the U.S. administration’s treatment of the torture abuses, present unique challenges to just war standards in asymmetric conflicts. Additionally, the photos serve as a springboard for discussions on women’s roles in contemporary war as both soldiers and civilians. At Abu Ghraib and Guantanamo Bay, the female physique is featured as a mixture of sex and violence, which stirs the public imagination and feeds stereotypes of gender roles and the masculinization of the military. This perception of women, common in contemporary Western culture, plays out in the Middle Eastern culture as something to be hated and feared. Analyzing these practices in a feminist¹ context brings up violations of both prisoner and combatant rights in the context of *jus in bello* restrictions for just war.

In the following sections I will analyze the War on Terror in the context of the just war theory. In Chapter II, I will emphasize the standards of justice in war or *jus in bello* as moral standards for the policies governing contemporary international conflicts. By illuminating the current global power disparities and the subsequent issues with combat, I will show how *jus in bello* restrictions apply to all parties involved in asymmetric warfare. Historically, just war theory provides the foundations for ethics of warfare. Over the last twenty years many just war theorists have further refined versions of traditional moral requirements to make the doctrine applicable to combating terrorism. I will use the United States’ policy decisions in the War on Terror regarding the classification and detention of enemy combatants as a

case study for these *jus in bello* restrictions in contemporary warfare. Under the guise of a nuclear disarmament, the U.S. administration has exploited ethical ramifications of international law, founded in just war theory at the onset of the War on Terror. Consequently, administrative controls and accountability mechanisms were displaced in the name of national security and global supremacy. The misuse of the American government's international clout in the wake of a tragedy like 9/11, is not an extraordinary divergence from past foreign policy decisions. However, in Chapter III, I will show how the use of loopholes in detainee classifications led to prisoner abuse, like the sexual torture at Abu Ghraib. Such abuses should be condemned as war crimes and restricted accordingly.

The paradigm shift from public support for unlimited executive power to that of national and global contempt for torture tactics after the publication of the Abu Ghraib photos reveals the ethical complications in establishing a new legal classification for detainees. The detainees held under the new classification of 'enemy combatant' did not receive traditional prisoner of war protections; this omission made possible numerous human rights violations and prisoner abuses at U.S. run prisons in Iraq and Cuba. Of these abuses, the gendered sexual exploitation of Muslim men by female military personnel at Abu Ghraib received a disproportionate amount of attention from the media, public, and U.S. administration. This heightened attention brought on countless inquiries, perhaps unfairly, surrounding the status of women in the military as a whole and their role as torturers at Abu Ghraib. Such inquiries highlight the systemic chauvinism of military culture and how female soldiers are forced to marginalize their own femininity in order to assimilate with military culture. In accepting this patriarchal construct, these women are submitting to the sexual exploitation of femininity and female subordination. The marginalization of female sexuality differs from the everyday marginalization of soldiers in general because it is a self-marginalization; women are forced to exploit their own sexuality in order to participate and thrive in the misogynistic constructs of the military. Such self-marginalization violates the principle of proportionality for actions in war according to *jus in bello* standards. To correct such gendered

practices will require a transformation in military culture away from a system reliant on principles of misogyny and the subordination of women.

While the Abu Ghraib photos created an onslaught of criticisms aimed at the physical, psychological, and mental abuse of detainees, little consideration was given to the immorality of ordering our servicewomen to engage in such torture tactics. These females were asked to disgrace themselves in front of their colleagues and superiors in order to elicit information from Muslim detainees. These servicewomen were publically shamed as if acting on their own initiative rather than represented as soldiers following orders and complying with the “enhanced” interrogation tactics approved by appropriate authorities. The exploitation of female interrogators suggests the victimization and self-marginalization of our own troops in detainee abuses at Abu Ghraib. Evidence to this effect will be discussed in greater detail in Chapter IV and V. The gendered nature of these interrogation tactics represents overarching patriarchal ideals and the underlying systemic chauvinism of military culture. Not only are U.S. servicewomen being demeaned and exploited for interrogative purposes, but in doing so, they remain pawns of the male ego within the masculinized institution of the military. Some objections to the argument that the systemic chauvinism in the military is immoral will be addressed in Chapter VI.

Using sex as a weapon to culturally abuse detainees violates ethical standards for the fair treatment of combatants and non-combatants recommended by *jus in bello*. However, instead of focusing on the human rights violations and rectifying the flagrant misuse of female sexuality, authorities and political figures used the photos to prompt debates on whether women were fit to serve in the military, and over gender equality. This conflation of issues sheds light on the pervasiveness of gender identities in the military and the expectations for women in society as a whole. An analysis of prisoner abuse at Abu Ghraib and Guantanamo Bay prisons in the years following the U.S. invasion of Iraq sheds light on the mishandling of power and international influence by the dominant party in asymmetric conflicts. This misuse of power is an archetype of a new era in global politics, as well as a call to return to moral decency and *jus in bello* principles of just war theory. Although new technologies have made it possible

for small, non-state agents to commit acts of war on a scale previously only available to organized military with national power, the principles of *jus in bello* are still applicable to contemporary prisoners of war or enemy combatants. The specific abuses subjected to detainees at Abu Ghraib reveal the extent to which public support for a war and more importantly for our servicewomen can shift. Through the onslaught of negative attention after the release of the Abu Ghraib photos, I will look at the sexual exploitation and the role of servicewomen as interrogators of supposed suspected terrorists after 9/11.

¹ The feminist criticism in this paper is only one view of many; feminists do not speak with a single voice and often do not share the same principles for *jus in bello* and warfare. There are numerous feminist objections on the use of female sexuality as a weapon, for the purposes of this discussion; “feminist” refers to a collection of ideologies with a central principle that gender equality is a basic human right. This ideology aims at establishing and defending equal political, economic and social rights for women. Furthermore, this discussion would be remiss if we did not consider the social and political context of the feminist perspective in light of the weaponization of sexuality at Abu Ghraib.

CHAPTER II

JUST WAR THEORY: *Jus in Bello*

The just war theory is a code of ethics that has been used as a philosophical basis for warfare and military ethics. The principles of the just war theory have been carried forward to contemporary politics as a means of moral justification guiding international policy makers². Currently, the theory is useful in academia as a means to evaluate the ethics of terrorism and dealing with terrorist acts. The theory distinguishes between two facets of warfare, the right to engage in war (*jus ad bellum*), and right conduct in war (*jus in bello*), which deals with the actions of combatants in war (White 3). For the purposes of this paper, I will be dealing with the *jus in bello* principles to evaluate conduct and procedures of the U.S. administration and military personnel during the War on Terror.

The emergence of new super powers, technological advances, and resource competition categorize world politics in this era, as well as an ever-increasing power disparity between first world and third world countries. Globalization and power vacuums have created a world ridden with asymmetric conflict, where one powerful opponent is pitted against a struggling third world or weaker party. Often the stronger party is a nation state and the weaker party a sub-state group, which engages in practices deemed unethical by traditional standards of war. Such practices include the use of guerilla tactics to assimilate with civilians, use of civilians as weapons or shield as well as targeting civilians. These tactics challenge traditional just war theory, specifically the protection of civilians by *jus in bello*, because they blur the distinction between combatants and non-combatants. One of the main controversies stemming from asymmetric warfare is resultant of the massive disparity in power and resources between opposing sides. Many times the availability

of military resources, political/popular power and budget, dictate the tactics used to close the gap. In order for the weaker parties to have a shot at victory many of the *jus in bello* restrictions that apply to more powerful adversaries are not feasible limitations for more disadvantaged non-state agents. If we are to use the *jus in bello* principles to justify contemporary warfare, we account for terrorism as a permanent component of global conflict. This common ground for ethical discussions in war will inevitably reveal the question of whether terrorism may in certain scenarios be morally justified and thus require certain modifications for right conduct in war according to the resources available to each party. One of the main issues with terrorism in finding a theory for just action in war is the disregard of basic human rights of detainees and the classifications of non-state agents as either prisoners of war or criminals.

In the context of asymmetric warfare, some just war theorists argue that the underdog may find a way to fight dirty in order to stand a chance against a dominant power. Shannon French theorizes that depending on what is at stake for the lesser party, it may be acceptable for both parties to act outside of *jus in bello* restraints (French 35). French argues that as a result of massive divergence in powers, the conditions proposed by *jus in bello* are unrealistic for weaker, disadvantaged, and oppressed groups and often modern interpretations of *jus in bello* fail to address the moral reality of current global conflict. The nature of asymmetrical warfare suggests a change in the ethics of *jus in bello* principles as they apply to state agents versus non-state parties and terrorism. Despite these changes, *jus in bello* criteria can be meaningfully adapted to regulate the wartime conduct of empowered states with the resources of a traditional military as they fight the non-state agents who lack such resources. French's distinction between a captured enemy who is fighting within the *jus in bello* requirements and a terrorist, fighting outside of the *jus in bello* standards, is persuasive in that such prisoners demand different treatment and rights. The difference between captured non-state terrorists versus captured non-state warriors hinges on the targets and tactics employed in combat. A non-state agent, who is targeting military and has a just

cause for utilizing tactics we normally associate with terrorism, is a warrior. Meanwhile, non-state agents whose targets are not predominately military and who has a higher proportion of collateral damage and civilian deaths would be classified as terrorists. Although both groups produce higher levels of collateral damage and civilian casualties than traditionally tolerated within the *jus in bello* standards, the limited resources available to these agents dictate the need for new standards.

In distinguishing between a just cause for the guerilla tactics of non-state agents warriors and non-state agent terrorists, the *jus in bello* restrictions make use of the principle of proportionality as well as the principle of discrimination to qualify necessity of terrorist tactics in war. The principle of proportionality is relevant in both *jus ad bellum* and *jus in bello* standards in contemporary war. The principle of proportionality as it applies to *jus in bello* weighs the positive effect of furthering a legitimate military objective against the aversive effect of civilian casualties and collateral damage. A just cause must not result in the bad effect—often the death of innocent civilians—as the direct means to achieve the intended effect. Additionally, the bad effect must not outweigh the consequences of the good effect or war initiative. According to David Rodin, using the proportionality test as a comparative mechanism between relevant goods versus harms caused by war, with those that could be reasonably expected to occur if no war was fought, we are able to show that the war was proportional without relying on only the ethics of combatants or *jus in bello* (62). For instance, if there is an internal conflict and terrorism within a state, the collateral damage caused by a non-state agent that is furthering a just cause to end the conflict, the actions of the non-state agents may be justifiable under the principle of proportionality. However, as Rodin points out, diverging interpretations of what harms exist, the degree of oppression and the level of aggression necessary to reverse such harms create a subjective side to the principle of proportionality (Rodin 62). Although a subjective determination of what actions are proportional is one grey area in the interpretation and implementation of the

principle of proportionality, the theory can still be meaningfully applied to asymmetric conflict in determining a just cause for certain terrorist tactics in war.

In considering wartime conduct, the principle of proportionality can successfully determine if the fighting is just, if the furtherance of a good effect outweighs the harm of the conduct. Specifically, the act, strategy, and implementation of combat must not cause more harm, pain, or suffering, than the good. In the War on Terror, the threat of a larger terrorist attack, nuclear war, and the freedom of the Iraqi people from Saddam Hussein's regime were thought to outweigh the potential harms to Iraqi civilians and U.S. troops. The projected length of the invasion was short and the appropriate amount of resources allocated for combat was agreed upon. After the invasion, the principle of proportionality continued to hold as a moral requirement for *jus in bello*. Once the threat of weapons of mass destruction was neutralized via intelligence that no such weapons readily existed in Iraq, the number of troops and resources required to sustain the war effort exceeded the proposed good or reason for fighting. Thus under the principle of proportionality, the war was no longer morally justifiable. This *jus in bello* principle serves as a guiding standard for the ethics of war in terms of conduct as well as the treatment of combatants and noncombatants.

In humanitarian interventions, the relevant good must take into account the need for self-determination and establishing a fair government for the purpose of enabling a better life for people being oppressed by their own regimes. In these situations, the intervening party as well as oppressed populace must weigh the casualties of war against the future good and betterment of the society. The risk of a conflict deteriorating into a civil war or long-term terrorist campaign by insurgents must be considered as factors for the principle of proportionality in the *jus in bellum* criterion for war. In the event of humanitarian intervention, the refusal to intervene may be a failure to oppose intolerable evil, but the only way to contest hostility or oppression will involve in the devastation of human lives. Unfortunately, the scope of the need for humanitarian

intervention is so great that the world's super powers commonly choose areas of economic value in which to intervene in exchange for military and financial benefits. In this way, policy-makers gain room to use public sympathy in order to increase political support for interventions that also happen to serve national self-interest. Often administrations will utilize moral incentives for humanitarian intervention as a pretense to garner resources. Intervention on behalf of human rights qualifies as a just cause, but a just cause is not sufficient for a just war. In many conflicts the protection of human rights is used as a merely convenient platform for interference with the real aim at exploiting some natural resource or profit motive. In order for *jus ad bellum* principles to hold, they must not be misapplied as moral underpinnings to further political aims.

