

**What is Life Worth in the United States Army
Military Justice System?**

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Authors' Financial Disclosure – We have no conflict of interest, including direct or indirect financial interest that is included in the materials contained or related to the subject matter of this manuscript.

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ABSTRACT

What is Life Worth in the U.S. Army Military Justice System? by Aimee M. Bateman, MAJ and O. Shawn Cupp, Ph.D., (LTC, retired, US Army)

This paper explores the value of human life as viewed through the lens of contemporary U.S. Army military justice, specifically the results of the U.S. Army Clemency and Parole Board (ACPB). The current operational environment and soldiers convicted of committing Article 118 (Murder) while deployed provides the bounded framework for the cases within this study. The research problem is the perceived difference in adjudication of U.S. Army soldiers based upon category of victims either American versus foreigners. The purpose of the research study is to determine whether a relationship exists between victim and the length of the confinement sentence served. The purposive sample derived from the U.S. Army Clemency and Parole Board results for the past ten years. All extraneous variables controlled based upon the sample only being those convicted of Article 118. Sample normalized all instances of evidence, disclosure, improper or unfit legal representations, logistics of witnesses, and all other trial variables due to individuals already convicted. The research study uses qualitative methodology and case study design to identify the phenomenon expressed based upon differences in sentence length according to victim. NVivo, a computer assisted software system is used to analyze the published trial results of each case. This will identify significant statements and meaning units and we will report themes. This would inform the U.S. Army military justice system to review procedures and correct any perceived different treatment of Article 118 convicted individuals, and encourage future continued study of any trends.

Key Words: U.S. Army Clemency and Parole Board, Article 118 convicted individuals, human life, victims

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Introduction

Mr. Moore, you have pleaded guilty today to conspiracy to commit premeditated murder and three counts of premeditated murder. You and your coconspirators, Mr. Hope and your older brother, sat around for weeks before these murders and thought up various "scenarios." These scenarios involved killing the family members of Latin King gang members?

Yes, Judge.

And, on three separate occasions, you acted out these scenarios. You murdered three people in broad daylight and took pictures of their dead bodies, correct?

Yes, Judge.

Did any of them ever threaten you? Did you know who they were, by name, when you targeted them to be killed? Did you have any legal justification for killing any of the men you killed?

No, Sir. None of that. They were all just innocent guys, walking through their neighborhood. Maybe they weren't even Kings' family members. I don't know. I didn't really care.

So why did you kill them?

I don't know, Sir. I mean, yeah, I know why. It doesn't make sense now, but I know why. We were bored. We were angry. We were unemployed. Sometimes I was high, but not on the days I killed people. I didn't want to be shooting guns while stoned. I guess we figured, why not? No one gave a shit about our lives, why should we give a shit about the lives of anyone else. I especially didn't care about their lives. The Kings are what brought this neighborhood down. I know they were the ones who killed my father 7 years ago. He didn't die in no "random car crash." So, yeah, we sat around dreaming up ways to kill them, in broad daylight, and watch them suffer, and bleed, and die. I didn't care about any of those 'spics.

But, the three people you killed, never threatened you, never posed a threat to you or your family, and were not even gang members, correct?

Yes, Judge.

OK. I want you to look at the picture marked Exhibit A. Do you recognize that picture?

Yes, Sir. I took that picture right after Hope and I killed him.

Let's talk about him. He was a 15-year-old boy.

Yes, Sir. I mean, I didn't for sure know at the time, but we were pretty sure he was coming home from school. It was about three or four pm, and we were waiting for him behind the dugout at the baseball field. It was a neighborhood cut-through from the school to the projects where the Kings lived.

How did you kill him?

Well, just like we had planned in our scenario. We said, "Hey, stop! Did you drop this?" so that he would come back a little closer to the wall so we could kill him easier. And he did. He turned around, walked toward his, and we both shot him, six times each. We both had six rounds in our guns. He immediately dropped to the ground and blood started pouring out of his head. And then I took that picture.

[Mr. Moore goes on to describe to two other "scenario" murders he carried out, and also his deep remorse for the senseless killings. The prosecutor then makes an argument to the court for a life sentence for 22-year-old Mr. Moore based on the cold, calculating, racially-motivated, and deranged manner in which the crimes were committed. Finally, Mr. Moore's defense counsel makes his argument for an appropriate sentence.]

Your Honor, you should sentence Mr. Moore to no more than 24 years in prison. He will be eligible for parole in seven years, when he is 29 years old. He has grown up in the roughest of eastside Chicago neighborhoods, with no father, no employment opportunities, and desensitized to violence. His brother, whom he has agreed to testify against, encouraged and congratulated him when he committed these crimes. He deserves the mercy and leniency of this court.

Does Mr. Moore stand a good chance of being successful in his plea for mercy? Not likely.

Violent, callous, immoral individuals such as the fictional "Mr. Moore" are considered to be among our society's most dangerous members. In response to an actual targeting killing of a 9-year-old child by gang members in Chicago, Police Superintendent Gary McCarthy said:

This is a different level. . . These are non-combatants now being assassinated. . . This is an innocent child, this is a 9-year-old child, targeted, lured to this spot and murdered. This is different.

But, what if the child was a 15-year-old Afghan boy? What if "Mr. Moore" was actually 22-year-old Specialist (SPC) Jeremy Morlock, and "Mr. Hope" was Private First Class (PFC) Andrew Holmes, and the "older brother" was Staff Sergeant (SSG) Calvin Gibbs?¹ Is it also different when non-combatants are murdered by soldiers in a combat zone?



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This paper seeks to examine the treatment of a very small subset of crimes, all committed in similar environments and in similar circumstances. The crime: murder; the convicted: U.S. Army soldiers; the location and circumstances: the combat theaters of Iraq and Afghanistan. The treatment of these crimes will be examined through an objective lens—that of the military justice system and the actions of the Army Clemency and Parole Board.

