

PURITAN MILITARY JUSTICE:
AMERICAN WAR CRIMES AND THE GLOBAL WAR ON TERRORISM

A Dissertation

by

RONALD P. LORENZO

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

May 2012

Major Subject: Sociology

Puritan Military Justice:

American War Crimes and the Global War on Terrorism

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Approved by:

Chair of Committee,	Stjepan Mestrovic
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	Rogelio Saenz
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ABSTRACT

Puritan Military Justice: American War Crimes and the Global War on Terrorism.

(May 2012)

Ronald P. Lorenzo, B.A., Texas A&M University,

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Chair of Advisory Committee: Dr. Stjepan Mestrovic

Exploring Puritanical cultural habits in the twenty first century American military, the following study focuses on U.S. Army courts-martial in the Global War on Terrorism. The study uses Emile Durkheim's original sociological interpretation of crime and deviance. That interpretation is linked with responsibility as described by Durkheim's follower Paul Fauconnet in *Responsibility: A Study in Sociology* ([1928] 1978) and with a new cultural reading of Max Weber's *The Protestant Ethic and the Spirit of Capitalism* ([1905] 1976). The study is an inductive, descriptive examination of the Puritanical aspects of American military culture based on its treatment of acts labeled as deviant and criminal in the Global War on Terrorism. Four sets of war crimes are included in the study: Abu Ghraib (which occurred in Iraq in 2004), Operation Iron Triangle (which occurred in Iraq in 2006), the Baghdad canal killings (which occurred in Iraq in 2007), and another set of killings which occurred in Afghanistan. My data include primary data collected through participation and observation as a sociologist assisting the defense teams for courts-martial related to all the cases except Abu Ghraib.

Records of trial, investigation reports, charge sheets, sworn statements, and other documentation are also included in the study as secondary data sources.

The study illuminates how unconscious, Puritan cultural habits color and shape both military actions and their perceptions. I explore Puritanism and its influence on military law, responsibility, revenge, “magic” (in its sociological sense), and narcissism. The study concludes with observations and recommendations for changes in U.S. military law.

DEDICATION

To my parents, Mary and Roger Lorenzo,
and in memory of my best friend,
Jason Charles Crawford (July 19, 1971 – January 2, 2009).

ACKNOWLEDGEMENTS

This work could not have been completed without the support and help of many people.

I am indebted to my parents, Mary and Roger Lorenzo, whom I regard as my first and best teachers. I could not have finished my studies without their encouragement and support. In following with the Costa Rican custom of dedicating one's degree to specific teachers, I dedicate my doctorate degree to them. Thanks are also due to my brother Mark, my sister-in-law Heather, and my niece Delilah Marie Lorenzo. Special thanks are due to my Uncle Paul, an attorney, who has been very helpful in answering questions about the law. My thanks go to my family in Costa Rica, especially my Tía (Aunt) Marta and my cousins Marianela and Rebecca.

My best friend since high school, Jason Crawford, passed away from his life-long struggle with kidney disease before my studies were complete. Jason had many fine qualities which I valued in our friendship. He loved to read more than anyone else I have met, and his love of reading was inspiring. Jason was also the most optimistic and cheerful person I have known, and he had a great sense of humor. He inspired everyone around him, and he was always supportive of my studies.

Jason's family, Susanne and James Daves-Peterson and Edward Crawford, have also become my friends, and they have also been very encouraging of my studies. I am particularly grateful for Susanne's insight into the use of Reid-like techniques in pharmacy settings.

The chairperson and members of my dissertation committee deserve my gratitude and thanks. Dr. Stjepan Mestrovic has been an excellent teacher, mentor, and friend. I am very grateful to Dr. Mestrovic for the opportunities he has afforded me in the way of allowing me to participate in the courts-martial where he has testified as an expert witness. He has always had great faith and expectations of me. I am also thankful for the time, mentorship, and participation of Dr. Larry Oliver, Dr. Alex McIntosh, and Dr. Rogelio Saenz on my committee.

My dissertation was written with the unique experience of having participated in the legal defense of U.S. Army soldiers as a sociologist. I am indebted to the dedicated lawyers who allowed me to participate in their teams.