Another guiding principle in *jus in bello* standards for war is the principle of discrimination; this principle deals with those deemed legitimate targets in war. If the principle of discrimination is to be understood as strictly forbidding the killing of non-combatants, there is no possible way to abide by *jus in bello* standards in contemporary warfare. Due to modern technology, guerilla tactics and terrorism, it is an unavoidable consequence of modern warfare for innocent civilians to suffer casualties. Just war theory allows unintentional, but foreseen civilian deaths provided that certain conditions are met. One way to avoid the constraints imposed by the principle of discrimination is to deny that there are innocent noncombatants in war and claim that everyone in an enemy nation is a legitimate target. Consistent with this viewpoint, being a member of a terrorist or enemy group is taken as sufficient to render such members as legitimate targets, regardless of their status as a combatants or noncombatants. There is no bright line distinction between legitimately targeting combatants and noncombatants, as both may be members of the enemy group. A party is still acting as terrorists when they target non-combatants or civilians. Determining when a group or agency is intentionally targeting non-combatants or civilians has become increasingly difficult in asymmetric conflicts because blurring the line between combatant and non-combatant is a strategic act of war for the weaker party. The key

component to successfully fighting a party that outnumbers a weaker party is to obscure the line between those fighting and innocent civilians. However, the difference between terrorists and just war combatants hinges on the extent to which parties attempt to distinguish between civilians and enemy fighters; one must try to target combatants and protect civilian protections. Under some interpretations of just war theory, legitimate targets are categorized by their involvement in an enemy group, as a collective member of a certain race, religion, non-state cause or other unifying characteristic as opposed to their status as a direct threat or enemy combatant (the negative implications of these unifying characteristics is discussed in the next paragraph). This interpretation is problematic when the target is not a country or specific culture but isolated non-state groups or extremist parties. In this case it would be illogical to classify an entire population as a legitimate enemy target. However, if an enemy agent is a member or accomplice to a targeted group, then this agent can be legitimately targeted even if such members are not directly involved in fighting. Terrorism and terrorist tactics such as guerilla warfare illuminate the difficulties associated with the targeting of non-combatants in *jus in bello* doctrine. However, once we establish through the principle of discrimination which groups are legitimate targets, we limit the possibility for indiscriminate killings and lower the risk of civilian deaths. So long as the principle of proportionality is met, the principle of discrimination is useful in establishing the classification of opposing terrorists groups as targets in asymmetric war.

As mentioned briefly above, the principle of discrimination provides the grounds for determining targets of war but in the War on Terror, racial prejudices have confounded the “legitimate targets” qualification. In many instances, anti-Muslim prejudice post 9/11 has compromised the capacity of American soldiers to abide by *jus in bello* constraints to detainee treatment. Mixed motivations can muddle the “right intention” requirement for pursuing specific military action and specific targets under *jus in bello* standards. For example, of this conflation between the “right intention” for war and war targets can be seen through an examination of

prisoner treatment at Abu Ghraib. The rampant racial profiling of Arab culture post 9/11 heartily influenced the detainee treatment at Abu Ghraib and Guantanamo Bay; sexual violence directed towards prisoners, even if not effective in intelligence gathering fed a vengeance fueled attitude of racial patriotism³ (Bond 18). Reports of arbitrary and unrelenting sexual abuse of detainees are serious violations of the *jus in bello* prisoner protections that condemn treatment that is ‘evil in itself’ but were often employed as a means to “fight back” against terrorists. First and foremost, the implementation of such practices must be in accordance with the severity of the detainees’ crimes, or involvement in terrorist activities and not simply as blanket treatment to all Arab men captured in the early 2000s. Anti-Muslim prejudice leads to a dangerous conflation between a “terrorist” and a “Muslim.” Specifically, the social stigma of any Muslim man became aggressively associated with “terrorist.” Such a national prejudice works its way into the military posture at Abu Ghraib to fuel especially volatile detainee abuse and an inaccurate application of the principle of discrimination. This heightened motive for abuse undermines the *jus in bello* standard for prisoner protection against tactics that are evil in themselves. Such tactics violate the principle of discrimination for non-combatant immunity. Even if one rejects an argument for the treatment of detainees as actions that exhibit an innate “evilness” and thus are not applicable to *jus in bello* standards in protecting prisoners from acts that are “evil in themselves,” the principle of proportionality can always be meaningfully adapted to the doctrine of *jus in bello*.

In order for the *Jus in bello* requirements to be taken seriously, they must fit the current climate of war as well as terrorist actions. Some consider a variation of application depending on the power and resources of the party. Specifically, right conduct in war must account for the massive power disparities between parties and allow for violations of basic human rights for the weaker party and prohibit them for the stronger party. Others claim that the just war theory only has a place in western politics only and will always be irrelevant to dealing with terrorists because terrorist actions by nature aim directly at harming innocent civilians to send a political message. I contend that *jus in bello* criteria can be meaningfully adapted to regulate the conduct of

empowered states as they fight non-state agents. Specifically, how a group fights, if there is a legitimate military target, if the collateral damage is proportional to the good effect served and if such conduct is unavoidable to pursue a just cause given the group's resources, then the criteria for *jus in bello* may be met. For the remainder of this project, I will focus on how the aforementioned characteristics of just war as they apply to disenfranchised non-state agents in asymmetric war, classify the status of such agents as captured enemy combatants.

² Just war theory can be meaningfully adapted in all its parts to contemporary warfare; I follow the traditional conception of justice of war which establishes which side of a conflict is right with respect to *jus in bello* issues (the way the war is fought). How politicians or academics propose to apply the doctrine varies greatly in both foreign policy and war. For the purposes of this discussion, I refer to just war theory as a comprehensive doctrine in its traditional sense—as ethical content that shapes the standards for International Humanitarian Law and the Geneva Conventions. See Luban, “Just War and Human Rights”

³ The racial profiling of Arab Americans after 9/11 represents a type of impossibility associated with war action that seeks impartiality in balancing national security and liberty. Prejudice rooted in a national tragedy, fear of nuclear war, and the widening gap between Western and Arab culture, cannot operate freely in a sort of post-tragedy legal vacuum but must be checked by the rule of law. The focus of this thesis is on gender prejudice, for a thoughtful commentary on racial profiling in the War on Terror, see Vincent-Joel Proulx's “If the Hat Fits, Wear it, if the Turban Fits, Run For Your Life: Reflections on the Indefinite and Targeted Killing of Suspected Terrorists.”

CHAPTER III

“Can the War on Terror fit within confines of Just War Theory?”

“*Jus in Bello*: Terrorism, Torture and Interrogation”

Although the War on Terror does not fit the traditional classification for war, there are functional reasons for treating the conflict as war. The just war theory can provide useful standards for behavior when integrated into the conditions of contemporary warfare and combating terrorism. Just war theory demands certain agreed upon constraints in wartime. Each side of the conflict should consider such constraints. However, this prerequisite is problematic in contesting terrorism because, as discussed in the previous chapter, the asymmetry of warfare carries with it special concerns for ethical actions in war. The just war theory cannot be taken as an all-or-nothing doctrine; as long as the majority of *jus ad bellum* and *jus in bello* conditions are observed, the doctrine is applicable to acts of terrorism. Specifically, *jus in bello* recommendations for prisoners' rights are present in both the Geneva Convention laws for prisoners of war as well as in our own criminal justice system for the protection of convicted criminals. Universally, *jus in bello* standards dictate that all prisoners have the right to benevolent quarantine. Asymmetric warfare however, has changed the nature of combat and the status of enemy soldiers. Those conflicts classified as terrorism inherently created a new status of captured enemy combatants. These “unlawful combatants” do not fall under the conventional legal classifications for prisoners of war or the criminal justice system. The absence of legal

constraints, specifically human rights protections of unlawful combatants, effectively leads to an inquiry regarding the necessity of torture as a means of interrogation in the War on Terror. Furthermore, if the status of unlawful combatants makes room for torture as a means of prisoner treatment, it is unclear what legal restraints can be employed to ensure torture is legitimate.

First and foremost, in the just war theory self-defense plays an integral role in combating terrorism; the protection of a society from a legitimate threat is a valid motive for war and actions in war. The Bush administration's decision to retaliate in responding to the terrorist attacks of 9/11 by engaging in the War on Terror, although not classified under the formal international law conception of war can still be considered within just war theory. The War on Terror was not a traditional war in that the U.S. did not wage war against another nation. Rather, it was a declaration of war against terrorism and those nations or sub-state groups that perpetrate terrorism. The functional use of just war rhetoric to defend the Bush administration's motive for declaring war (*jus ad bellum*), was cursorily implemented and quickly contradicted as evidence of violations for just conduct in war and international law countermanded restrictions on war conduct. The ethical basis for declaring war, even if such a declaration is unique under the confines of international law, must be maintained throughout the war. A party cannot justifiably continue to wage war if the *jus ad bellum* justification for war were to dissolve. Specifically, the standards of *jus in bello* that restrict the means of combat provide basic human rights to those involved in the conflict and protect civilians from being intentionally targeted. However, in an effort to combat terror, the United States has marginalized the legal restraints that govern the means by which it conducts war as it erased many limits that regulated the status of combatants, noncombatants, and military intelligence.

Regardless of its unique classification, once the United States proceeded with the war against terrorism in the same manner conversant to contemporary warfare, restrictions for justice

in war and the legal ramifications evoked by the concept of war should likewise have been respected. Specifically, the standard of rights and responsibilities recommended by *jus in bello*, should have been respected in the same way those standards are assumed under the formal international definition of war. In assessing the subsequent wartime actions of the United States following 9/11, one is required to treat the conflict as war for both functional and superficial reasons. Practically, treating the war on terror as war ensures that combatants respect the restrictions for combat and the treatment of armed forces provided by *jus in bello*. The Bush administration successfully treated the War on Terror as a war whilst ignoring the formal confines of an international declaration of war. Specifically, the U.S. simultaneously upheld the right to invade other states to kill adversaries of the war on terror while ignoring the constraints of warfare demanded by international law, such as the rights owed to prisoners of war.

The U.S. Executive Branch relied on wartime rights to detain enemy soldiers for the duration of the conflict without trial or conviction of any crimes. Thus, guards at Abu Ghraib denied detainees the rights owed to both enemy soldiers and criminals. This contradiction in prisoner rights caused glaring human rights violations. The mistreatment of detainees in this manner is illegal, and those detainees who have chosen to litigate against the U.S. services have, for the most part, been successful. Specifically, the right to a benevolent quarantine and protection from treatment that is evil in itself is owed to all detainees. Those who were not guilty of any crimes and subjected to torture and sexual abuse have since sought to charge the U.S. military with crimes. The United States holds the largest military in the world, with some of the most advanced technology, intelligence capabilities and resources. Thus, discerning the threat of each detainee, if unknown during their imprisonment is arguably within the scope of the military capabilities. These resources should have reduced the number and severity of human rights abuses that occurred at Abu Ghraib and Gitmo during the War on Terror. For purposes of this paper, I will focus on the U.S. administration's blatant disregard of those constraints established by the Geneva Convention and the racial as well as gender abuses brought to light by the Abu

Ghraib torture photos.

My overall argument for the mistreatment of detainees and interrogators at Abu Ghraib depends on providing a clear account of the unique status of detainees imprisoned at Gitmo and Abu Ghraib after 9/11. Allen Weiner, director of the Stanford Program in International and Comparative Law, makes several interesting points regarding the classification of the War on Terror. I will offer a sympathetic interpretation of his view on the status of detainees that he developed in his paper, *Law, Just War and the International Fight Against Terrorism: Is It War?* Presently, the detainees at Abu Ghraib and Guantanamo Bay are held indefinitely, in accord with wartime legal rights of the President's war powers. However, U.S. authorities have failed to apply the requisite legal restraints regulating the treatment of detainees in times of war. One issue with regulations of 'wartime' in a war on terror is that there is no single group or enemy to defeat. Combating terror sets the stage for an indefinite conflict where preemptive measures make room for open-ended detention of unlawful combatants. Weiner contrasts this new status of wartime with the traditional conception of detained enemies of war. Formerly, when enemy forces were captured they were imprisoned for the duration of the conflict to ensure the prisoners did not rejoin the conflict once released from custody (Weiner 140). Once the immediate threat of war was defused, the captured enemy soldiers were released. Currently, since terrorism encompasses both immediate and future threats, suspected terrorists remain in custody indefinitely.

In accord with Weiner's conceptualization, I believe that cherry picking policies of war to best suit the needs of the United States undermines the power of international law and the Geneva Convention in the War on Terror. U.S. authorities have decided that both al-Qaeda and Taliban fighters do not qualify for prisoner of war protections, although they are combatants in what we functionally characterize as the 'war' on terror (Weiner 145). Weiner characterizes the justification for this new standard of protections denied to terrorist groups to include the fact that terrorists do not wear uniforms, are not part of a military hierarchy, do not openly carry arms, and

do not fight according to the law of war (Weiner 145). Accordingly, the United States attempts to create a new classification for insurgents and more specifically, new standards for treatment of captured suspected terrorists. In line with Weiner's approach, this new classification is necessary with the advent of asymmetric warfare. Still, the standard protections and restrictions for the humane treatment of prisoners should not be ignored and new protections should be developed to account for a new classification of prisoners.