Military Law: Uniform Code of Military Justice (UCMJ)

The United States military justice system is unique in form and purpose. While most criminal justice systems exist to promote justice and ensure public safety,³ the stated and functional purpose of military criminal law is more expansive. As stated in the preamble to the Manual for Courts-Martial:

The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.⁴

Since its inception in 1775, the military justice system has evolved from a “disciplinary tool of the commander into an elaborative judicial process.”⁵ The current body of military law, the Uniform Code of Military Justice (UCMJ), has stood largely unchanged since its enactment in 1950.⁶ When amended over the years, most major amendments to the UCMJ have sought to strengthen the legitimacy and robustness of the process. Such changes include the addition of the trial judiciary in 1968⁷ and the ability for direct appeal to the Supreme Court in 1983.⁸ Additionally, although the UCMJ is “uniform” meaning it applies to all branches of the military, service secretaries also strengthened the legitimacy of the system through service-specific regulations. One significant example is the establishment of an independent trial defense organization by the Army in 1980.⁹

Army Clemency and Parole Board (ACPB)

Another matter which Congress has left up to the “Secretary concerned”¹⁰ is “a system of parole for offenders who are confined in military correctional facilities”¹¹ as well as provisions for clemency.¹² Pursuant to this authority, the Secretary of the Army established the Army Clemency and Parole Board (ACPB).¹³ As it is stated in the first paragraph of Army Regulation (AR) 13-150, titled “Army Clemency and Parole Board,”: “There is no constitutional, statutory, or regulatory right or entitlement for an individual to be granted clemency or to be released on parole.”¹⁴ However, every soldier confined in a military facility will be considered for clemency or parole in accordance with the litany of prerequisite conditions that must first be met.¹⁵

If a soldier meets this eligibility criteria and is subsequently considered for clemency or parole, there are only two binding criteria for the ACPB: 1) “the ACPB will consider each case on its own merits,”¹⁶ and 2) “The Board shall refrain from developing conclusions as to guilt or

innocence and shall accept the finding of Courts-Martial as approved or affirmed as final.”¹⁷ As for non-binding criteria, AR 15-130 offers over two dozen factors that the board may consider, but “the relevance and the weight to be accorded any factor is within the broad discretion of the ACPB.”¹⁸ One overall consideration the Board may consider is the “nature and circumstances of the offense to determine whether clemency or parole would depreciate the seriousness of the offense or promote disrespect for the law.”¹⁹

As such, historical clemency and parole approval rates are generally low. In Fiscal Year (FY) 2013, only 16 percent of cases considered for parole were approved (26 of 163) and two percent of cases considered for clemency were approved (13 of 671).²⁰ In FY 2014, the approval rates were even lower: 12 percent for parole cases (20 of 171) and 1.2 percent for clemency cases (8 of 645).²¹

“Murder” Under the UCMJ

Among the cases which come before the ACPB are cases of soldiers convicted of murder. A soldier who is convicted of murder is likely to receive a sentence which includes years or decades of confinement time. Therefore, in accordance with the clemency and parole eligibility described above and in Appendix A, these soldiers are likely to petition the ACPB for clemency or parole multiple times during the pendency of their term of confinement.²²

Crimes, In General, Under the UCMJ

The UCMJ is a unique criminal code. In conformity with the unique purpose of military law, stated above, there are acts criminalized by military law that have no counterpart in civilian penal codes. Such examples are “Absence without leave,”²³ “Missing movement,”²⁴ and “Insubordinate conduct.”²⁵ Historically, military crimes *only* included crimes that were prejudicial to good order and discipline.²⁶ It was not until 1863 that crimes such as murder, assault, and rape could be prosecuted by the military without a connection to good order and discipline.²⁷

Today, nearly half of the crimes in the UCMJ are very if similar, if not directly analogous, to crimes found in civilian penal codes, to include “Larceny,”²⁸ “Rape,”²⁹ “Assaults,”³⁰ and “Murder.”³¹

Article 118, UCMJ: Murder

Among these non-military-specific crimes, Article 118 (Murder) is unique. Murder is the only non-military crime³² under the UCMJ that, when convicted of either premeditated murder or felony murder, a service member must be sentenced to “imprisonment for life.”³³ If the murder was unpremeditated or committed through an “inherently dangerous act,” any term of confinement may be adjudged.³⁴

However, there is a mechanism that allows for modification of what would appear to be a “mandatory” sentence. Under Article 36, UCMJ, Congress has granted the President the authority to prescribe rules for “Pretrial, trial, and post-trial procedure . . . which may not be contrary to or inconsistent with” the UCMJ.³⁵ One such rule is Rule for Court-Martial (RCM) 705, “Pretrial Agreements.”³⁶ A pretrial agreement may include a promise by the convening authority³⁷ to “[t]ake specific action on the sentence adjudged by a court-martial.”³⁸

In order to illustrate how a mandatory sentence of “imprisonment for life” may actually become a sentence of confinement for a few years, we will use the case of SPC Morlock and PFC Holmes, referenced in the introduction.

United States v. SPC Jeremy Morlock

Specialist Morlock, pictured above moments after he killed Gul Mudin, age 15 years old,³⁹ was convicted, among other crimes,⁴⁰ of three counts of premeditated murder.⁴¹ In accordance with Article 118(1), UCMJ, SPC Morlock’s conviction required a sentence of “imprisonment for life.”⁴² However, SPC Morlock entered into a pretrial agreement. The terms of the agreement included a promise from SPC Morlock that he would plead guilty and testify against SSG Gibbs. In return, the convening authority promised to approve only twenty-four years of confinement.⁴³

Because SPC Morlock is serving his term of confinement in a military prison, he is eligible to be considered for clemency and parole by the ACPB. Specialist Morlock's case is among the 29 cases examined in the research set for this paper.

Research Problem

The research problem centers on adjudication (sentencing) of U.S. Army soldiers being different based upon victims being foreigners versus Americans while deployed in OIF and OEF convicted of Article 118 (Murder) under the UCMJ from 2003 to 2014. Even while deployed soldiers are charged, tried, and convicted of serious criminal offenses. In this study, Article 118 (Murder) is the charge and only those convicted of this article are included.

Research Purpose

The purpose of this research study is to determine whether a relationship exists between sentencing results of deployed U.S. Army soldiers convicted of Article 118 (Murder) and the status of their victims (either U.S. citizens or foreigners). This research study attempts to discover and inform the U.S. Military Justice system of differing sentencing outcomes based primarily upon the nationality of the victim involved.⁴⁴ A tentative definition of the phenomenon identified is the expression of feminist geopolitics.

Research Question(s)

Does the nationality of a victim have any relationship to the confinement time served of deployed U.S. Army soldiers from 2003-2014 convicted of Article 118 (Murder) to OIF and OEF? Do deployed U.S. Army soldiers from 2003-2014 convicted of Article 118 (Murder) in OIF and OEF receive greater sentencing penalties, if their victim was a U.S. citizen? Do deployed U.S. Army soldiers from 2003-2014 convicted of Article 118 (Murder) to OIF and OEF receive lesser sentencing penalties, if their victim was a foreigner?

Definitions of Key Terms

The following are key terms used throughout this research study and provided for clarity and consistency of descriptions.