Several scholars corresponded with me during my research and provided me with reading recommendations. I owe thanks to Dr. Gary Solis for his correspondence with me and for book recommendations. Dr. James Weingartner, Emeritus Professor, has written about American war crimes during the Second World War. His article on the mutilation of Japanese war dead during World War II was useful in drawing parallels between these contemporary killings and similar events during World War II. Dr. Weingartner's article on the Biscari massacre also helped illuminate aspects of all of these contemporary war crimes. Dr. Roger Beaumont, Emeritus Professor, taught me a military history class of World War II as an undergraduate that has been invaluable in my studies.

Much of this work is informed by the book *Responsibility* by Paul Fauconnet ([1928] 1978). I have special thanks for those who made available the only extant,

typewritten English translation of the book made decades ago by law professor William Jeffrey, Jr. My special thanks are due to the estate of William Jeffrey Jr. for permission to access his translation, and to the University of Cincinnati law library and its director, Dr. Kenneth Hirsh, who made the work available. Of course, my thanks are due to the late William Jeffrey, Jr.

Thanks are also due to Father Leon Strieder for his encouragement to finish my dissertation. In 1994, as an observer, I was fortunate and privileged to attend his dissertation defense for the degree of Doctor in Sacred Literature in Rome, Italy. The experience formed a point of reference in my own academic endeavors.

Finally, I owe my gratitude to Texas A&M University for the research opportunity. I am grateful for the help and support of the sociology department. I am thankful also to the Sterling C. Evans and Cushing libraries of Texas A&M University and their librarians – especially the reference, government, map room, legal, and special collection librarians – for their assistance.

NOMENCLATURE

372 nd	372 nd Military Police Company
AO	Area of Operation
AR 15-6	A formal or informal investigation in the U.S. Army
Article 32	A military hearing roughly equivalent to a civilian grand jury
BDE	Brigade; an army unit consisting of several battalions
BN	Battalion; an army unit consisting of several hundred soldiers
CIC or CID	United States Army Criminal Investigation Command, still known by the acronym for the Criminal Investigation Division
COIN	Counter Insurgency
Company	An army unit consisting of several platoons; several companies together compose a battalion
COP	Combat Outpost
DHA	Detainee Holding Area
E-1 or PV1	Private; lowest U.S. Army enlisted rank; rank for recruits and soldier-prisoners
E-2 or PV2	Private
E-3 or PFC	Private First Class
E-4 or SPC	Specialist; Not a non-commissioned officer rank
E-4 or CPL	Corporal; Lowest rank for non-commissioned officers
E-5 or SGT	Sergeant

E-6 or SSG	Staff Sergeant
E-7 or SFC	Sergeant First Class
E-8 or MSG	Master Sergeant
E-8 or 1SG	First Sergeant; Highest ranking sergeant in a company of soldiers
E-9 or SGM	Sergeant Major
E-9 or CSM	Command Sergeant Major
EFP	Explosively Formed Projectile or Explosively Formed Penetrator; a type of IED (see below) used in Iraq and Afghanistan against the U.S. military and capable of penetrating or destroying heavily armored vehicles
FM	Field Manual
FOB	Forward Operating Base
GTMO	Guantanamo Bay Naval Base, also used in reference to various detention facilities at the base since 2003
HMMWV	High Mobility Multipurpose Wheeled Vehicle or Humvee
IED	Improvised Explosive Device; a homemade bomb usually planted roadside and used in Iraq and Afghanistan against U.S. military personnel and vehicles
INP	Iraqi National Police
IO	Investigating Officer
IP	Iraqi Police

IRA	Irish Republican Army; a name used by various insurgent groups in Ireland throughout the 20 th century and into the present
JAG	Judge Advocate General's Corps; The military's legal branch
LCDR	Lieutenant Commander; Navy rank (O-4) equal to Army Major
mTBI	Mild Traumatic Brain Injury
MG	Major General
MI	Military Intelligence
MJ	Military Judge
MP	Military Police
MRE	Meal, Ready-to-Eat; U.S. military rations
NAMA	Nasty Ass Military Area
O-1 or 2LT	Second Lieutenant; lowest U.S. Army commissioned officer rank
O-2 or 1LT	First Lieutenant
O-3 or CPT	Captain
O-4 or MAJ	Major
O-5 or LTC	Lieutenant Colonel
O-6 or COL	Colonel
O-7 or BG	Brigadier General
OEF	Operation Enduring Freedom; the U.S. led war in Afghanistan
OIF	Operation Iraqi Freedom; the U.S. led war in Iraq
Panel	The rough equivalent of a civilian jury in a court-martial