Recognizably, those detained at Abu Ghraib in the years immediately following 9/11 did not have the requisite basic human rights demanded of all prisoners of war or enemy combatants. Weiner's exposition on the political motives for the new status of detainees provides a foundation for the discussion of the status of detainees at Abu Ghraib and Gitmo after 9/11. Some difficulties of classifying captured suspected terrorists as applied to abusive treatment and interrogative tactics are discussed in the next chapter. The status of enemy combatants will be the focus of the remainder of this chapter, as a main concern for *jus in bello* and the middle ground between international and domestic legal rights of prisoners.

“Unlawful Combatants”

The U.S. employs numerous constraints and safeguards affecting both kinds of prisoners in war. However, in reclassifying detainees of the War on Terror as outside of these existing safeguards, the U.S. administration is sidestepping the protections owed to prisoners of war. Until the Abu Ghraib scandal, the extent to which this nebulous classification ignores basic human rights was largely unknown to the public. After 9/11, anti-terrorism rhetoric aided in the illusion that the United States was acting out some higher calling and could do no wrong. Abusive detainee treatment was just one aspect of the war effort that the U.S. justified as retaliation to

terrorism. International and criminal law prohibit the deprivation of detainees' basic rights, even with the new classification of war, enemy combatants and nature of terrorism. For detainees at Guantanamo Bay and Abu Ghraib, the U.S. does not automatically confer on all captured combatants a prisoner of war status. The "unlawful combatants" category operates to exempt the U.S. from the constraints designed to protect the rights of imprisoned persons, unless special criteria is met the standard prisoner of war status does not apply. As such, the detainees can be held indefinitely, with no right to legal counsel, contact with their families or protections against inhumane treatment. The United States' insistence on rejecting the possibility of classifying terrorist suspects detained at Abu Ghraib and Guantanamo Bay as prisoners of war, even though their indefinite detention is justified only through our claim to be at war with terror, is the overarching issue framing the interrogative tactics and treatment of detainees.

At the inception of the War on Terror, the United States was adamant in expounding that Taliban members would be stripped of their prisoners of war status, while also claiming that members of the Al Qaeda network would not benefit at all from the protection of the Geneva Conventions. However, all agents of war fall within the scope of some protection or regulation established by the Geneva Convention. International human rights, just war theory and international law dictate that any individual who is captured by the opposing party, although subject to control and imprisonment, is also protected from physical or moral coercion in order to obtain information. However, the definitive standard of physical and moral coercion is loosely held. Extreme coercion constitutes torture while some coercion is inherent in interrogative techniques. David Luban, in his article "Liberalism, Torture and the Ticking Bomb," describes the fine line between standards interrogation techniques and those prohibited as torture. He claims that a detainee's entire environment can be justifiably manipulated to get a subject of torture to disclose valuable information (Luban 1431). Humiliation and deception are valuable psychological tools interrogators use in order to glean intelligence from subjects. Luban claims

that the current administrative challenges to define torture keep practices of sexual humiliation and moral coercion on the table as “cruel, inhuman, or degrading,” treatment and not torture (Luban 1459). Thus, as far as criminal offenses are concerned, U.S. interrogators are protected from criminal conviction as torturers as long as their interrogation tactics are classified as “cruel, inhuman, or degrading.”

Although, the new title of “enemy combatant” differs from the traditional concept of an enemy soldier, it does not erase the basic rights owed to all persons—rights as simple as a prisoners’ ability to notify family members of their imprisonment. Under the correct application of *jus in bello* and the Geneva Conventions, these detainees involved in the combat in armed conflict in Iraq and Afghanistan should either be released after the aim of the war has been neutralized, or they should be tried and convicted. Such convictions would then result in proper sentencing of imprisonment within the appropriate confines of criminal law. The U.S. cannot indefinitely hold enemy insurgents as combatants in the War on Terror simply as a preventative measure. In direct violation of this law, many of the detainees held at Abu Ghraib or Gitmo in the years following 9/11 were never linked to terrorist activities. “The International Red Cross estimates that 99% of all prisoners held by U.S. authorities in its now-infamous torture cells at Abu Ghraib were arrested ‘in error’ – that is with no probable cause—and hence unlikely to be “high-value detainees” (Tung 54-55). Consequently, the classification of “unlawful combatants” as outside the scope of basic prisoner of war rights violates *jus in bello* standards for enemy agents who are not guilty of any wartime crimes. Reconstructing the *jus in bello* standards for right conduct in war would redefine and allot rights to the middle ground illegal “enemy combatant” classification. However, the grey area in classifying enemy combatants does not discharge the U.S. from respecting certain prisoner rights.

It is my belief that detainees at Guantanamo Bay and Abu Ghraib if held for terrorist activity that occurred prior to their detention should be privy to trial, contact with family and

basic human rights. This right to trial and possible prosecution remains even if they are classified as enemy combatants and qualify for indefinite detention as enemy combatants under traditional prisoner of war conditions. Thus, a classification of terrorist suspects does not protect those guilty of acts of terror from prosecution; it would simply provide rights to those detainees who are innocent. Just because a time of war confers emergency powers on the government does not mean the U.S.'s traditional ethical standards for right conduct in war need to be abandoned. These standards require modification to fit the within the context of asymmetric warfare and the War on Terror.

Another issue with the classification of detainees at Abu Ghraib is the resulting legal limbo for the housing, interrogation and rights guaranteed by the Geneva Conventions by which military police and interrogators are expected to abide. Military officials should exercise due diligence before classifying anyone as a detainee. Even if already imprisoned, each detainee has the right to evaluation and to prove his or her innocence. Additionally, once the classification of enemy combatant or unlawful combatant is given, certain basic human rights, similar to those entitled to POWs, should be respected. Any prisoner abuses should be treated as war crimes and punished within the military courts. They should be considered in the context of *jus in bello* and be evaluated according to their necessity under the doctrine of double effect. Specifically, when distinguishing between interrogation and abuse, the doctrine of double effect precludes pursuing the bad effect as a means to the good end in obtaining essential information, even if civilian lives are at stake. In order for abuses to be justifiable, they must be an unavoidable side effect, not the direct means of the good effect. The moral good or indifference resultant of each act of extreme interrogation should be evaluated in the context of suspected acts of terror. If harm to the detainees comes as a side effect to interrogation, rather than the means of interrogation, then the abuse might be justifiable depending on the proportional good result. Those detainees with little or no attachment to the enemy agency deserve techniques proportional to their threat on society.

As discussed in detail in Chapter V and VI, the rampant sexual torture and abuse at Abu Ghraib unjustly demeaned not only the detainees but also female U.S. interrogators. This treatment is not proportional to defusing or preventing possible terrorist attacks and violates the basic human rights owed to detainees under *jus in bello* standards.

The War on Terror has brought about many difficulties with the current international grounds for war and the conduct of each party in war. The War on Terror embodies the issues with just war in the context of asymmetric warfare. The United States maintains the War on Terror legitimates war powers, authorities continue to capitalize on some standards for being at war while simultaneously ignoring many of the rights guaranteed to enemy combatants. This selective approach to the international legal standards for war undermines the ethical soundness of the War on Terror and the agents who fight it. The United States continues to claim the legal rights guaranteed to a state at war and concurrently refuse to uphold the full range of restraints established by *jus in bello* and substantiated by the Geneva Conventions, the global perception of U.S. foreign policy suffers. Such actions undermine not only the standards themselves for future conflicts but also may feed further insurgences against the United States. No better example of this ethical hypocrisy is offered than the treatment of enemy combatants detained by U.S. forces post-9/11.

“Legality and Ethics of Torture”

After 9/11 the legal limitations to torture and interrogation reflected the post-crisis leniency towards torture. The U.S. government claimed that word of torture and prisoner abuses fell through the cracks as military officials sent reports up the power train to the officials with legislative control. These abuses are committed off American soil and therefore outside the scope

of civil protections provided by American law and also beyond the protections for prisoners of war. With no accountability mechanism for addressing such abuses, (beyond negative publicity and congressional contempt of those directly acting on orders to torture), human rights violations associated with torture will remain unaddressed and those higher in the chain of command will remain unpunished. Regardless of the intent of such reported ignorance, politicians were able to deny knowing about pervasive human rights violations under U.S. military control. The responsibility of such abuses fell squarely on the shoulders of those who carried out the torture tactics. This attitude towards responsibility and communication up the chain of bureaucratic command are just the tip of the iceberg for *jus in bello* standards for war and detaining enemy combatants.

The chain of command is especially important for communication to and from prison personnel because of the isolation and intensity of such positions. In such a confined atmosphere, the social psychology of torture changes to reflect a dangerous new position of normalcy. Once accustomed to treating prisoners a certain way, and seeing abuses day in and day out, human nature leans towards acceptance as part of just another day. As David Luban notes, “given that lawyers at the highest levels of government continue to loophole the laws against torture as energetically as [SIC] before the Abu Ghraib revelations, the only reasonable inference to draw is that the United States government is currently engaging in brutal and humiliating interrogations” (Luban 1461). The official ‘go-ahead’ given to those interrogators confined to the prison atmosphere is a dangerous platform to gauge just cause and more specifically whether the act of torture is morally good or morally indifferent. Those responsible for determining whether acts of torture are permissible under the principle of proportionality would need to be separated from those directly involved in the tactics to prevent such techniques from becoming normalized. The accountability standards would also need to include the oversight and clear authority over those directly responsible for prisoners.

Another argument against the permissibility of torture as necessary actions of just war revolves around the legality of torture. A standard of torture could never be legalized because it could not be justified in the confines of the U.S. Constitution. Therefore, just war theorists struggle to define torture as an act that is morally good or morally indifferent within *jus in bello* standards. The Eighth Amendment prohibits cruel and unusual punishments; however the legal loophole is delimited by the fact that torture in interrogation is not a punishment for something. In the last two decades, scholars and politicians have heavily debated the legalization of physically harmful interrogation tactics. Moreover, as previously stated, the Geneva Conventions explicitly prohibit torture, physical abuse or any form of coercion. Therefore, if unlawful combatants were to be treated as prisoners of war, torture is illegal. If they are to be classified as criminals, the U.S. cannot subject them to harm outside of the normal tribulations of imprisonment—i.e. no torture. If these categories leave room for a third classification of unlawful combatants, then the standards for interrogation and torture in detaining such prisoners can be teased out of *jus in bello* criteria.

Alan Dershowitz one of the leading academic proponents for the legalization of torture has introduced the concept of torture warrants as an accountability mechanism for the use of torture in each conflict. Dershowitz's work is useful in addressing the legality of torture, providing a framework for the current deliberations in academia and politics regarding torture. He, like the majority of the American public, defends the use of nonlethal torture to get lifesaving information from terrorists—the foundational argument being a type of “ticking-bomb” scenario. Dershowitz's views are especially influential because he correctly embodies the real issues regarding torture in interrogations. The pervading issue is not whether officials would use torture as a means of interrogation (they do and will continue to do so). The issue it is whether it would be done openly under the confines of existing legal procedures or performed secretly, in violation of existing laws (Dershowitz 201). Dershowitz and many others advocate that a more specific legal interpretation of torture would establish stringent confines for what can and cannot be

permitted and diminish apprehension of future legislatively-permissible abuses. However, putting Dershowitz's torture warrants into practice would require a constitutional amendment. Such an amendment is exceptionally difficult and is an unrealistic solution to torture; the Supreme Court is extremely resistant to Constitutional amendments and would likely defer to the legislature to propose a less impactful solution. For this reason I believe that torture warrants are not a viable solution for principled use of torture in interrogations.

I am hesitant to endorse Dershowitz's proposition because the situations that merit the use of torture in interrogation are so clandestine and time sensitive, it is impractical to propose a legal amendment for something so case specific. Torture warrants would require permanent regulations and a lengthy clarification of such practices in military proceedings, further complicating the already rigorous jobs of those trained to handle interrogation. The primary issue with torture as a justifiable means to interrogation is not its legality but the slippery slope involved in deliberately keeping torture as an unspoken but necessary means of interrogation. There options exist for permitting torture outside of the traditional confines of law. The first of which is to legalize torture and regulate its occurrence and use. The second option is to keep torture illegal and vigorously prosecute those who practice it. Or finally, to keep torture officially illegal but make no effort to enforce the law in relation to interrogators acting as agents of the state. This final option is what officers at Abu Ghraib chose in the years following 9/11, when torture and the state of interrogators were outside the scope of military accountability. One potential solution to the issue of torture is to strictly enforce punishment for those using tactics that are classified as torture. By enforcing anti-torture laws interrogative practices are less likely to cross the line from interrogation to criminal abuse. Furthermore, the tacit approval of the use of torture as a means to combat terror has numerous implications for our troops when the tables turn and it is U.S. soldiers being held captive. Along this same line of reasoning, as a major military super power, the United States serves as an example for global standards of power and

peacekeeping. To sacrifice the prohibition of torture would endorse a violation of basic human rights and undermine the democratic principles on which the United States was founded.