Article 118 (Murder) – “Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—(1) has a premeditated design to kill; (2) intends to kill or inflict great bodily harm; (3) is engaged in an act that is inherently dangerous to another and evinces a wanton disregard of human life; or (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.”⁴⁵

Operation Iraqi Freedom (OIF) – Operation Iraqi Freedom (OIF) was launched on March 20, 2003. The immediate goal, as stated by the Bush Administration, was to remove the regime, including destroying its ability to use weapons of mass destruction or to make them available to terrorists. The broad, longer-term objective included helping Iraqis build “a new Iraq that is prosperous and free.”⁴⁶ In October 2002, Congress had authorized the President to use force against Iraq, to “defend the national security of the United States against the continuing threat posed by Iraq,” and to “enforce all relevant United Nations Security Council resolutions regarding Iraq.”⁴⁷ After violence began to decline in 2007, the United States gradually reduced its military presence in Iraq, formally completing its withdrawal in December 2011.⁴⁸

Operation Enduring Freedom (OEF) – “The attacks of September 11, 2001, thrust the United States into a no-notice war against Osama bin Laden, his al Qaeda terrorist network, and transnational terrorism the board. The first round of this war was Operation Enduring Freedom, an air-dominated offensive conducted by U.S. Central Command (CENTCOM) against al Qaeda forces in Afghanistan and against the Taliban theocracy that provided them safe haven.”⁴⁹

Deployed U.S. Army soldier – Any United States soldier (Active, Reserve, or National Guard) serving overseas during a named operation and ordered there by a Secretary of Defense order. “It is important to note that each of the services also supports other missions not included in the Defense Manpower Data Center (DMDC) data as ‘deployed.’ The definition of ‘deployed’ in the DMDC database is limited to troops in the OIF and OEF areas of operation, and those who have received hostile fire pay in connection with other aspects of OEF. Troops from each of the services serving in Korea, Kosovo, MFO Egypt, at sea, and in other theaters are not counted.”⁵⁰

The Law of War – “Rests on four interrelated principles: military necessity, humanity, distinction, and proportionality. The latter two principles are central to the norm of noncombatant immunity.”⁵¹ It is the result of several international agreements. The Hague Conventions of 1907, Geneva Conventions of 1949 and additional protocols to the Geneva Convention of 1977.⁵²

Just War Theory – “It has developed probably the most comprehensive consideration of the ethics of war and peace. So, even though it was developed in the West...it deserves universal attention. Is a coherent set of concepts and values, which enables moral judgment in wartime. Traditionally, it is split into two categories *jus ad bellum* (when it is just to start war) and *jus in bello* (how it is just to fight war, after it begins).”⁵³ Furthermore, war has a beginning, middle, and end. “A complete just war theory—or comprehensive international law—we simply must discuss justice during the termination phase of war.”⁵⁴

Manual for Courts-Martial – “Covers the operations of the entire system, from the initial steps to be taken before trial to the completion of the case. It deals fully with the various crimes and offenses, the evidence which can be used to prove them, and the sentences which can be imposed. It, in effect, declares much of the military law in advance, not for any specific case but for all cases which may arise in the future.”⁵⁵

Feminist Geopolitics

The expression of political will or force upon indigenous peoples of a different nation or region in order to politicize the security, peace, and nature of the other people through violence and conflict. In other words, “feminist geopolitics attempts to develop a politics of security at multiple scales including that of the civilian body.”⁵⁶ “It aims to bridge scholarship in feminist and political geography by creating a theoretical and political space in which geopolitics becomes a more gendered and racialized project, one that is epistemologically situated and embodied in its conception of security.”⁵⁷

Literature Review

This study only considers U.S. Army soldiers convicted of Article 118 (murder)⁵⁸ under the Uniform Code of Military Justice (UCMJ) who were deployed and committed their offense from 2003-2014. The philosophical framework for this study is *jus in bello* or just war principle engaging war. The sociological construct that connects the two is feminist geopolitics. In other words, are the deaths of Iraq and Afghan civilians valued differently than United States soldiers? The intersection of these three fields of study form the literature that this research is based upon.

Article 118 Murder and Sentencing

Throughout the history of warfare conducted by the United States of America, more and more scrutiny is placed upon military members. That scrutiny is good and required because it demands that we live the professional military ethic when conducting any operation in the name of the United States. “The armed forces must reflect the demands of morality if they are to be consistently useful to society-indeed, if they are not to be a danger to it.”⁵⁹ That morality should be evident in the military judicial system of the country conducting combat operations. Therefore, those who are tried and convicted of serious crimes, such as Article 118 murder, should be sentenced in a manner that reflects both the morality of the nation and the severity of the offense.

“Unlike the federal guidelines system, and many state sentencing regimes, the UCMJ typically vests unfettered discretion with the sentencing authority.”⁶⁰ Sentencing under UCMJ can range from “no punishment” to the maximum punishment authorized for each offense. However, there are a few exceptions.⁶¹ Conviction of Article 106, Spies, imposes a mandatory death penalty. Under Article 118, Murder, mandatory minimum of life sentence with the possibility of parole for subsection (1) premeditated murder, or subsection (4) felony murder.”⁶²

Jus in Bello

In the Just War theory of war, *jus in bello* covers the actions during the engagement of hostilities. “Medieval writers made the difference a matter of prepositions, distinguishing *jus ad bellum*, the just of war, from *jus in bello*, justice in war.”⁶³ *Jus in bello* is about the observance of customary and rules of engagement within the conflict. For discussions regarding this research study, *jus ad bellum* or how we came to become in a war is not considered.

Jus in bello “can be broken down into two concepts, distinction and proportionality.”⁶⁴ Within the construct of *just in bello*, distinguishing combatants from non-combatants is what directly relates to this study. “Distinction is the injunction to avoid injuring noncombatants.”⁶⁵ During combat operations, some civilians could be injured in what is called collateral damage. When there are “civilians not participating in combat [they] are, morally, immune from attack.”⁶⁶

“There are two kinds of killing in war; intended and unintended. Soldiers intend to, and may under the laws of war, kill those who pose a threat to them. Soldiers may not intentionally kill innocents.”⁶⁷ Within this study, all cases are those who not only committed murder but were tried and convicted of Article 118, as described earlier. But why do civilians have such an impact on military operations?