Platoon	An army unit numbering about 20 soldiers or more; several platoons together compose a company
PN Space	Pathological Narcissistic Space
PNAC	Project for the New American Century
PTSD	Post Traumatic Stress Disorder
Regiment	An army unit consisting of several battalions
ROT	Record of trial
S2	On a military staff, the officer in charge of operations
S3	On a military staff, the officer in charge of intelligence, security, and information
TC	Trial counsel; the prosecutors in a court-martial
TDS	U.S. Army Trial Defense Services; military defense lawyers within JAG
UCMJ	<i>Uniform Code of Military Justice</i>
UNPROFOR	United Nations Protection Force; a United Nations peacekeeping force in Croatia and Bosnia-Herzegovina during the Yugoslav wars
USMC	United States Marine Corps

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CHAPTER I
PREFACE AND INTRODUCTION

With regard to legal issues regarding my use of court documents, the reader should be aware of the following: all material pertaining to the records of trial from which I quote are regarded by the law as public documents. The records of trial (ROT) include the transcripts of Article 32 hearings, other pre-trial hearings, investigative reports, sworn statements, transcripts of testimony at courts-martial, and other documents. However, I obtained the Twitty report from a news source, and various news sources have already quoted extensively from this report in numerous news reports. Because the Twitty report was obtained from a news source, it is also a public document. In summary, all my usage of government documents in this study is lawful, and the government does not own any copyright to any of this public information. I wish to make it unequivocally clear that I do not assert or imply any criminal wrongdoing by any officer or soldier whom I mention or quote in this book. I present many instances of wrongdoing and questionable actions neutrally, and as a sociologist, not as a criminal investigator.

Introduction

Puritanical cultural habits persist in the twenty first century American military as well as in American society in general. This study will explore the different Puritanical

This dissertation follows the style and format of the *American Sociological Review*.

influence of Puritanism on American society. The study will follow a similar cultural habits, and is inspired by Kai Erikson's *Wayward Puritans: A Study in the Sociology of Deviance* ([1966] 2005). The study focuses on courts-martial in the current Global War on Terror, specifically to courts-martial in American wars being fought in Iraq and Afghanistan. Tocqueville's *Democracy in America* ([1835] 2003) and Bellah's *Habits of the Heart* ([1985] 1996) serve to ground the study in previously explored topics in the approach, and it will examine patterns of culture evident through the legal process in the military justice system for a select group of trials. The courts-martial included in the study will be specific to events that have been uniquely singled out as contemporary war crimes by the U.S. Army.

Unlike the study conducted by Erikson, the current study will focus on a different set of data and time period and use a different theoretical perspective. Instead of focusing on three crime waves affecting Puritan settlers in New England, the current study looks at courts-martial related to war crimes in the Global War on Terrorism. Erikson focused on seventeenth century Massachusetts, and this study will focus on contemporary wars in Iraq and Afghanistan. This study builds on Erikson's earlier research and uses additional theorists beyond Durkheim in the study of deviance.

The focus of the study will be on Durkheim's (1893) original sociological interpretations of crime and deviance which are not always identical with the structural-functional interpretation of the law. Puritan cultural habits persist in contemporary American society, even if the habits have been transformed from their original configurations. The study extends David Riesman's ([1950] 2001) characterization of

contemporary American culture being attenuated in its Puritan character. The trial as Puritan ritual by which the community coerces forgiveness from the accused, as Erikson described of the Massachusetts Puritans, is still present in American culture.

Additionally, the study will link these Puritanical habits to Durkheim's writings on vengeance, justice, punishment, and responsibility. Even in present American society, the study will show continuity with Durkheim's observations of American society centering itself on Old Testament values characteristic of societies held together by mechanical solidarity and of Weber's observations of Calvinist interpretations of the Old Testament in influencing habits. The study examines what patterns of deploying resources are used by the U.S. Army in handling deviance.