Although establishing a legal system for torture in the form of a torture warrant is not a viable solution to the use of torture in interrogation, the absolute prohibition of torture is an overly utopian ideal for contemporary politics. While a strengthened policy and good faith attempts to prosecute torturers will limit the pervasiveness of torture, the risks of prosecution may not dissuade the use of torture as an effective means to protect civilians from potential acts of terror. The nature of asymmetric war in the current climate of combating terror creates a dynamic where the exclusion of torture as a means to gather intelligence is highly unlikely. Although I agree that torture is morally wrong, there are exceptions in warfare that make torture the lesser of two evils and legitimate within just war theory. Dershowitz and Luban both agree that it is ethically wrong to abuse another human being for information, there are scenarios where it is unavoidable and can therefore be legitimated. This view is especially powerful when considering the potential for further harm unless the threat of terror is neutralized. This scenario is often called the problem of the “dirty hands,” which illustrates the moral issues with violating ethical standards in order to avoid disasters for a greater group, like the use of torture in preventing terrorist attacks. The problem of the “dirty hands” has gone a variety of directions in political discourse but each variation involves some sacrifice of morality in order to protect national security (Walzer 161-62). Michael Walzer is the contemporary “dirty hands” advocate. Like Walzer, I support a general thesis that a “dirty hands” scenario creates a legitimate reason to torture. Torture will always be morally wrong but there are situations, like the interrogation of terrorists, where it is justified under the principle of proportionality. There is a duty to pursue social goods such as protecting civilians from terrorism; in such situations torture may be the only option available for pursuing this end. In such a case, the moral dilemma is not in choosing whether to torture or abstain from torture, but a decision to pursue a good with no avenue

available except to torture. Such a situation is called a moral tragedy—where a wrongdoing such as a torture is unavoidable in pursuing a necessary good. As long as the use of torture as a means to protect civilians is proportional with the harm, it may be justified under *jus in bello* standards for just war. Dershowitz and other defenders of torture believe that a strict prohibition of torture is a mistake for POWs and/or convicted criminals, the realities of terrorism elucidate a need for torture and a need for a new class of prisoners of war that may be subject to torture within the standards of *jus in bello*. Walzer's notion of an extreme emergency exists when the enormous and intolerable cost to those you are sworn to protect are almost certain unless you violate some moral constraint such as torture of non-combatants. A party either violates the moral constraint or fails to live up to the moral requirements of *jus in bello*, there is no option for a moral high road, someone has to have "dirty hands." According to Walzer, we need this dirty hands figure as a type of black knight, to violate the laws for the protection of the public and then be subject to criminal prosecution afterwards (167).⁴

The status of rights owed to those detained as unlawful combatants in the War on Terror and the question of torture as a resource in prosecuting these detainees is imperative to the analysis of detainee-interrogator relations at Abu Ghraib and Gitmo. The some defenders of traditional *jus in bello* standards call for the consideration of moral tragedies and the necessity for immoral choices for a moral result in war. Proponents of this theory, such as Dershowitz feel that there is no way to avoid violating moral rules in the imprisonment of detainees who have been active in the War on Terror and pose a threat to innocent civilians. These participants in asymmetric conflicts deserve a different classification and set of rights than the classic POW or convicted criminal retain but in doing so, all moral restrictions should not be abandoned. Even if we concede that the War on Terror necessitates soldiers do everything in their power to protect our citizens from terrorism we cannot maintain a strict prohibition on torture without undermining rights owed to all detainees of the war on terror. The need for torture must be an

exception, granted only in the direst of circumstances and in doing so, one cannot guarantee the protection of our “dirty hands” candidate from criminal conviction. In any case, the everyday treatment of detainees at Abu Ghraib and Gitmo does not warrant torture as means to solve a pending moral tragedy and thus, these blatant human rights violation must be prosecuted under our criminal justice system for the utilization of tactics that are immoral when other approaches were neither hopeless nor too costly. As a result, the War on Terror became an illustration of fraudulent international policy where serious attempts to confront abuse and demand compliance with international law or standard U.S. military codes of conduct was largely ignored (Mckelvey 203). The conventional legal classifications we have for detainee, whether it is a criminal suspect or prisoner of war, is that torture is illegal. The Geneva Convention protects prisoners of war from torture and the criminal justice system for the most part protects suspected criminals from being tortured during interrogations and imprisonment. However, if those prosecuting the prisoner’s captured during the War on Terror endorse a Dershowitz-type of ticking bomb terrorist and a strict prohibition on torture leaves no space for legitimate torture, then there needs to be a new classification for detainees that permits the military to use torture techniques in interrogating suspecting terrorists. The reality of this need does not however overshadow the need for clear restrictions for the treatment of such enemy combatants and why these detainees can be subject to torture while criminals and prisoners of war cannot. Without reserving moral standards for the treatment of enemy combatants, we leave open the possibility of a slippery slope for immoral treatment. This slippery slope is dangerous for an inconsistent classification of captured enemy agents and an arbitrary treatment of such detainees in U.S. prisons. There is no reason that a detainee cannot be both a prisoner of the War on Terror and a suspected terrorist liable to criminal conviction. The detention of a prisoner of war could, after the war be transferred to a suspected criminal and put on trial at the end of the war, however this classification overlap still bars torture techniques. In order to protect the possibility of using torture as a means of collecting life-saving intelligence information, a classification for the type of prisoners that can be subject to

torture must include protections from a slippery slope anything-goes interrogation.

⁴ Although the problem of the dirty hands traces back to Machiavelli, its present application is mostly attributed to Walzer's 1974 article, although in this article he contends that this problem goes far beyond the political arena in its scope. It is this application I wish to endorse in using the dirty hands scenario as an illustration for just war and the moral conflicts addressed through *jus in bello* criteria.

CHAPTER IV

The Just War Theory at Work: Ethics of Gender Biases and Woman in Military

“Women As Soldiers”

“In the Muslim world, notions of chivalry make even the most bloodthirsty fighters squeamish about shooting female soldiers or blowing them up at checkpoints, for this reason I asked a woman to sit beside me in the front seat while I drove on a dicey highway in Iraq on the theory that befuddled snipers would hesitate to fire” (Kristof 3).

- New York Times reporter on a trip to Iraq in 2003

One interesting consequence of the United States' War on Terror has been the cultural disparities between Middle Eastern and Western traditions. This divergence is especially prevalent in considering the role of gender in Muslim cultures as compared to the United States, both in general and more specifically, in the U.S. armed services. Just war theory is not only applicable to the standard of human rights protections deserved by each detainee but also by the servicewomen who detain them. In order to fully appreciate the ethical complications associated with the manipulation of gender in the interrogation and detention of suspected terrorists it is imperative to consider the massive strides women have made in seeking equal opportunities in the United States armed services. First, I will address the pervasive misogyny that shapes military culture as the underlying constraint for women who wish to succeed within such a masculinized

system. As such, even with the advent of women in greater numbers joining the ranks, the system is being reinforced by gendered practices, specifically in the weaponization of sex. Once female soldiers conform to the use of sexual aggression as means to succeed military culture, they perpetuate the gendered practices and sexual exploitation of femininity. The interrogation of detainees at Abu Ghraib and Guantanamo Bay relied on sexual abuse and the use of women in coercion techniques that not degrade prisoners and insult our service women, but also vastly undermine the role women play in the military and armed conflict. The remainder of this project will focus on the ethical considerations of women in the War on Terror, specifically the use of sex as an interrogative weapon. In this chapter, I will address the deep seated chauvinism as a systematic issue in the military as how it continues to dominate military culture even with the increase in female involvement in the armed services.

On a global scale, many countries have no formal restrictions on women in combat positions but few have actually exercised such policies and put women on the front line. More American women have fought and died in Iraq than in any war since WWII; over 191,500 women have served in the Middle East since the invasion of Iraq (Benedict 3). Although female U.S. soldiers are gaining in numbers, the positioning and representation of women in the military is far from equal. Over the last two decades however, the role of women in the U.S. military has been especially advantageous as a means of disrupting the social norms of Middle Eastern cultures. Women in combat are used to intimidate and astound Iraqi soldiers as deadly weapons that contradict the traditional role of women in the Middle East. The public sentiments on women acting in this militant capacity varies from considering them as revered heroines to rebuking them as being dishonorable, to maintaining that they serve merely as disposable pawns to male combatants.

Torture only becomes a scandal when news of it penetrates the media, when there is a unique component, such as female perpetrators of torture; the spectacle of Abu Ghraib is symbolic of hidden tacitly approved principles of contemporary warfare. The War on Terror and

the public reactions to women in combat, interrogation and violence was presented as something rare, however the use of women and sexual abuses is just a continuation of the horrors of warfare and military culture. As a case study, I focus on the public reaction to the Abu Ghraib prison photos that depict, in part female soldiers torturing male Iraqi prisoners. The strong aversive reaction directly reflects the social constructs of gender in the military. Women as interrogators of Iraqi men highlight a particularly important example of the perceived versus actual gender roles in the U.S. military and the racist approach to warfare in Middle Eastern conflict.

The public outcry after the Abu Ghraib photos were released was not simply reactions to human rights violations. It expressed the shattered illusions about women in the military. Of the individuals charged with prisoner abuse at Abu Ghraib, the servicewomen involved received far more public attention due to sheer fascination with females actively participating in such acts. The naiveté of women dissolved after these photos were released, women could no longer be held as morally superior to men, incapable of rape, torture, and abuse. I will evaluate the treatment of detainees at Abu Ghraib and Guantanamo Bay in the context of just war principles. My emphasis will be on the servicewomen involved in the detention of suspected terrorists and the manipulation of gender for the purpose of interrogation. The social shock at the reports of torture and abuse at Abu Ghraib in the spring of 2004 revolved not so much around the human rights violations themselves but over the splintering of gender stereotypes.

Kelly Oliver, Vanderbilt University Philosophy Professor, in her article “Women: The Secret Weapon of Modern Warfare?” perfectly depicts the public sentiment surrounding women in the military as mere pawns as opposed to valiant combatants. Oliver characterizes the use of female interrogators at Abu Ghraib in light of their function as females over their function as fighters (Oliver 2010, 15-16). While the press and public reactions centered on these female interrogators, their male counterparts were brushed aside, in a “business as usual” sense; the media was unmoved by the numerous accounts of male soldiers abusing female and male prisoners. Oliver interprets the divergence in public reactions to these abuses as reflecting

something inherent in United States culture. These gendered expectations; the actual role and perceived roles of women in the military, as well as the specific interrogative practices utilized at Abu Ghraib and Gitmo will be addressed in the remainder of this discussion.

“The War on Terror and Women”

The United States has adopted a new paradigm designed to enhance national security in the post-9/11 world. This paradigm includes various policy changes, the sacrifice of civil rights and privacy as well as the inclusion of practices such as unlimited detention and torture in interrogation. In the name of safety, the Bush administration created an atmosphere of distrust, validating practices far from the democratic practices our nation claims to endorse. Under the guise of national security, the government has endorsed the detention and interrogation of suspected terrorists at prisons like Abu Ghraib and Guantanamo Bay. Interrogative practices that strip prisoners of civil liberties have been carried out in secrecy, away from public scrutiny, and independent of any accountability mechanisms. One reason for the lack of accountability for abuses at Abu Ghraib and Gitmo involves the purposeful grey area between international and criminal law. Outside of the United States’ jurisdiction, military personnel and contracted interrogators act according to their orders from those above them. As a result, the policy procedures for imprisonment have become increasingly muddled.

In the context of the Iraq war, U.S. servicewomen are asked to exploit their sexuality to aid in interrogative programs; the consequences of which undermines gender equality sought by women in the military as well as basic human rights of the men being interrogated. One cannot understand the behavior of female military personnel at Abu Ghraib without taking into account the broad-spectrum gendered framework of the military. Tara McKelvey, in her book *One of the Guys*, explores the gender roles inherent in the military and the paradigm shift from women as victims to women as aggressors. She contends that the military is an obedience-based institution

where racism and sexism still prevail. As a heavily dominance oriented institution, the military's hierarchical organization encourages the depreciation of originality for forceful, uniform cooperation among ranks (McKelvey 200). Her position is especially cogent in considering the tradition and practices of U.S. armed forces and the attitudes expected of them in service. At Abu Ghraib, soldiers were expected to maintain this aggressive cooperation in a prison environment. McKelvey also stresses the dynamic between torture tactics and Western culture; specifically, those interrogation strategies aimed at humiliating Arab detainees are methods that would arouse males in the Western culture (McKelvey 69). Sexualized torture thus raises new ethical implications regarding cultural sanctity, chauvinism and gender.