According to U.S. Army doctrine, protecting civilians, above just the legal requirements is very important. “There are three other significant reasons to support the protection of civilians. First, counterinsurgency and stabilization experiences highlight that the population is often the

center of gravity for military operations, and the population's support related to providing protection from perpetrators or, in some cases, from rival identity groups. Second, harming civilians undermines military efforts and becomes a divisive issue between multinational partners."⁶⁸ The military force may not be responsible for civilian casualties that occur but there are always prevalent expectations that the force will prevent harm to civilians as an operating principle under *jus in bello*. "Finally, during most operations, Army units are concerned with civilian welfare while achieving the desired outcomes to a conflict or crisis."⁶⁹ Therefore illegally killing civilians removes the ability of a unit to meet desired outcomes from a conflict.

Feminist Geopolitics

"Feminist geography has undergone several transformations since its inception in the late 1970s and early 1980s."⁷⁰ Over the years, feminist geography shifted due to the limited amount of analysis within international relations. Feminist geography is political "in that it advocates change where social, economic, or political relations, including those of gender, are inequitable, violent, or exploitive." "Feminist geopolitics attempts to develop a politics of security at multiple scales, including that of the (civilian) body."⁷¹

"Since the 'war against terrorism' began, our images of men and women, as warriors and victims, have become more rigid. Prior to September 11, we in the United States were becoming accustomed to less militarized models of masculinity."⁷² Feminists assisted in understanding the meanings of development and security. "Feminist definitions of peace have generally included the reduction of all forms of violence, including structural violence and oppressive gender hierarchies."⁷³ "U.S. led international political and military interventions in Afghanistan (post 9-11-01) distinctly re-politicized gender politics and Taliban corporeal violence, by way of linking the 'savior' of Afghan women to U.S. military action."⁷⁴

“Moral uses of violence and essentialist dichotomies of masculinity and femininity are also identified as hallmarks of gender politics during war or political conflict.”⁷⁵ ⁷⁶“Feminist geopolitics then includes embodied epistemologies and the security, or protection, of people.”⁷⁷ Therefore, feminist geopolitics includes the protecting of people. Hyndman argued in 2003 and 2004 that “lack of civilian death visibility contributes to a gendered geopolitics that values (masculinized) U.S. lives over (feminized) Afghan ones.”⁷⁸ The expression of feminist geopolitics is probably based upon its connection with violence and international conflict. The sentencing of convicted U.S. Army soldiers within this study could be another expression of the phenomenon of feminist geopolitics. “The tragedies at both ends of this violence were very similar in terms of lives lost, but the patriotic values placed on them and their geopolitical value were highly disparate.”⁷⁹ Or, at first glance this seems to be the case.

The results of this study will inform the U.S. military justice system on how it determines the sentence length for soldiers who committed the same crime (Article 118, Murder) but against different types of individuals. The actions of discrimination under *jus in bello* can only be further educated through this study. Finally, the expression of feminist geopolitics upon the results of these seemingly divergent sentencing (in most cases) will demonstrate an area for further study.

Sample

The sample used for this research study is purposive. It only includes those U.S. Army deployed soldiers from 2003-2014 convicted of Article 118 (Murder) as maintained by the U.S. Army Court of Criminal Appeals (ACCA).⁸⁰ The sample includes 31 individuals all convicted of a crime under Article 118 of the UCMJ while deployed. Therefore, all pre-trial differences, witness availability, and pre-trial motions are not considered because the sample is only of those convicted.

Of the initial data set of 31 adjudicated cases, one case was deleted due to one of the authors being in a supervisory role as Chief of Justice in Afghanistan who oversaw this case. This deletion was in order to preserve the sample without undue researcher bias. A second case was deleted

because the murder was committed in Jordan, outside of the established definition of “deployed” for the purpose of this study. Therefore, the final n=29 for this study.

Research Methodology

This study used a qualitative research methodology to examine the phenomenon of feminist geopolitics expressed through differences in sentencing of U.S. Army soldiers deployed and convicted of Article 118 (Murder) and the nationality of their victims. The research conforms to the *constructivism* worldview.⁸¹ This philosophical worldview of the research study based in understanding the social interactions of the individuals within the study. “Inquirers generate or inductively develop a pattern of meaning.”⁸² The researchers seek to interpret what is found in this research study. As Guba and Lincoln stated “constructivism is about understanding and becoming informed.”⁸³

The research design is multiple case study. The research seeks to use case study based upon “the study of an issue explored through one or more cases within a bounded system.”⁸⁴ All variables for trial and witness availability are not considered since all U.S. soldiers were already convicted of Article 118 (Murder). “By identifying the context of the case, the researcher helps others who later read the case study report to draw conclusions about the extent to which its findings might be generalizable to other situations.”⁸⁵ The only item reviewed within this study is the confinement time served of those deployed U.S. Army soldiers convicted of Article 118(Murder) and bounded by the time limits identified earlier.

Each subject of the n=29 sample had two articles used with the NVivo descriptive analysis from appropriately vetted Internet sources. These news articles are from reputable agencies and not personal blogs, activist sites, or opinion venues. They included Los Angeles Times, Washington Post, Daily Mail, USA Today, New York Times, and National Public Radio. These articles provide

more than one lens to view the conviction through and give the study more than one perspective to analyze each subject and their case.

Rigor

In both modes of research methodology, quantitative and qualitative, rigor is a standard that all investigators seek to instill in their studies. Within this research study, three standards were used to reduce researcher bias and reduce research error. These are triangulation, validity, and transferability. “Triangulation gets its name from the principle used in surveying land. By getting more than one different view on a subject, an accurate (or more accurate) view can be obtained. Samples and datasets, investigators, research methodologies and theories are some of the examples of obtaining triangulation.”⁸⁶ The bottom line is “multiple sources of data are collected with the hope that they will all converge to support a particular theory.”⁸⁷

Another standard of rigor is validity. Within validity in qualitative research we look at two aspects of the constant process. “Comparison check the consistency and accuracy of application of codes and differences and variations in the activities, experiences, actions, and so that have been coded.”⁸⁸ The researcher must constantly seek to review the data to check for any explanation and generalizations that you may wish to make. This primarily means looking for negative cases. “However, the discovery of negative cases or counter-evidence to a hunch in qualitative analysis does not mean its immediate rejection.”⁸⁹

A third standard is also considered within this study. That standard of rigor is transferability. “Transferability may be thought of as parallel to external validity or generalizability.”⁹⁰ In other words, what we take from this study could be used to interpret or explain other similar situations. “The object of transferability judgments is to set out all the working hypotheses for this study and to provide an extensive and careful description of the time, the place, the context, the culture in which those hypotheses were found to be salient.”⁹¹ We hope

that the “provision of background data to establish context of [this] study and detailed description of [the] phenomenon in question will allow comparisons to be made.”⁹²

In regards to this multiple case study research design triangulation and validity of this research were accomplished in the following manner. Multiple vetted sources were used to ensure the accuracy of the information and qualitative phrases used to describe each case and subject. This included using US Clemency and Parole Board (ACPB) information vetted with news reports of all cases and subjects within the study.