Some background and context on courts-martial may be instructive, especially in the context of the U.S. military in relation to its members. During the Second World War, there were about 16 million people who served in the American military and 2 million courts-martial (Lurie 1992:128). That averages to one court-martial for every eight service members and about 40 to 50 trials beginning on any given day. In total, during World War II, there were at least 12,000,000 Americans subject to military justice (Lurie 1992:128). There is a gap in the literature, as there is no general sociology or history of these courts-martial during that time period. Speculating, this gap is created by divergent goals and backgrounds of potentially interested professions: lawyers are generally not writers of sociologies or histories, and historians and sociologists may find the subject of military courts-martial to be esoteric to their interests or knowledge. There is also the problem that records of trial for military

courts-martial are not readily available to researchers. Regardless, after the war there was a public hue and outcry over the incredibly high number of courts-martial, which mobilized the Congress to enact reforms in 1950 to the court-martial system. Since 1950, the U.S. military justice system has remained virtually unchanged.

Another fact about the military justice system is its exclusive place in the American constitutional system. One might expect that the military justice system would function under the executive branch as the military is itself located within that branch, but that is not the case. Also, one might expect that the military justice system, being a system of courts might otherwise be within the sphere of the judiciary branch of the federal government, which is not the case either. The military court system exists as part of the legislative branch as stated in the Necessary and Proper Clause of Article 1 in the Constitution, which grants Congress the right to establish tribunals inferior to the Supreme Court (U.S. Constitution, art. 1, sec. 8, cl. 18). Congress has not made major changes to the U.S. military justice system since institution of the *Uniform Code of Military Justice* shortly after the end of the Second World War. The fact that the U.S. military justice system operates as if the world had not changed since 1951 seems to point to the fact that it is an orphaned justice system, abandoned by its parent institution of the Congress. American military personnel do not have the same constitutional rights secured by civilian American citizens.

The U.S. Army and its military justice system exist in outposts of American society throughout the world. These outposts and bases are reminiscent of the early settlements of British Puritan society that existed in Massachusetts. Just as those early

Puritan outposts were isolated in the wilderness, the Army justice system is also isolated in a wilderness of neglect and oblivion by the U.S. Congress. The U.S. military justice system operates under conditions not too different from those of the Puritans that Erikson studied. In fact, on going onto a U.S. Army base for the first time has the sensation that one is entering a foreign country: the gates have the look and ambience of border control crossings such as the ones between the United States and Mexico or the United States and Canada.

For isolated communities undergoing collective identity crises, Erikson directly addresses what a possible function of trials, including courts-martial take in communities under such conditions. Erikson states:

Whether these confrontations [between members of a group] take the form of criminal trials, excommunication hearings, courts-martial, or even psychiatric case conferences, they act as boundary-maintaining devices in the sense that they demonstrate to whatever audience is concerned where the line is drawn between behavior that belongs in the special universe of the group and behavior that does not ([1966] 2005:11).

Trials, including courts-martial, according to Erikson act as ways for communities to identify boundaries that communities occupy in social space (p. 10). Erikson builds on the Parsonian interpretation of Durkheim that deviance is not the result of a poor social system but a condition for preserving the stability of social life (p. 13).

Necessarily, the study will cover the character and origin of American military law. American military law is explicitly religious and Puritanical in nature. Two facts become evident immediately. First, American military law has a direct descent from Swedish military law of the seventeenth century. Swedish military law served as a Protestant template for British military law, which was explicit in its Puritanical

character. Puritanical religion is the origin out of which American military law would eventually emerge. Second, military law is not geared towards justice but discipline.

As described by Tocqueville and Weber, Puritanism places the burden of responsibility on the individual. In all the courts-martial, there is an inability by the U.S. military legal system to properly recognize and address the problem of collective responsibility for military war crimes, an observation that theoretically bases itself on earlier observations made by Durkheim's student Paul Fauconnet in *Responsibility* ([1928] 1978). Instead of finding the origin of war crimes in social conditions that the military creates through its own policies and errors, military courts find the origin of war crimes entirely in individual soldiers. Ultimately, institutions such as religion and legal systems are supposed to create and maintain social integration. When social integration starts to weaken within an institution, such as the U.S. Army, individuals search out alternative means to meet individual needs. Although the U.S. military retains its ceremonies and rituals, their emotional meanings and functions have started to atrophy. When the beliefs of an institution are weak and cannot provide for the emotional needs of its members, social integration will also be weak, and the members will turn to idiosyncratic, unorthodox beliefs and practices which Durkheim terms magic.