The paradigm shift in torture techniques to include sex as a weapon raises new issues for the rights of detainees and the rights of interrogators under just war theory. Although, war can never be race-neutral and there will always be cultural divergences between the values and norms of each side of the conflict, *jus in bello* standards provide the basis for how far prejudice can drive the actions of war. War will never be a race-neutral practice one that respects the belief system of each party, but acts of war that aim at defiling religion by means of sexual abuse are immoral in themselves cannot be justified as a means to a good effect of war. The marginalization of female sexuality in order to humiliate Muslim detainees takes an immoral effect of interrogation as necessary to the ends of successful interrogation. There are hundreds of psychological and physical interrogative tactics; there is no clear reason why sexual torture is favored over any of the others. Even if sexualized torture is taken as the only effective means of interrogation utilized by U.S. soldiers, how both male and female soldiers implement the torture is far from gender neutral. Female soldiers, more so than males, are being asked to manipulate their sexuality and in a way that reinforces gender subordination. The resultant humiliation of male detainees being sexually assaulted by female interrogators relies on the manipulation of female subordination as present in both military and Arab cultures. This employment of sexuality, at the expense of both female servicewomen and Arab detainees, disproportionality challenges *jus*

in bello standards because the good effects of interrogation by victimizing not only detainees in a racial sense, but also female interrogators in a gendered sense. Thus, even though war is far from a cultural neutral phenomenon, *jus in bello* standards serve to protect the actors of war from unwarranted, over-the-top, intrinsically immoral acts.

“The Masculinization of the Military”

One important caveat to the discussion of women as interrogators is an analysis of the treatment of servicewomen in the military and the harsh reality of the minority status of women. Economic opportunity and progressive legislation have made military positions more accessible to women today. According to a 2012 report from the Department of Defense, women hold approximately 15% of the positions in the U.S. military (United States, DOD). Women are now serving in some of the most dangerous combat zones in the world posts that until recently have only been occupied by US servicemen (United States, DOD). This report exemplifies the progress of gender equality for obtainable positions in the military. However, the sexual politics framing the discussions on servicewomen indicates the prevailing notion that women are ‘civilizing’ forces on society. Consequently, female soldiers wear two hats, the first of which compels acquiescence with the underlying masculinity of the military. The second of which instructs them to maintain the tactful and conscientious manners expected of a lady. While the increase in female soldiers in our military represents a progression for gender equality, the discrimination and exploitation of sex in interrogation is damaging to the project of gender equality.

The negative connotations surrounding women in the military are imbedded in social stigmas and gendered traditions of the U.S. armed forces as an institution. The history of deep-rooted chauvinism in the military makes it all the more difficult for women to gain equal footing

and equal representation. One prevailing attitude that feeds this chauvinistic underpinning is the encouragement of aggression and subduing of feminine emotions such as nurturing and compassion. Traditionally, military society praises virility, while devaluing attributes and inherent characteristics commonly associated with women. Gendered derisions begin in basic training and are carried into service, ensuring that women feel as though inherently female characteristics must be overcome in order to effectively train as men. The types of women who succeed within these constructs are those who distance themselves from traditionally 'feminine' characteristics in favor of more 'masculine' traits.⁵ Regardless of if feminine traits considered inherent or not, social values in a system traditionally dominated by men that encourage misogyny move beyond what is appropriate for contemporary military service. Soldiers who elude to struggle and act "wimpy" are called "little girls" whereas those who maintain a stoicism and fight through are extolled as "real men." Even at the most basic level, gendered epithets demonstrate deep-rooted patriarchal ideals in military culture. In order to reflect societal changes in gender norms, the socialization of gender in military would benefit not only the increasing number of female soldiers but also the other minority groups in the military such as homosexuals and effeminate males. Although it can be argued that masculine ideals are well-suited for an institution that relies on virility and aggression, these qualities are no longer requisite of soldiers. Due to the advent of computer technology, chemical and guerilla warfare; brute strength associated with aggression in males is no longer a necessity for soldiers. Effeminate soldiers can be just effective as fighters as the macho men; as such a transformation in military culture is necessary to ensure the value of soldiers lacking so-called hyper-masculine ideals is appreciated and equally respected.

Kaufman-Osborn claims that in order for women to ever really succeed in a military capacity the gendered approach to training and the degradation of lower ranking military personnel via gendered epithets in military philosophy must be transformed⁶ (Kaufman-Osborn 599). By embodying aggressiveness and virility these servicewomen are perceived as "one of the

guys” as opposed to accepted as a women. If women soldiers play into the patriarchal ideals of the military, gender equality can never truly be achieved. The adoption of masculine personas is also problematic for the future of women enlisting in the armed forces because, as one of the most respected organizations and profession choices in the nation, the institution as a whole will continue to embody a gender prejudice all the while, society as a whole moves forward with gender equality. The more we misuse gender in the training and combative methods in war, the deeper the gender biases are engrained and the harder it becomes for women to move up the ranks and gain equal respect and opportunity in the military. As we fight for more military opportunities for women we must also recognize and modify the current struggle against the omnipresence of gender partialities.

This transformation must occur from the inside; it must begin with servicewomen who have earned the respect of and have suffered through the trials of war with their male-counterparts. As an insular minority women in the military are not only outnumbered, but they are also under-represented. The few women who fight tooth and nail for leadership opportunities are those who are unwilling to jeopardize such positions to implement change, changes that may benefit women and neutralize the pervasive masculinity in the United States services (Karpinski 230). These women have become agents perpetuating the existing system that marginalizes women, or those women who do not embrace masculinity. Granting that promotions up the ranks are far easier for women who accept the existing misogynistic system rather than challenge the existing barriers for women in their pursuits of equality, women who make it to positions in which there are able to implement change have only made it there by buying into this system. Thus, either for fear of losing ground or beliefs that change is impossible or unnecessary, female servicewomen are perpetuating their own minority status (Karpinski 230). As such, the undercurrents of chauvinism are impervious to change, even as the volume of servicewomen continues to increase.

The two options available to servicewomen within this existing structure is to resist

assimilating to the detriment of acceptance and advancement in a subculture dominated by men or allow the structure to marginalize what is construed as feminine and thus, transform the women themselves. The female soldiers who choose to conform to the standards that marginalize feminine characteristics can never fully achieve equality because even when they adopt masculine personas they continue to embody feminism. As such, these soldiers who accept the misogynistic military culture and subordination of female sexuality, are propagating their own alienation as members of the female sex.

In addition to the disproportionate ends served by the exploitation of female interrogators, systemic chauvinism and self-marginalization illegitimizes the notion that women deserve equal opportunity in the armed service. Ostensibly, the negative connotation attached to the Abu Ghraib photos perpetuates the stereotype that women are unstable and cannot handle the rigors of interrogating suspected terrorists without going too far. The image of women sexually abusing detainees allows military officials to pit the violations on gender as opposed to the officials giving orders. Traditionally, lower ranking soldiers rely on camaraderie and support from their fellow soldiers, an attitude that was severely lacking in the treatment of female interrogators at Abu Ghraib (Benedict 164). This paucity of support, respect and defense of the female interrogators at Abu Ghraib represents a type of discrimination against soldiers on the same side of a conflict that does not fit within the standards of *jus in bello*. Servicewomen face not only the constraints of an inherently nationalistic and masculinized organization, but also the hostility associated with insular minorities in the military. The degradation of female interrogators serves to preserve stereotypes of feminine subordination while simultaneously forwarding a negative connotation of servicewomen as agents of human rights abuse.

On a micro level, we notice this alienation of female sexuality in the duties of women currently serving in interrogative units. These female soldiers experience an even more amplified minority status; one tainted even further by the harsh social criticism of women soldiers in the aftermath of Abu Ghraib photos were released. One cannot appreciate the interrogative abuses at

Abu Ghraib until we recognized the pervasiveness of an expected masculinity within the military and our ideas of ‘manliness’ as it shapes the entire institution. In the context of such a gendered setting, the abuses of women as interrogators at Abu Ghraib can be better understood.

Specifically, this is true with regard to the classic practices of subordination in the military, which achieve maximum effect through the manipulation of gendered stereotypes and sexual aggression. As female interrogators adopt this systemic chauvinism towards feminine sexuality, they end up self-marginalizing because that which they marginalize they inescapably embody. Combine this systemic chauvinism in military culture with the ever-present misogyny in Middle Eastern culture and the behavior of female interrogators at Abu Ghraib becomes less shocking.

“Sex as Power”

There is nothing new about the pervasiveness of sexual abuses in the military. Historically, instances of rape were a common occurrence between occupying forces and the local populace, seen as a means to alleviate the sexual tension amongst soldiers that often accompanies combat. In the context of contemporary warfare, female soldiers create a new dynamic to the sexual aggression inherent in combat. Wartime categorically breeds aggression into every facet of a soldier’s life, sexual violence is espoused as part of the norm. From this “new normal,” soldiers who rape women of the occupying forces are seen as exercising another level of domination as opposed to punished as perpetrators of heinous war crimes. It is only to be expected that when women assume military positions they enter into this dynamic by routing their sexuality to aggressive ends. Instead of transforming the military culture from one ridden with sexual violence and undercurrents of male dominance, servicewomen are reinforcing the existing sexual stigma of military aggression. However, in a culture where women as soldiers is still the minority, the

weaponization of their sexuality will not be a way for servicewomen to assert equality but rather for women's bodies to become weapons in the hands of a misogynistic system.

Resultant of the gender strata in Middle Eastern cultures and the increasing commonality of women in the military, female military personnel played a unique valued role in the War on Terror. Specifically, after 9/11 in U.S. maintained detention centers, sexual abuses of suspected terrorists have proved especially effective in humiliating male prisoners. Sex is being used as a weapon to capitalize on the deep-rooted gender roles of women as subordinate to men. As a tool for interrogation, female soldiers are instructed to use their bodies to degrade Arab and Muslim detainees. While historically, when a male soldier rapes their enemy's 'women,' the decision to rape was an individual choice; soldiers were using their own bodies to degrade women outside the expectations of military orders. Conversely, when female servicewomen are instructed to use their bodies to humiliate Muslim detainees, the choice of using their bodies is no longer a private decision outside the call of duty. This lack of choice puts female soldiers in a subordinate position to their male peers, because it requires them to use their sexuality as a tool. This use of sexuality, albeit effective in humiliating Muslim detainees by disrupting the gender norms of Arab culture, necessarily hinders the progress for gender equality and mutual respect in the military.

By offending cultural sensitivities and Islamic law, U.S. personnel aims to emasculate prisoners by having them pose naked, masturbate, and rub each other in front of female military personnel. Specifically gendered tactics include the forced masturbation in front of females, forcing detainees to wear women's underwear and putting a leash around a detainee's neck at the hands of a female soldier (Taguba 15-17). Female interrogators were described regularly wearing tight, revealing clothes, stripping in front of prisoners, rubbing detainees suggestively sometimes with their bare breasts and nipples, and making sexual sounds (Rumann 285). Thus, in accord with a strict interpretation of Muslim culture, for women to disparage men is to reverse and defile gender standards. Devout Muslim detainees have been subjected to various forms of sexual harassment and abuse both in and out of interrogation. Forcing a Muslim man to strip naked in

front of female guards, touching their private parts, offering sex in exchange for cooperation, or being threatened with rape are some recorded examples of reverse gender abuses at Guantanamo Bay (Rumann 285). For female interrogators to sexually abuse Arab detainees is to combine classic torture techniques what Muslim Fundamentalists detest about Western culture, namely the pervasiveness of sex, promiscuity and lackadaisical religious commitment (Rumann 288).

Is the solicitation of seductive apparel, sexual touching, exposure, and use of fake menstrual blood acts of empowerment or disempowerment? We strive for equality by the inclusion of women in the armed forces and simultaneously expect them to hold their own and “be tough,” when in actuality the “secret weapon” for Abu Ghraib interrogations was an exercise of masculinity and subordination. The use of sexualized violence by male soldiers is rarely discussed when expectations of masculinity and brutality are central to the stereotypical ‘boys will be boys’ attitude. This nonchalant attitude signals an acceptance of sexualized violence of men in the military. Women are then asked to exploit their sexuality and stomach the resultant powerlessness as members of the U.S. military but not quite on par with their male peers. In short, sexual aggression is expected of male soldier, thus when men cross the line and commit sexual abuses they are often excused as “blowing off steam” or slapped on the wrist. Conversely, the female sexual aggressors at Abu Ghraib were publicly shamed, discharged from duty and vilified. The establishment of sexualized violence directed at male prisoners by women soldiers induces public outcry and discredits women who have otherwise served their country honorably. This disparity exemplifies the gendered nature of the military as an institution as well as the social expectations for female/male behavior. This contrast is significant not only to show the patriarchal ideals that play out daily in military culture, but also to illustrate how, by following orders; female interrogators are participating in a counter-initiative to the empowerment of femininity sought by those fighting for gender equality.