In regards to transferability is using this study to review historical examples of sentencing of Article 118 (Murder) service members. This could take the form of revisiting the cases contained within Son Thang or My Lai and analyzing those convicted of Article 118 (Murder). This analysis could also be used in other *jus in bello* cases involving U.S. service members.

Descriptive Analysis from Computer Assisted Qualitative Data Analysis Software (CAQDAS)

The articles covering the results of the trials were used to analyze the outcomes. NVivo 10.0 used to conduct analysis of all cases included within the study. This computer assisted software package enabled the researchers to provide matching of variable in all cases, describing the significant statements in all news reports pertaining to the cases. “Thus, CAQDAS program along with all types of analysis software (e.g., SPSS, SAS), do not analyze the data for the researcher. Rather, the researcher utilizes the computer program to assist in the analysis.”⁹³ Simple and key-context coding of the 29 cases in the sample (2 articles about each at the conclusion of subjects’ trials) and triangulation with the ACPB data revealed the following themes. These themes are supported by the qualitative research methods within this study and the descriptive terms used in each theme.

Theme #1: U.S. Life Worth Life without Parole

Of the 29 cases, six were subjects that were convicted of Article 118(murder) under UCMJ and the victim was a U.S. citizen. Four of those six cases received either life without parole or death from the trial court. The two other case received less (33 years and 26 years with an eligible for parole status).

Case #1 “nation’s highest military court has affirmed the conviction and death sentence for a University of California, Davis, graduate who admitted killing two fellow U.S. soldiers at the start of the Iraq War.”

Case #7 “was sentenced to life in a military prison without parole for shooting and killing his infantry squad leader and another colleague after they criticized his poor performance.”

Case #28 “guilty Tuesday of killing his two Army roommates in 2010 at a U.S. base camp in Iraq, where prosecutors said he opened fire hours after complaining that the victims had let their room get too messy.”

Case #29 “he pleaded guilty to unpremeditated murder , violating a general order against drinking in Iraq, communicating a threat and reckless endangerment under a deal with prosecutors.”

Theme #2: Iraqi or Afghan Life worth less than Life without Parole

When considering punishment and sentencing for conviction of Article 118(murder) of an Iraqi or Afghan the only outlier is the case of SSG Robert Bales, When convicted, he received a sentence of life without parole and final determination that parole is not possible. He was convicted of killing 16 Afghan citizens. In all other cases from the sample of 23 Iraqi or Afghan murder victims the sentence from the trial court ranged from life with parole to 1 year. In final disposition, 12 soldiers are paroled or served the entirety of their confinement time. The other 11 are still serving their confinement time and all but SSG Robert Bales are eligible for parole.

Case #14 “was convicted today of murder in the execution-style slayings of four bound and blindfolded Iraqi detainees. He faces the possibility of life in prison without parole.”

Case #19 “A military jury in Germany has found a U.S. army medic from Illinois guilty of murder in the execution-style shootings of four Iraqis. He now faces a possible life in prison and dishonorable discharge.”

Case #26 “A U.S. soldier has been jailed for 24 years for the murders of three Afghan civilians after admitting 'the plan was to kill people' in a conspiracy with four fellow soldiers. He agreed to plead guilty to three counts of murder, one count of conspiracy to commit assault and battery, and one count of illegal drug use in exchange for a maximum sentence of 24 years.”

Theme #3: Multiple U.S. Victims worth a harsher sentence

Four of the six deployed soldiers convicted of Article 118(murder) were sentenced to either death or life without parole. In all four cases the soldiers killed multiple U.S. victims ranging from 2 to 5.

Case #1 “A military jury convicted an Army sergeant of premeditated murder and attempted murder on Thursday for killing two of his comrades and wounding 14 others in an attack on his own camp in Kuwait at the start of the Iraq war.”

Case #7 “An Army sergeant was found guilty on Wednesday of two counts of premeditated murder in the 2008 slayings of his squad leader and another U.S. soldier at a patrol base in Iraq, but he was spared the death penalty when the military jury didn't return a unanimous verdict. He now faces a sentence of life in prison, either with or without the possibility of parole.”

Case #30 “A US army sergeant has been sentenced to life in prison without parole for the 2009 killings of five fellow service members at a combat stress clinic in Iraq.”

Theme #4: Multiple foreign victims of murder worth life with parole as initial sentence

Of the 23 deployed soldiers convicted of Article 118 (murder), they killed foreign victims (either Iraqi or Afghan citizens). A total of 13 subjects convicted of killing multiple foreign victims. Eight of the 13 received a life with parole initial sentence from their trial court.

Case#4 “A soldier was sentenced Thursday to 90 years in prison with the possibility of parole for conspiring to rape a 14-year-old Iraqi girl and kill her and her family.” He was “one of four Fort Campbell soldiers accused in the March 12 rape and killings, pleaded guilty Wednesday and agreed to testify against the others to avoid the death penalty.”

Case #13 “A US military court has convicted an army squad commander of leading a "kill team" in Afghanistan that murdered unarmed civilians and collected body parts as war trophies. But he could be freed in less than 10 years after receiving a life sentence with the possibility of early parole for murder, assault and conspiracy over the killings of three Afghans in separate incidents staged to look as if the victims were combatants.”

Case #34 “convicted in court-martial of one count of premeditated murder and one count of unpremeditated murder in deaths of unarmed civilians during operations near Sadr City. Sentenced to life in prison and given a reduction in rank.”

Theme #5: Officers, NCO’s, and enlisted soldiers were not sentenced differently based upon rank.

Even based upon the small numbers of officers within the sample, a theme did emerge that officers, non-commissioned officers (NCOs), and enlisted soldiers deployed and convicted of Article 118 (Murder) were not sentenced differently based upon their rank. There were only two officers within the sample but based upon their conviction of Article 118 (Murder) they were within the time-frame as other NCOs and enlisted soldiers with the same convictions.

Case #5 Officer “was court-martialed and charged with premeditated murder. He was subsequently convicted of the lesser offense of *unpremeditated* murder and sentenced to twenty-five years in prison.”

Case #11 NCO “is serving seven years in military lockup for the killing and the mistreatment of an Iraqi teenager”

Case#13 NCO “could be freed in less than 10 years after receiving a life sentence with the possibility of early parole for murder, assault and conspiracy over the killings of three Afghans in separate incidents staged to look as if the victims were combatants.”