We live in a society that claims to maintain global moral superiority, promoting equality and human rights when the treatment of detainees and the degradation of our female troops at

Abu Ghraib expresses otherwise. As a result, the onslaught of criticism and vilification of the military after the Abu Ghraib scandal was the product of prisoner abuses, but also represented the pervasiveness as sex as a weapon. The continued encouragement to demean and humiliate detainees contributes to the sexual constructions that already pervade the military. In addition to reinforcing the already existing sexual aggression against women, sexual torture leads to a new way of expressing sexual aggression. This new way was borne from the presence of women in the military, women who have been effectively assimilated into the misogynistic military culture. These servicewomen are maintaining this misogyny by treating their bodies as pawns for the use of sexual violence in interrogation. The Abu Ghraib scandal photos will serve as a case illustration for this new facet of sexual violence and gendered military practices as the focus of the rest of this discussion.

⁵ The debate on whether or not gendered traits are inherent or learned is beyond the scope of this discussion. However, the views reflected in this discussion are based on the belief that women are just as capable of violence and aggression as men. To assume all women are moral exemplars or conversely, monsters for behavior that suggests otherwise, is to subjectively endorse gender roles.

⁶ Sexualized torture and forced masturbation around other detainees and male officers alludes to a homophobic element of military tactics as well as misogynistic.

CHAPTER V

ABU GHRAIB: TORTURE, PRISONER ABUSE AND THE ROLE OF WOMEN

“Women at Abu Ghraib”

The story of America’s invasion of Iraq and the details of the scandal at Abu Ghraib serve to illustrate the systemic chauvinism that characterizes the military as discussed in the previous chapter. The focus of this chapter will be on the effects of the public perception of female soldiers as they are pulled between the military norm of chauvinism and the public disdain for female soldiers committing sexual violence. The Abu Ghraib Scandal’s eye-opener in the spring of 2004 marks a significant change in public sentiment towards servicewomen. While the military pressures female soldiers to be hyper-masculine the very traits that distinguish them as females are being weaponized. The undercurrents of aggression and systemic chauvinism work together, first, to pressure servicewomen to adopt masculine traits and objectify their own sexuality by turning it into an interrogative weapon. Secondly, when such sexual violence was leaked to the public via the Abu Ghraib photos, women were vilified for succumbing to such misogyny. The backlash against the soldiers at Abu Ghraib was selective, blame was placed on a ‘few bad eggs’ and responsibility for the sexual violence did not move up the ranks to higher-level officials. The focus remained on the subjects of the photos, not their supervisors or who ordered the abuses initially. Thus, the women who carried out the sexual abuses at Abu Ghraib, as a consequence of the very masculinized culture they were forced to conform to, were simultaneously blamed for yielding to these moral wrongs and were portrayed as deserters of the public perception of what a female soldiers should embody, that of a lady.

The most widely circulated photos from the 2004 Abu Ghraib Scandal, were those of three female soldiers giving a thumbs up or holding a leash of naked male prisoners in various positions. The following sections explore the ethical implications of sexual torture by female soldiers through the lens of social norms and gender expectations both within the military and in general. The muddled reactions and displaced abhorrence toward the few female servicewomen who abused their roles as interrogators, obscured not only the various human rights violations of detainees but also the issue of the female torturers as themselves victims of a broader inconsistency between the interrogation tactics and the decorum expected of U.S. armed forces. By shouldering the blame and illustrating sexual violence, these servicewomen exposed gender role assumptions and the overall gendered nature of the military. They challenged the ideological beliefs of what it means to be “feminine” by revealing the social stigmas attached to femininity and masculinity in the armed services. By challenging the normative account of what it means to be a woman as established by gender ideology, these female soldiers became a fixation for the media notwithstanding evidence of abuse carried out by male soldiers.

However, it is important to note that the public reaction to the Abu Ghraib photos represent another side to gender ideology; gender differences as part of men and women’s distinct natures⁷. The photos depict the possibility of human rights abuses of both genders in prison/wartime setting. If both genders can just as easily fall prey to the psychological temptation to torture then the gendered norms are distinguished through culture in a reactive sense as opposed to attributable to intrinsic feminine/masculine qualities. In order to protect against exposing gender constructions inundated by misogyny, the photos are better interpreted as the irregular effects of “a few bad eggs.” Thus, the women of Abu Ghraib are blamed as rogues, infamous as a result of gender ideology and a fixation towards individuals who challenge it. By understanding the abuses in this way the gendered practices and systemic chauvinism that characterizes the military is left unhindered. Specifically, if women are required to participate in

the patriarchal constructs that define the military that reduces female sexuality to a mere means of sexual aggression, the increased involvement of women in the military is not a true measure of progress towards gender equality.

The abuses carried out at Abu Ghraib were not the mere whims of a few select military personnel. The use of sex as a weapon in interrogation was a military strategy to manipulate the traditional Arab gender roles and use promiscuity as well as sexual degradation to break prisoners. These practices were carried out incontestably, however the choice of strategies are not, by social standards, exemplar practices and were damaging to those women ordered to carry them out. The way in which these abuses were framed, as discussed in the previous paragraph, not only explains why the photos created such a large public scandal but also why such indignity did not reflect poorly on the cultural expectations of what it means to be an American soldier. The virtues expected of women are not the same as expected as men, thus the photos depicting women sexually assaulting detainees undermine the ideological expectations of how women should act. This ideological account differs from the virtues of men, seen as protectors of the helpless and saviors of the innocent. This gender ideology melds perfectly with the patriarchal ideology that shapes the military.

One concern for female soldiers is that by demanding an unambiguous masculine identity from those in the armed forces while simultaneously demanding they exploit their femininity as a weapon in interrogations, we maintain the gender roles servicewomen seek to abolish and undermine the integrity of the U.S. armed forces. There is nothing new about the use of sexual coercion as the core strategy of torture at Abu Ghraib, but the visualization of women engaging in such practices undermines first, the ethical basis of interrogation and human rights, and secondly, the ideological constructs of women as naïve, harmless, and morally above the testosterone motivated, aggressive military attitude. The photos from Abu Ghraib are problematic in that they challenge this ideological account of the virtues of feminism. The photos represent an equal

opportunity to torture, women capable of inflicting torture in the form sexual violence that contradicts cultural and gender norms. The virtues expected of women versus those expected of men are a distinction that defines the public reaction to the Abu Ghraib scandal. Specifically, by pitting the servicewomen who abused detainees as violating virtues expected of women as opposed to violating the virtues expected of American soldiers, we can avoid thinking generally of the American military in cohorts with scandal. From a patriotic standpoint it is safe to nationally scandalize these women because the photos become about women acting unladylike instead of soldiers shaming the military as an institution.

Although the overwhelming majority of the public outrage in the midst of the Abu Ghraib scandal involved the female perpetrators of torture; they are only a tiny fraction of the torture and abuse that went on in Abu Ghraib. The dissemination of torture photos created an onslaught of tumult not only in the public eye but trickling down from high-level officials and members of the executive. This isolated blame ignores the accountability mechanism of orders in the military; high-level officials should be responsible for the human rights abuses occurring under their command. Additionally, the scandal should have stirred Congress and other bureaucratic controls towards policy changes to ensure more explicit and controlled communication between administrators and military personnel at Abu Ghraib. Instead, the scandal resulted in negative discussion of women in the military, the permissibility of gender roles and blame of torture on a “few bad apples.” While the photos are inarguably gruesome and shocking, the public uproar generated not so much from the fact that U.S. soldiers were torturing detainees, but that female U.S. soldiers were sexually exploiting male prisoners, undermining the cultural assumption of a woman’s subordinate position to men, even when exhibiting the same aggression expected of men.

It is impossible to discuss gender at Abu Ghraib without addressing the actions of former Private First Class Lynndie England and Brigadier General Janis Karpinski. As a scapegoat for

gender discussion military file clerk Lynndie England became a central figure in the discussion of torture in the aftermath of the Abu Ghraib photos. England's infamous photo documents the sexual abuse of a naked detainee being pulled like a dog by a leash. The effect of this photo, where England poses smiling with leash in hand, effectively shattered any illusions that servicewomen were incapable of torture. However, the public perception of England as gender representative of military women is a gross exaggeration; most servicemen and women were equally as appalled as the public by the abuses revealed by the Abu Ghraib photos. It is revealing however, that England's actions in Abu Ghraib caused many right-wing officials to re-evaluate female involvement in the military⁸ (Ahmed 11). Some feminists view the vilification of England after Abu Ghraib as a deliberate attempt to condemn women as weak and malleable, and thus unsuitable for interrogative positions (McKelvey 51).

This reaction is a prime example of how servicewomen, acting in the hyper-masculine sense to mimic the military's inherent patriarchal nature, has undermined the gender-neutral promise of the servicewomen who seek equality in the military. These women were following orders; the responsibility of such human rights abuses should be regarded as equally unethical as the numerous male-performed abuses. Military tribunals reveal the use of female guards to taunt male prisoners is a widely accepted method of interrogation and not something arbitrarily invented by the few female soldiers at Abu Ghraib (McKelvey 52). The condemnation of Janis Karpinski as the only high-level officer held responsible for the violations at Abu Ghraib, represents the attempts of the administration to blame the abuses on a "few bad apples" as opposed to the institution as a whole. Karpinski served as a scapegoat for the abuses at Abu Ghraib, and although she was held accountable at the time of her investigation she has since been supported in her claims that she was carrying out orders and her actions were in accord with superior directives (Karpinski 236). The demonic portrayal of the female soldiers at Abu Ghraib incontestably proves the gendered nature of the military, the expectations of servicewomen and the abuse of sexuality as weapon in interrogation.

Countless military personnel, both male and female, claimed that it was not uncommon for detainees to be naked and photographed. However, abhorrence to the Abu Ghraib photos called into question the success of a gender-neutral military. The abuses themselves are gendered, the reactions to the female soldiers carrying the abuses out are gendered and the punishments handed down to remedy the abuses were gendered. First, the demeaning treatment of detainees can be equated to feminization, through the concept of sexual power in a traditional relationship, man in a dominant or active role and woman in a submissive or passive role (Ahmed 13). Those few female servicewomen who committed sexual violence against detainees were participating in violence traditionally only expected by men. This violence is not only traditionally carried out by men, but also normally perpetrated against women. When sexual violence is directed at males, it is a way of reducing the subject of such torture to the status of a subordinate female. The rationale for sexual abuse is to treat male detainees like subordinate women; to strip, dominate, and sexually exploit a detainee is to completely emasculate them (Ahmed 6). Through this militarized, racist, sexist representation, interrogators were defining their position and dominance over the Iraqi detainees. This type of interrogation strategy is only successful by presupposing the patriarchal hierarchy in society and the systemic chauvinism intrinsic to the military. To be sexual assaulted like a woman is a loss of such chauvinism that resides these men.

According to the U.S. armed forces, women more effectively carry out interrogation tactics designed to sexually harass and violate the religious integrity of Arab male prisoners and they categorize such practices as permissible 'gender coercion' (Kaufman 600). By offending cultural sensitivities and Islamic law, U.S. personnel aims to emasculate prisoners by having them pose naked, masturbate, and rub each other in front of female military personnel. Such gendered behaviors include the constant humiliation of nudity in front of females, forced masturbation in front of females, and placing a dog chain or strap around a naked detainee's neck and having a female Soldier pose for a picture (Taguba 15-17). Additionally, naked detainees were forced to wear women's underwear on their heads, stand naked in front of female personnel, and female

interrogators were asked to smear red ink from their unbuttoned pants on detainees' faces to feign menstruation (Kaufman 605). Many prisoner testimonies also reveal the threat of rape by female interrogators, offering sex in exchange for information or using sex as coercion to break detainees (Rumann 287). Female interrogators were described regularly wearing tight, revealing clothes, stripping in front of prisoners, rubbing detainees suggestively sometimes with their bare breasts and nipples, and making sexual sounds (Rumann 285).

The sexual abuses were considered distasteful and criticized, but those in control as well as those in Washington sanctioned the techniques. Sexual torture was not simply the indiscriminate work of a few "bad girls," it was a major component of the mental side to interrogating detainees. To attribute the actions of those involved in the Abu Ghraib torture photos to a few uncivilized and unrestrained soldiers, is to completely overlook the psychological components to torture, acts of bigotry, sexual exploitation, and racial prejudice (Kaufman 605). The photos from Abu Ghraib expose the pervasiveness of racism, misogyny, homophobia and hyper-masculinity in the military and their influence on interrogative tactics. In this way, the most shocking techniques used to interrogate Muslim detainees were not necessarily the most violent, but the ones that challenges patriarchal hierarchies and portray female interrogators as hyper-masculine sexual predators. The remainder of this section will look at the flip side of gender at Abu Ghraib, the human rights abuses suffered by female detainees at the hands of male soldiers and the juxtaposition of social expectations from these abuses to those mentioned above.

“Systemic Chauvinism at Abu Ghraib”

“Gender stereotypes also play a role in the confusion regarding these [SIC] images, not only because women are the torturers but also because men are the ones being sexually abused. Of course, we know that men sexually abuse and rape female Iraqi prisoners, but that is so much business as usual that it does not capture our imaginations in the way that images of women sexually abusing men does.”