Case #16 Enlisted Soldier “The soldier was sentenced to spend seven years in prison at Fort Leavenworth, Kansas, for killing an unarmed 15-year-old Afghan boy while on patrol in 2010.”

Case #20 Officer “was convicted of two counts of murder and one count of attempted murder. The jury found him not guilty of making a false official statement. The commander of the 82nd Airborne Division has reduced the prison sentence but upheld the guilty verdict for a former lieutenant convicted of murder in the deaths of two Afghan men during a 2012 deployment,”

Case #31 Enlisted Soldier “A soldier convicted for his role in the rape and murder of an Iraqi teenager was sentenced to 110 years in prison, the longest of four soldiers found guilty in the case. He was sentenced Saturday, has the possibility of parole after 10 years.”

Conclusions

The themes identified point to a trend regarding desperate outcomes substantially based upon the nationality of the victims when controlling for other factors. With respect to this study, “the perceived lack of empathy for civilians (historically and presently) points to ambiguities about who the enemy is, rules of engagement, as well as the ongoing debate about the nature of military intervention in internal conflicts.”⁹⁴ It also presents an opportunity for the U.S. Military justice system to reflect upon the treatment of all convicted soldiers with respect to their victims.

If this phenomenon displayed in a number of the identified themes is truly an expression of feminist geopolitics then “feminists have helped us rethink the meanings of development and security, [and] they can help us rethink the meaning of peace.”⁹⁵ Therefore, future *jus in bello* conflict may be shaped by these themes. Nevertheless, feminist geopolitics will continue to influence our understanding of peace and security in the future.

Beyond violating the tenants of the Geneva Convention, the law of armed conflict, and the UCMJ, there are other pragmatic and policy impacts that result from the intentional killing of civilians. First, civilians required military protection during combat and stability operations. It is counterproductive to mission accomplishment and “results in a decline in support for military intervention forces.”⁹⁶

“Intentionally killing non-combatants is considered an atrocity for which actors are morally responsible and legally culpable.”⁹⁷ When found guilty of Article 118 (Murder) under the UCMJ all service members are subject to the same potential punishment and standardized treatment by the ACPB. However, this subset was treated differently in both regards. Between court-martial results and ACPB results the more pronounced disparity in treatment was by the ACPB. Thus far, nine soldiers convicted of murdering Iraqi or Afghan non-combatants have been granted parole or both clemency and parole.

There is no conclusion that the results of the ACPB is not correct but there is an extreme disparity between the sample subsets. Further research with both deployed and U.S. based soldiers convicted of the same crimes is warranted. Without access to private deliberative decisions of the ACPB, there is no way to know what factors were considered and thus resulted in a high rate of clemency and parole. However, of the six categories of criteria the ACPB may consider when examining a case for clemency or parole, the strength of these prisoner's "parole plan" was likely very high and influential in the board's decision. This conclusion based on the overwhelmingly positive community support for these prisoners reflected in news reports and privately run websites. For example, in the case of PFC Holmes, who was SPC Morlock's co-conspirator and released on parole in October 2015: He was greeted by dozens of friends and relatives when he arrived back home. His mother Dana stated they were "grateful to have him home and look forward to having this chapter of our lives closed."⁹⁸

Recommendations

There are "three levels of collective moral responsibility for military atrocity."⁹⁹ These include organizational (military), the state, and finally a political or public level of collective moral responsibility.¹⁰⁰ First, are organizations and those organizations are made of soldiers. "Officers and soldiers not morally competent are not militarily competent."¹⁰¹ Therefore, training is required to ensure as much of the moral standards within the profession are exposed to members of the military and expressed in terms of *jus in bello* as possible. "Given the near certainty that some misconduct will occur regardless of steps to avoid it, the key to measuring organizational compliance is to consider the steps taken to minimize the number of these incidents and, when they occur to investigate them and punish offenders."¹⁰²

"Combatants are never to target noncombatants directly."¹⁰³ "The requirement of discrimination and noncombatant immunity is the most important *jus in bello* rule."¹⁰⁴

Discrimination is the central concept in avoiding injuring noncombatants. Norms are 'collective

expectations for the proper behavior of actors with a given identity.”¹⁰⁵ The norm of noncombatant immunity continues to have its legal and ethical roots in “just war” theory. That norm of identifying and discrimination of noncombatants is required to be and continue to be central to the selection and training of military service members.

With regard to the disparate results in both court-martial cases and ACPB reviews, only time and further research will shed greater light on the implications of these disparities. Not only should new cases and ACPB decisions be examined, but continuing attention should be directed toward those granted parole or who have served short terms of confinement. Their future successful or unsuccessful reintegration into society after being convicted of murder may provide additional insight into why these cases have, thus far, been treated differently.

Appendix A: “Clemency and Parole Considerations”¹⁰⁶

Excerpt from: Army Regulation 15-130, “Army Clemency and Parole Board.” Chapter 3, paragraph 3-1.c.: “Clemency and parole eligibility. *Conditions for consideration.*”

c. Conditions for consideration. Normally, the ACPB will not consider a case for clemency or parole unless all of the following conditions are met:

(1) The individual meets the clemency or parole eligibility criteria listed in *d* and *e* below.

(2) The individual clemency or parole case file has been reviewed by a disposition board and the correctional facility commander or the commander’s designee or by an appropriate Federal correctional or probation official.

(3) Action on the adjudged sentence has been taken by the court-martial convening authority pursuant to Rule for Courts-Martial 1107, Manual for Courts-Martial, United States.

d. Clemency. The ACPB will consider an eligible individual for clemency as follows:

(1) When the approved sentence to confinement is less than 12 months, there will be no clemency consideration, except as noted below.

(2) When the approved sentence to confinement is 12 months or more but less than 10 years, clemency consideration will be not later than 9 months from the date confinement began and at least annually thereafter.

(3) When the approved sentence to confinement is 10 years or more but less than 20 years, clemency consideration will be no later than 3 years from the date confinement began and at least annually thereafter.

(4) When the approved sentence to confinement is 20 years or more but less than 30 years, clemency consideration will be not later than 3 years from the date confinement began and at least annually thereafter.

(5) When the approved sentence to confinement is 30 years or more, to include a sentence to confinement for life, clemency consideration will be not later than 5 years from the date confinement began and at least annually thereafter.

(6) A prisoner sentenced to death is not eligible for clemency consideration unless the sentence has been commuted to a lesser punishment.

(7) An individual confined in or paroled from a military or Federal correctional facility—even when serving less than 12 months’ confinement—may be considered for clemency by the ACPB for good cause as shown on the individual’s written application for special consideration for clemency. An application for special consideration for clemency will be submitted through the appropriate correctional facility commander or Federal correctional official for a recommendation prior to consideration by the ACPB.

(8) An individual released on parole will be considered for clemency 12 months after release on parole and upon request annually thereafter until expiration of the sentence.

(9) An individual returned to military control as a parole violator will be considered for clemency no earlier than 12 months from the date the individual is returned to the control of a military correctional facility.

(10) When exceptional circumstances exist or for other good cause, the ACPB may consider a person serving a sentence of any length for clemency at any time prior to completion of an approved sentence. The ACPB may not consider a person whose sentence extends to death.

(11) Prisoners may elect not to request clemency; however, a local disposition board will consider the prisoner’s file and make recommendations for measures of clemency as appropriate. The prisoner’s waiver and the disposition board’s recommendations will be forwarded to the ACPB.

e. Parole. A prisoner in a military correctional facility will be considered for parole when the prisoner first becomes eligible and annually thereafter.

(1) A prisoner is eligible for parole when requested by the prisoner and when the following conditions are met:

(a) The prisoner has an approved court-martial sentence that includes an unsuspended dismissal or punitive discharge or the prisoner has been administratively discharged or retired.

(b) The prisoner has an unsuspended court-martial sentence or aggregate court-martial sentence to confinement for 12 months or more.

(c) The prisoner has served one-third of the term of confinement, but in no case less than 6 months, or the prisoner has served 10 years of a sentence to confinement for 30 years or more or a sentence to life.

(2) A prisoner sentenced to death is not eligible for parole unless the sentence is commuted to a lesser punishment.

(3) A prisoner who is otherwise eligible for parole with an approved sentence including confinement and a fine and containing a provision for further confinement if the fine is not paid will be considered for parole based upon the initial sentence to confinement. Any confinement resulting from a failure to pay a fine will not be considered in computing eligibility for parole.

(4) A prisoner who is otherwise eligible for parole with an approved sentence including a fine and no confinement and containing a provision for confinement if the fine is not paid will be considered for parole upon imprisonment for nonpayment of the fine.

(5) Good conduct time and any other sentence reductions will be excluded in computing eligibility for parole.

(6) A prisoner returned to military control as a parole violator normally will be considered for parole no earlier than 12 months from the date the individual is returned to military control.

(7) When exceptional circumstances exist or for other good cause, the ACPB may waive any parole eligibility requirement with the exception of (2) above.

(8) If prisoners waive parole, sections I, II, and IV of DA Form 1704-R (Parole Statement) will be completed by confinement facility personnel, signed by the prisoner to acknowledge waiver, and forwarded to the ACPB. Despite a waiver of parole, a local disposition board may consider parole.

(9) Prisoners transferred to Federal facilities are under the control of the U.S. Parole Commission, unless otherwise designated in writing. As such, Federal and Commission policies and procedures apply, not those of this regulation.

Appendix B: “Clemency and Parole Considerations”¹⁰⁷

Excerpt from: Army Regulation 15-130, “Army Clemency and Parole Board.” Chapter 3, paragraph 3-2.a: “Clemency and parole considerations. *Criteria.*”

a. Criteria. When considering a case for clemency or parole, the ACPB will consider each case on its own merits. When applicable, the ACPB may consider the criteria listed in (1) through (6) below. Determination of the relevance and weight to be accorded any factor is within the broad discretion of the ACPB. In addition, the ACPB will use a salient factor score and evaluation guidelines when considering prisoners for parole suitability. The salient factor guidelines provide a customary range of time to be served in confinement before release on parole. The customary ranges determined by salient factors serve as guidelines only. The guidelines are not legal or regulatory mandates and the ACPB is not bound by them. The guidelines are established to identify and recognize good institutional adjustment and program progress. The salient factor guidelines assist the ACPB in determining parole prognosis. Mitigating or aggravating circumstances may justify decisions above or below the guidelines. The ACPB shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(1) The ACPB may consider the nature and circumstances of the offense to determine whether clemency or parole would depreciate the seriousness of the offense or promote disrespect for the law. In that regard, the ACPB may consider any of the following:

- (a) The effect its decision may have on the deterrence of the offender and others from committing other or similar crimes.
- (b) The protection and welfare of society.
- (c) The need for good order and discipline within the Army.
- (d) The rehabilitation of the offender.
- (e) The extent and nature of any violence or the potential for violence, associated with the offense.
- (f) If a weapon was involved, the type of weapon and how it was used.
- (g) The physical, financial, social, psychological, and emotional harm done to or loss suffered by, any victim of the offense.
- (h) The motive of the offender.
- (i) Whether the offender received any gain from the offense.
- (j) The extent of the offender's participation in the offense.
- (k) The criminal or administrative disposition of any co-accused and the degree of that co-accused's complicity in the offense.
- (l) Whether the offender committed other or similar offenses.

(2) The ACPB may consider the individual's civilian history and the quality of the prisoner's prior military service when considering a case for clemency or parole. The ACPB may give whatever weight it deems appropriate to any of the following:

- (a) Prior honorable discharges.
- (b) Combat service.
- (c) Awards and decorations.
- (d) Favorable personnel actions.
- (e) Prior criminal activity or evidence of misconduct. In determining the probative value of prior criminal activity or evidence of misconduct, the ACPB may consider the nature and circumstances of the prior act and the lapse of time between the act and the current offense.

(3) The ACPB may review the conduct and disciplinary records of the prisoner's confinement to determine whether the prisoner has achieved the degree of rehabilitation necessary to warrant clemency or parole. Prisoners are expected to comply with all institutional rules and to participate meaningfully in available correctional treatment programs. Relevant to this review are the following:

- (a) Comments by institution counselors.
- (b) Reports of institution boards.
- (c) Evaluations by institution cadre.
- (d) Evidence of enrollment in or completion of available education, vocational, and correctional treatment programs.

(4) The ACPB may consider any of the following personal characteristics of the prisoner:

- (a) The prisoner's age, education, experience, psychological profile, medical condition, and marital and family status.
- (b) The prisoner's need for specialized treatment.
- (c) Whether the prisoner has recognized the wrongfulness of his or her confining offense, shown genuine remorse, achieved a sense of purpose, demonstrated a desire for self-improvement, or exhibited self-discipline.