-Kelly Oliver, (Oliver 2008, 3).

In the context of the patriarchal military culture this section will address why what these servicewomen did was not merely exploiting vulnerabilities created by the misogyny of Arab culture but that they made space for themselves as females soldiers within the misogynistic culture of American military. As aforementioned, after the Abu Ghraib scandal went public the main opposition to the treatment of detainees revolved around female military personnel defiling male detainees, whereas little attention has been given to the women detainees at Abu Ghraib. If one were to interpret the Abu Ghraib scandal as soldiers disgracing the U.S. military, the national pride and patriotism so integral to the support of Operation Iraqi Freedom would collapse. To preserve the patriotic perception of morally upright American soldiers, little attention was given to the various women and children detained for the purpose of pressuring their male relatives suspected of terrorist activity to come forward. *The Guardian's* reporter Luke Harding reported about female detainee abuse in the midst of the Abu Ghraib scandal citing instances of female prisoner abuse including solitary confinement, starvation, rape, forced sustained sexual positions and physical abuse by U.S. soldiers (Harding 3). Similar violations perpetrated by U.S. military men and women to detained Arab women occurred, but these abuses remained unrecognized in order to shield soldiers from any criticism. Even the Taguba report (military investigation into Abu Ghraib scandal) confirmed acts of violence and sexual assault towards

female detainees; expounding on numerous accounts of nudity, sexual exploitation and even rape of Arab detainees by U.S. soldiers (McNutt 1). However, in an effort to preserve the image of the U.S. soldier as a hero and protector of the innocent, these reports remained largely unconnected from the Abu Ghraib scandal.

Beyond the general “image-saving” function of portraying the abuses in a gendered manner, we perpetuate the systemic chauvinism outlined in Chapter IV. The relative silence on the issue of male soldiers abusing female detainees fits into the gender norm for men; it melds with the expectation of male sexual aggression. The fact that male soldiers are exhibiting sexual aggression can be written off according to the “boys will be boys” gender ideology. This expectation preserves male abuses as a lack of self-control according to the expectations of men in general, whereas well-behaved male soldiers can be extolled as resisters of the temptation to sexually abuse prisoners and become even more heroic. Alternatively, the select few servicewomen who served as scapegoats for the Abu Ghraib abuses shouldered the blame in order to salvage public support for military culture. If we were to acknowledge the scandal in a way that reveals the overwhelming reports of male soldiers abusing both male and female detainees in a way other than deflating such violence to actions associated with a “boys will be boys” attitude, we would be vilifying the American military. Thus, gender ideology serves to explain why abhorrent behavior of male soldiers can be minimized and even ignored as a part of the natural aggression and sexual dominance associated with masculinity while similarly accused women are hung out to dry as bad soldiers and poor representations of ladies.

Once we accept women as fully integrated in the military structure, the media will be forced to stop insulating the public from the female soldier. The ‘new normal’ for military culture will include these gendered interrogation techniques. Such normalization will break down the barriers of systemic chauvinism in the military to expose and remedy the issues associated with such a misogynistic culture. Gender norms are not distractions amplified in order to excuse or undermine the severity of torture and violations of basic human rights. Gender ideology serves as

a template for the details of the Abu Ghraib photos to fall into according to the most shocking. It is also according to this ideology that helps explain why these abuses arose as a means of interrogation. By using the sexuality of female soldiers as a weapon against male detainees the military can preserve its systemic chauvinism despite an influx of female soldiers and calls for gender equality. These servicewomen's reputations are forever sullied as few "bad apples," and their service is reduced to that of sexual pawns; they were following orders and serving on behalf of the U.S. government (Ahmed 10). Even as more female soldiers join the ranks, these women are forced to conform to the deeply engrained patriarchal military culture and weaponize the only remaining feminine traits. Through self-marginalization, these servicewomen (either voluntarily or under orders) use their sexuality as a tool to degrade prisoners. Thus, the remaining femininity associated with female soldiers is converted into a tool of aggression and encouraged to embrace the misogynistic culture either as pawns to be scandalized as exemplified by the Abu Ghraib photos, or as complacent hyper-masculine members of an overly chauvinistic institution.

Once we remove the gendered expectations of women in the military and see them as neutral representatives of the military, fully integrated in the inherently violent institution of combatants, the female soldiers at Abu Ghraib are not monsters, but simply some of the few perpetrators of human rights violations with red-hands. The photos do not represent the criminal deviancy of a few rogue servicewomen, but evidence on a new realm of sexualized interrogation methods. The patriarchal ideals of military culture not only pressure servicewomen to objectify their own sexuality and treat it as a weapon, but also to vilify women who are caught succumbing to this pressure by portraying them as enemies to the ideals of femininity. The Abu Ghraib photos embodied the systematic work of the U.S. government to engage in the sexual exploitation of prisoners at the hands of female interrogators. Sexualized interrogation of suspected terrorists is not an isolated technique used singly at Abu Ghraib, but a calculated war strategy for fighting Middle Eastern combatants. The ethics of sexual torture is too broad of a project for the remainder of this essay, instead this discussion will focus on the methods developed by U.S.

military that require female interrogators to use sex as a weapon against detainees. The next section will discuss the sexually explicit techniques in greater detail as well as the legality of these techniques within the standards of *Jus in Bello* and domestic and international law.

⁷ Gender ideology is a view of both the nature of men/women and the social construct of how men/women are supposed to be. The ideological account at Abu Ghraib serves to explain the media's response to the Abu Ghraib photos; they challenged how men and women are expected to behave in society or their cultural ideology. Conversely, the photos could be interpreted as discounting any normative ideology because they challenge the idea of how women are, their nature. To protect against this outcome, the women at Abu Ghraib were depicted as bad women for failing to live up to feminine virtues.

⁸ Lynndie England served 36 months in military prison for her crimes. Boyfriend Charles Graner, 15 years her senior and father of her son, was the perpetrator of the abuses depicted in the very photos from which she gained notoriety as the "Small Town Girl who became an All-American Monster," served only 6.5 years in prison albeit being convicted of all charges of abuse.

CHAPTER VI

MILITARY CULTURE, GENDER AND SYSTEMIC CHAUVINISM

“A Soldier’s Norm or Gender Exploitation?”

“The humiliation was much worse than any physical torture. We are men, it is ok if they beat me, beatings don’t hurt us, it’s just a blow. But no one would want his manhood to be shattered. They wanted us to feel as though we were women, the way women feel and this is the worst insult, to feel like a woman.” (Faramarzi 1).

Dhia al-Shweiri, Months after his release from Abu Ghraib

The use of Western “sexual aggressiveness” in torture and interrogation, imposing pornographic tactics on detainees, infringes on the putative sexual and moral codes of Islam. Sexually explicit interrogation techniques included the use of female interrogators to invade detainee’s space, aggression, sexual imagery and pornography, placing women’s underwear on detainees and threats of sexual assault (Rumann 287). The exploitation of female soldiers as sexualized objects to be utilized as part of interrogation of Middle Eastern men suspected of terrorism appears to be a new twist on gender and sexual violence in the U.S. Military. The degradation of female interrogators as tools for sexual aggression undercuts the advances towards gender equality in the military.

In the first part of this chapter I will show how the weaponization of female sexuality is particularly unethical, by way of addressing two particular objections to this view. Specifically, a critic might argue that all soldiers, regardless of their sex, are weaponized and thus, there is

nothing immoral about the weaponization of sex. In response to this objection this chapter aims to bring to light the differences between the weaponization of female sexuality at Abu Ghraib versus the weaponization of soldiers in general, exposing the former as a unique and immoral violation of *jus in bello* standards for the treatment of prisoners of war. Ostensibly, the value of servicewomen at Abu Ghraib as sexualized pawns of the military overshadowed the broader project of opportunity for women in the military as icons of Western femininity and sexual freedom. In the second part of this chapter, I will address another potential object to the argument that gender, in general is always exploited in the military as a form of humiliation for both male and female soldiers. Although, the military is not neutral per se to maleness the way in which masculinity is exploited is itself gendered. In humiliating soldiers in a blatantly feminine manner and to make pariahs out of the females who have been shamed in this way, is a distinct type of humiliation experienced only by female soldiers.

“Weaponizing Soldiers vs. Weaponizing Gender”

First, it is important to distinguish why the weaponization of feminine sexuality in the military is unethical. The distinguishing factor between the marginalization of soldiers in general and the exploitation of female soldiers, as sexual aggressors is one based on gender as opposed to rank or position. To be a soldier is, in some sense, to lose your status as an individual for the cohesiveness of the unit. In order to achieve this cohesiveness soldiers are by necessity tools for warfare, responding to orders, carrying out duties, and acting according to their own training regimen. A critic may claim that to weaponize femininity is a natural and proper use of female soldiers as components of war. However, treating women as things by which officers can carry

out sexually aggressive interrogation tactics reinforces the misogynistic system of the military and thus, goes beyond the everyday way the average soldier is put to use. To put it differently, female soldiers should be weaponized to the same extent and in the same way as any other soldier, not in a manner that reinforces (and arguably exacerbates) the patriarchal ideals of the military. Male soldiers at Abu Ghraib participated in sexual interrogation tactics as well, but these soldiers were not asked to exploit their own sexuality as the women were. Women are accepted into military culture once they conform to the misogynistic standards that marginalize what is construed as feminine. Specifically, when women are asked to seduce and sexually assault male prisoners they are asked to conform to the idea that women are pawns of sexuality while acting as such pawns, or rather, they are self-marginalizing female sexuality. For example, various forms of sex-based interrogation that utilize mini-skirts and bare breasts rely only on the self-marginalization of females as objects of sexual subordination, as opposed to as objects of training or any military skill. Specifically, the use of gender in this instance, does not play on the capacity of servicewomen to do what they were trained to do but on their bodies as sex objects for the commission of sexualized abuse. These techniques succeed only when they are deeply humiliating, a contingency that relies fully on a misogynistic culture. In order for female sexual aggression to be successfully corruptive, the participants of such techniques must be so committed to a patriarchal view of human sexuality that a woman interrogator who is being explicitly sexual and domineering is experienced as a degradation of maleness. These techniques are only successful because they play directly off a systemic chauvinism in the military as well as patriarchal ideals in society. Because female interrogators are forced to presuppose these constructs for the success of their sexual interrogations they are essentially self-marginalizing their own sexuality. Thus, female soldiers were not weaponized in the same manner as all other soldiers. This gendered approach to interrogation is problematic for just war principles because it intentionally manipulates female characteristics in a morally repugnant manner. An intrinsically

immoral action cannot be justified as a means to a good effect of war, because the bad effect cannot be a means to a good one. Thus, actions in war that cause harm, as a means of pursuing a good end are not permitted under the *jus in bello* principles of war and doctrine of double effect.

According to the doctrine of double effect, immoral action can be justified if they are the means to a good effect if the good outweighs the bad. If the action itself is neutral but has a bad effect and a good one, then the bad is a side effect as opposed to a means to the good effect. In the name of national security and corrupting the 'bad guys' U.S. servicewomen are willingly manipulating their sexuality as weapons of war, the bad is a means to the end of war and the deterrence of terrorism. However, the use of fake menstrual blood, provocative clothing, bras and thong underwear, and sexual touching as sanctioned interrogation tactics does little to forward a gender-neutral respect of women in the military. The cost of demeaning U.S. servicewomen must be evaluated in as a factor in the doctrine of double effect in the context of defusing threats of terror. As far as the use of sexualized torture as a means to an end, the effectiveness of humiliating Arab detainees in interrogation does not outweigh the detriment such torture techniques play on the gender equality in the military. Albeit, the disparity between the traditional Arab female and female in the modern Western world creates a powerful tool for the corruption of Arab men, but the use of such techniques is not a necessary means by which interrogators must deter terrorism. First, the interrogations themselves are carried out to gain information, however, the means of torture must be proportional to the ends of intelligence gathering. If the means we utilize is deep humiliation there must be sufficient evidence that such humiliation will reveal life-saving information; only if the probability of acquiring such information is significantly higher than the probability of producing such goods through another tactic will the bad effect of self-marginalizing female sexuality be justified. However, there is no clear reason to think that this type of utilitarian argument will stand considering the subjective and largely outcome dependent breakdown of torture techniques.