(5) The ACPB will consider the prisoner's parole plan before granting parole. Prisoners eligible for parole must agree to abide by the parole plan before their parole release. A parole plan should be tailored to motivate the prisoner for continued socialization. The parole plan will include, at a minimum, the following:

- (a) A residence requirement stating where and with whom a parolee will live.
- (b) Except in the case of a medically disabled prisoner, a requirement that the prisoner have an offer of guaranteed employment, an offer of effective assistance to obtain employment, or acceptance in a bona fide educational or vocational program.
- (c) A signed agreement by the prisoner that the prisoner will abide by the parole plan and the conditions of parole.
- (d) Any conditions of parole deemed reasonable and appropriate. These may include a requirement to begin or continue treatment for alcohol or drug abuse, the payment of restitution, or the payment of a fine ordered executed as part of the prisoner's court-martial sentence.

(6) The ACPB may obtain the views of any victim of the prisoner's offense. The victim, the victim's family members or the victim's representatives may submit matters in writing or by audio tape or video tape or by a combination of all methods for consideration by the ACPB.

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- ¹¹ *Id.*
- ¹² 10 USC § 953 (2012).
- ¹³ Army Regulation 15-130, “Army Clemency and Parole Board” (23 October 1998), para.1-1.
- ¹⁴ *Id.*
- ¹⁵ AR 13-150, para. 3-1. See Appendix A.
- ¹⁶ *Id.*, para. 3-2.a.
- ¹⁷ *Id.*, para. 3-2.c.
- ¹⁸ *Id.*, para. 3-2.a. See Appendix B.
- ¹⁹ AR 13-150, para. 3-2.a.(1).
- ²⁰ Steven Andraschko, *Army Review Boards Agency*, at slide 35 (May 2015) (unpublished PowerPoint presentation) (on file with author).
- ²¹ *Id.*
- ²² If a soldier is transferred to a Federal confinement facility, he will not be considered for parole by the ACPB. AR 15-130, para. 3-1.e.(9).
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- ³³ UCMJ, art. 118 (2012).
- ³⁴ *Id.*
- ³⁵ UCMJ, art. 36(a) (2012).
- ³⁶ Manual for Courts-Martial, United States, R.C.M. 705 (2012).
- ³⁷ A convening authority is an individual authorized by law to convene a court, refer crimes to such a court, and then approve the results of the court-martial. See UCMJ, art. 22, 34, and 60, respectively.
- ³⁸ R.C.M. 705(b)(2)(E).
- ³⁹ Mark Boal, “The Kill Team: How U.S. Soldiers in Afghanistan Murdered Innocent Civilians,” *Rolling Stone* (27 March 2011), available at <http://www.rollingstone.com/politics/news/the-kill-team-20110327>.
- ⁴⁰ Other crimes included conspiracy to commit premeditated murder, conspiracy to commit assault consummated by a battery, wrongful use of hashish, and obstruction of justice. *Morlock*, at *1.

⁴¹ *Morlock*, at *1. In a decision by the Army Court of Criminal Appeals, the two of the three counts of premeditated murder were affirmed, and the finding of guilty regarding the death of Gul Mudin was affirmed only as an attempt to commit premeditated murder. *Morlock*, at *7.

⁴² UCMJ, art. 118 (2012).

⁴³ Multiple new reports cite the confinement limit to be 24 years. See, e.g., “The Kill Team” and William Yardly, “Soldier Gets 24 Years for Killing 3 Afghan Civilians,” *NY Times* (23 March 2011). However, the Army Court of Criminal appeals notes in its decision that the convening authority approved 22 years of confinement. *Morlock*, at 1. Therefore, the convening authority may have reduced the sentence by two additional years when approving the sentence.

⁴⁴ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Third Edition, Sage Publications, 2009.

⁴⁵ Manual for Courts-Martial, United States pt. 4, ¶ 43 (2012).

⁴⁶ “President Bush Address to the Nation, March 17, 2003,” the televised speech that included a 48-hour ultimatum to Saddam Hussein and his sons, available at <http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html>.

⁴⁷ “Authorization for Use of Military Force Against Iraq Resolution of 2002,” H.J.Res.114, Section 3(a), signed into law on October 16, 2002, (P.L.107-243). The Senate vote was 77-23, and the House vote 296-133.

⁴⁸ Catherine Marie Dale, *Operation Iraqi Freedom: Strategies, Approaches, Results, and Issues for Congress*, CRS Report for Congress, Feb 2008,

⁴⁹ *Operation Enduring Freedom: An Assessment*, RAND National Defense Research Institute, Research Brief, 2005, 1.

⁵⁰ Timothy A. Bonds, Dave Baiocchi and Laurie L. McDonald, *Army Deployments to OIF and OEF*, Rand Arroyo Center, 2010, 9.

⁵¹ Colin H. Kahl, “In the Crossfire or the Crosshairs? Norms, Civilian Casualties, and U.S. conduct in Iraq,” *International Security*, 2007, 32, 9-10.

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⁵³ Brian Orend, *The Morality of War*, Broadview Press, 2006, 10.

⁵⁴ *Ibid.*, 160.

⁵⁵ Frank Fedele, “The Manual for Courts-Martial – Its Legal Status and the Effect of Decision of the United States Court of Military Appeals,” *Fordham law Review*, 23, 3 1954, 324.

⁵⁶ Jennifer Hyndman, “Beyond Either/Or” A Feminist Analysis of September 11th, *ACME: An International E-Journal for Critical Geographies*, 2003, 2, 3.

⁵⁷ Jennifer Hyndman, “Mind the gap: Bridging Feminist and Political Geography through Geopolitics,” *Political Geography*, 2004, 23, 307.

⁵⁸ Uniform Code of Military Justice (2012).

⁵⁹ Anthony E. Hartle, *Moral Issues in Military Decision Making*, Second Edition, Revised, University Press of Kansas, 2004, 43.

⁶⁰ David Jason Rankin Frakt, *Legal Studies Research Paper Series*, Working Paper No. 2012-23, “When Mandatory Isn’t Required: Mandatory Sentence Under the UCMJ,” University of Pittsburgh School of Law, September 2012, 1.

⁶¹ Although not requiring a mandatory punishment with regard to confinement, Congress recently established a minimum punishment for certain sexually based offenses, that being a mandatory dishonorable discharge. UCMJ, art. 56, as amended by the “National Defense Authorization Act for Fiscal Year 2014,” Public Law 113–6, Dec. 26, 2013, 127 Stat. 672.

⁶² Frakt.

⁶³ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, third edition, Basic Books, 1977, 21.

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⁶⁵ Neta C. Crawford, “Just War Theory and the U.S. Counterterrorism War,” *Perspectives on Politics*, 1, 1, March 2003, 7.

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⁶⁹ *Ibid.*, 1-7.

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