The overall effectiveness of torture in interrogation is beyond the scope of this paper but as discussed in Chapter III, the success of torture in gaining legitimate information is subjective, varied, and largely contingent on the psyche of each detainee. While the effectiveness of sexualized interrogation on each detainee is varied, humiliation, subordination, and the reinforcement of gender roles for female soldiers are not justifiable bad effects to the good effects of intelligence gathering. Such ends are suffered only by female military personnel and adversely affect an already insular minority in the U.S. armed services. Sex-based interrogation techniques represent an immoral ethos attached to the female soldier, no longer as merely a victim but as an actor, enabler and perpetrator of sexual violence (Bond 34). The sexual abuse at Abu Ghraib represents a step-back in equality regarding the progression of women's roles in the military. The weaponization of female sexuality goes beyond the assumed roles of soldiers as 'things' or weapons of war. The use of female soldiers as things goes beyond an extension of normal soldier status in that the means of service are not proportionate to the ends of subjecting detainees to sexual torture. A soldier's moral culpability is salvaged by their service to the cause of war; female interrogators however are self-marginalized and their service does not preserve their morality. Rather, through the Abu Ghraib scandal, the service of female interrogators as sexual aggressors solidified their status as morally compromised women who have violated *jus in bello* norms in order to assimilate to the patriarchal military culture. This pressure to assimilate and unavoidably violate the *jus in bello* standards of moral decency in war serves to undermine efforts of female soldiers to move forward in the military towards gender equality. By serving as sexual aggressors these women were pushed into a position that signals inequality while simultaneously hindering steps for future equality. Therefore, the weaponization of female sexuality is not simply an extension of a soldier's duty as members of any sex, but is a distinct abuse of sexuality that reinforces the systemic chauvinism and undercuts advances towards gender equality in the military.

“Humiliation as a Punishment”

Another objection to the argument that sexually aggressive interrogation techniques are immoral revolves around the idea that techniques designed to humiliate detainees are common and effective practices ingrained in the everyday life of a soldier, regardless of their gender. As discussed in Chapter IV, the U.S. military has a long tradition of male-dominated notions of honor as associated with masculinity. As an element in training this attitude of an honorable soldier, those who break from this mold are often demeaned as a penalty for poor behavior. Because dominance, victory and honor are so revered within the U.S. Military, humiliation of soldiers becomes a common type of punishment for soldiers; a punishment that begins in basic training and continues in the field. The humiliation of women interrogators in performing sexualized torture may be perceived as an extension of this type of humiliation. However, the type of sexual exploitation and self-marginalization of their own sexuality is not ordered as a type of punishment. Rather, the weaponization of femininity is expected as a part of a female soldier's line of duty, the humiliation of such is the honor associated with of serving ones country is detached from the actual practices involved in sexual torture that exclusively exploit the physical characteristics of females. This type of humiliation differs from the humiliation of soldiers who act out of line or those undergoing training because the latter humiliation is a consequence of some negative action on the part of the soldier. The exploitation of femininity involves a type of humiliation inconsistent with the philosophy of honor for good behavior and disgrace for poor behavior. These soldiers, even when completing the sexualized torture effectively, are not then honored for their good behavior but are treated as subordinate tools that play into the systemic chauvinism of military culture. Put another way, the activity they are called upon to do, as part of their military duties, is intrinsically humiliating. Whereas faithfully executing one's duty as a soldier is assumed honorable, in this case the nature of the activity itself is dishonorable. This

view is substantiated by the public reaction to the Abu Ghraib photos as discussed in Chapter IV; society did not respond kindly to the portrayal of female soldiers as sexual aggressors. These women were viewed as an embarrassment to the military and their gender for the crime of following orders and perhaps taking the weaponization of sexuality a bit too far. However, the humiliation involved in carrying out these orders pales in comparison to the social disgrace experienced after the photos went public. The vehement public reaction to the Abu Ghraib photos exposes the difference between sexually aggressive interrogation tactics as a common practice to humiliate a soldier versus an immoral and socially unforgivable practice of the self-marginalization of female sexuality. Thus, the use of female sexuality to interrogate detainees is not an extension of “business as usual” in military practice, but an immoral practice that blatantly disregards any goals for gender equality in the misogynistic constructs of the military.

CHAPTER VII

CONCLUSION

“Abu Ghraib Abuses and Just War Theory”

The War on Terror was founded on the promise of saving the world from terrorism as a pre-emptive ‘just war,’ where the U.S. assumed the position of superhero answering to some higher moral law, in fighting the “axis of evil”. However, the political tendency to justify war within the context of “good” and “evil” is no longer a beneficial delineation of *jus in bello* standards because of massive disparity in power, resources and military strength present in asymmetric conflicts such as the War on Terror. The most glaring omission from just war is the reclassification of prisoners of war as enemy combatants and the exclusion of basic human rights to the detainees at Abu Ghraib and Guantanamo Bay in the years following 9/11. The status of these detainees resulted in a quagmire of problems for suspected terrorists and *in bello* rights. Under the Bush Administration, limits on the status and treatment of noncombatants, soldiers and military intelligence were eradicated and redesigned outside of the restrictions of *jus in bello* standards—but also outside the constraints of the criminal justice system. As the war progressed and public support wavered, it became clear that the U.S. was undercutting international law and the standards of justice in war.

The Abu Ghraib scandal not only represented a turning point of support for the Bush administration but it also brought the topics of torture, abuse, and human rights, into the public

eye. As a result, the rationale of fighting evil gave way to the moral condemnation of torture tactics. The permissibility of torture and different abusive interrogative tactics lessened in the aftermath of the publication of Abu Ghraib torture photos. Under traditional *jus in bello* legislation, once enemy combatants surrender, they are protected from torture, rape and other harms. However, the status of suspected terrorists as likewise deserving these same rights has been heavily contested since 9/11. The aggressive interrogation of detainees at Abu Ghraib and Gitmo inescapably violate the rights of these prisoners. In the War on Terror, the effectiveness in gaining valuable information through these methods was prioritized by U.S. officials above the protections of basic human rights of suspected terrorists. However, the public reaction to the abuses at Abu Ghraib bolsters the need to push through legislation in order to strengthen the bureaucratic confines and administrative accountability of prisoner interrogations. Specifically, it ensures that the suspect is actually threatening and that the tactics utilized are in fact a necessary means for intelligence gathering.

The humane treatment of detainees is an established protection of *jus in bello*. Even if the suspected terrorists at Abu Ghraib and Gitmo were not classifiable as POWs, as enemy combatants they deserve contact with the outside world, the right to a trial and the right to release after the conflict ceases. The complex reactions to the attacks of September 11, 2001, including the vilification of Islamic and Muslim men, proved to be a catalyst for policy issues surrounding the capture of suspected terrorists that culminated in the Abu Ghraib Scandal. The *jus ad bellum* rationalization for the War on Terror was fueled by outrage, terror, and political advantage from the position of global super power, rather than necessity. Under the standards for right conduct in war, the *jus in bello* recommendations for detainee treatment at Abu Ghraib and Guantanamo Bay were undercut by hyper-masculinity and racial prejudice. Using the combination of fear of additional terrorist attacks, war rhetoric, and moral absolutism, U.S. authorities carved out numerous exemptions to international law in the name of combating the ‘axis of evil.’ Not only did the Abu Ghraib photos create a call for the humane treatment of detainees in accord with

protections similar to those owed to POWs, but also for an assessment of the practices expected of our own armed forces. Particularly, the weaponization of female sexuality is an impermissible means of interrogation that undermines gender equality in the military as well as perverts the ethical expectations of our soldiers through practices of sexual exploitation. The U.S. must adhere to the standards of *jus in bello* in the War on Terror, comprised not only of the humane treatment of detainees but more immediately to preserve the rights and reputes of our own servicewomen.

The Abu Ghraib scandal brought to the surface particular interrogative tactics developed to manipulate Arab culture. The specific interrogative practices involving nudity, seductive clothing and fake menstrual blood are methods demeaning to prisoners and servicewomen alike. The implications of such practices demonstrate the extent to which systemic chauvinism influences military culture. It also illustrates the heightened pressure on women to act in accordance with the policies of a male-dominated institution. “Ironically, these misogynistic rituals were acted out in a way that depending on the devalued status of women, as male detainees were humiliated in part by being treated ‘as women’—sodomized with objects and forced to wear women’s underwear” (McKelvey 204). The conditions in military detention centers encourage dehumanization as a part of the system of intelligence gathering. In this context, the success of women depends on their willingness to participate in the misogynistic and racist interrogation tactics used on detainees (McKelvey 210). The automatic condemnation of the servicewomen at Abu Ghraib as ‘a few bad eggs’ feeds an unjustified stereotype of female soldiers that overlooks the misogynistic constructs each female soldier must assimilate with in order to thrive in military culture. In the aftermath of 9/11, the reports of torture and prisoner abuse have had a negative impact on the U.S. global image. Consequently, some fear this international disrepute will jeopardize alliances, spark future terrorist attacks, and endanger our troops in future conflicts. However, a more immediate implication of Abu Ghraib is the continued subjugation of women in the military through the use of sexuality as a tool of men.

The human rights abuses and sexual assault conveyed in the Abu Ghraib photos played a

central role in discussions of women in the military. The use of women as interrogators and officials at Abu Ghraib opened the floodgates to the discussion of torture, gender equality and women in the military. The now infamous photos of the Abu Ghraib scandal represent some of today's most physically and psychologically damaging torture tactics; the servicewomen involved however, served as mere instruments of sanctioned coercion tactics. They were in asked by their male counterparts not only to use sexual depravity in order to mistreat detainees, but to use a kind of sexual depravity that succeeded in humiliating detainees only granted the misogynistic assumptions such behavior was founded on. In short, they were asked to participate in their own marginalization as women by acting out a role that presupposed the inferiority of women. As discussed in Chapter IV and V, sexual aggression is expected of male soldiers. Sexual abuse by male soldiers is viewed as 'blowing off steam' or tension relief and oftentimes excused under a nonchalant 'boys will be boys' attitude. Conversely, the female sexual aggressors were disgraced, punished and ostracized from society for partaking in sexual abuses. The conviction, public disdain and military exile of these women reveal expectations regarding the normative ideology of women. The weaponization of female sexuality not only violates prisoner protections established by *jus in bello*, but also sheds light on the role of women in the military as they grapple to maintain a balance between societal beliefs and the need to assimilate with the masculinization of the military.

In order to achieve gender equality for female soldiers serving in the War on Terror, the systemic chauvinism of military culture must be transformed from a misogynistic hierarchy to one that protects the female soldier minority. Once these patriarchal ideals are broken down, the pressure for female soldiers to adopt masculine traits and objectify their own sexuality will cease alongside the disparagement of women who submit to this pressure. Consequently, female soldiers will slowly be treated less as anomalies and gain equal respect to their male peers both within the military and from society. Male soldiers do not victimize themselves when they turn their sexuality into a weapon the way female soldiers do. It is problematic for female soldiers to

weaponize their sexuality because they are then reinforcing the patriarchal system by turning their bodies into tools, objects to be used. Instead of weaponizing female sexuality, interrogation practices should be gender neutral and not force the self-marginalization of a female interrogator's body. In interrogating prisoners in this way, the underlying systemic chauvinism in the military is presupposed and thus the women who endorse sexual aggression are not asserting gender equality but are instead assuming the underlying misogyny in the military. By assuming a subordinate attitude to the misogynistic substructure of the military, female soldiers are presupposing their own inferiority in order to use their sexuality as a tool in interrogating detainees. In this way, female interrogators become victims of subordination and submit to a distinctive type of self-marginalization unknown to male soldiers. Thus, the weaponization of women's sexuality is different from the weaponization of soldiers in general and consequently it is a distinctive kind of wrong that is being done to women in the military. In order to overcome this self-marginalization, the patriarchal ideals of the military must be disbanded and gender-neutral practices must be implemented in interrogation tactics to preserve advancement towards gender equality in the military.

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Findings and Conclusions:

This thesis asserts that jus in bello standards for contemporary warfare can be meaningfully adapted to regulate asymmetric conflicts. Although, non-state agents may be forced to resort to acts of terror in order to achieve their aims, empowered states must abide by jus in bello criteria as regulations of wartime conduct. For example, a captured enemy who is not abiding by jus in bello standards—a terrorist who uses immoral tactics—may be justified in doing so if their targets are military ones. These agents deserve fair treatment from empowered states even if they themselves do not abide by jus in bello standards. Similarly, as captured combatants these agents must be treated according to the just war standards that govern the treatment of captured enemies. Enemy combatants, even if outside the legal parameters of prisoners of war, have the right to benevolent quarantine and to be safeguarded from torture. I use the Abu Ghraib scandal as a case illustration to demonstrate the perverse nature of torture and to discuss its place in contemporary warfare. The Abu Ghraib photos also expose the use of sexual aggression as an interrogation tactic. I offer support for the claim that such tactics are immoral and impermissible not only under the established protections of international law, but also as ethical violations of the basic rights owed to detainees and their female interrogators. In order to be successful, sexualized torture must capitalize on the systemic chauvinism present in both military culture and traditional Muslim culture. Through the self-marginalization of female sexuality, female soldiers are exploiting their own bodies as weapons of war in order to humiliate Muslim detainees. This self-marginalization contradicts normative gender roles and the expectations of women as soldiers in western society. The Abu Ghraib photos exploded gender roles and exposed the detriment to gender equality in forcing female interrogators to reaffirm the systemic chauvinism of military culture. In order to overcome the self-marginalization of female sexuality, the patriarchal ideals of the military must be disbanded and gender-neutral practices must be implemented in interrogation tactics to preserve the advancement of women in the military.

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