Puritanism seeks to suppress idiosyncrasy and spontaneity in its many forms through systematic action. How Puritanism within the U.S. military and U.S. military courts deals with revenge serves as an example. Puritanism is unable to suppress the impulse for revenge which instead of taking a primitive and authentic course, takes a different, mutated form. In Puritanical revenge, violence persists but it is detached from

the emotions driving it. Puritanical vengeance is postemotional (Mestrovic 1997), characterized by the use of dead, abstracted emotions which are taken out of their historical and social context. This type of imperfect revenge is even more anomic and dysfunctional than traditional forms of blood revenge: where traditional revenge had a limit on deaths socially imposed by the community and regulated through anger, there is an apparent infinite desire for revenge – and deaths – in the wars waged in Iraq and Afghanistan which is not regulated or tempered by anger, but rather institutionalized and prolonged through modern techniques.

Dysfunction within the military justice system is part of a wider culture of narcissism within American society. Anomie and narcissism do not occur in isolation. The U.S. military has its own localized culture of narcissism that shares many of the features with other areas of American life. The patterns of American narcissism, which are shaped and directed by American Puritanism, take similar forms throughout society: what appears narcissistic and anomic in a military setting will have similarities with other narcissistic and anomic practices in areas such as banking or academia.

Deviance from a Weberian Perspective

This study is informed by a new reading of Max Weber's *The Protestant Ethic and the Spirit of Capitalism* (1905) and its central argument that religion as a social force colors the characteristics of a culture in a multitude of ways¹. Building from this cultural reading of Weber's argument, societies with a Calvinist or Puritan cultural

¹ Weber's argument is not limited to *The Protestant Ethic and the Spirit of Capitalism* (1905) but may be found in his other, more neglected works such as *The Religion of China: Confucianism and Taoism* (1915), *The Religion of India: The Sociology of Hinduism and Buddhism* (1915), and *Sociology of Religion* (1922).

foundation, such as the United States, not only conduct their economic activities in a Puritanical way, but carry out all other activities, from the production of art to the conduct of war, in a Puritan way². This perspective, that Puritan societies wage war in a different manner from non-Puritan countries has not been examined extensively, and the motivations and manners in which Puritan militaries regulate themselves as Puritan entities also has not been examined extensively. What is perceived as deviant or criminal behavior, and who is perceived as a deviant or criminal within a military context also follows a distinct Puritanical pattern.

Kai Erikson ([1966] 2005) addresses Puritanism in its relationship to the control of deviance in *Wayward Puritans*, and is a study that builds on his reading of Emile Durkheim's concepts on deviance and its role in maintaining social stability. Erikson details how Puritan courts coerced confessions out of the accused in order to relieve the community of its inherent contradictions. Erikson also stated that Puritan courts actually aided in the creation of deviance to meet the community needs of confirming normal or saintly identity.

This study addresses the concepts of Puritanism and courts-martial and their relationship to each other. Instead of examining deviance entirely from a Durkheimian perspective, the study will extend and combine Durkheim's framework for understanding deviant behavior with Weber's perspective on Puritanism. Puritanism as a subject matter is grounded in classical and contemporary sociological theory.

However, the subject of courts-martial is a relatively new one within sociology

² Talcott Parsons (1937) in *The Structure of Social Action* draws on Weber and Durkheim among others in concluding that society is an inter-related social system where parts affect one another.

specifically and in academia generally.

Methodology

This dissertation is an inductive, descriptive examination of the Puritanical aspects of American military culture based on its treatment of acts labeled as deviant and criminal during the Global War on Terrorism, a war which is ongoing in Iraq, Afghanistan, and elsewhere at the time of writing³. Kai Erikson's *Wayward Puritans: A Study in the Sociology of Deviance* informs this study as a template of sorts. This study will examine how the U.S. Army as a military institution approaches the making of war in regard to what it considers normative behavior and what becomes labeled as a deviant or aberrant way of making war. Erikson's study focuses on three "crime waves" that took place in colonial New England, and the way in which the Puritans dealt with deviance among their own. The parallel to my study is the following: instead of three crime waves occurring in colonial Massachusetts, this study examines four sets of war crimes labeled and treated as criminal with which the U.S. Army has had to contend. These war crimes, namely, the abuse of prisoners by U.S. Army military police at Abu Ghraib beginning in 2004, the killing of civilians and prisoners during the U.S. Army Operation Iron Triangle in 2006, the killing of prisoners by U.S. Army soldiers in the Jihad Canton of Baghdad in 2007 (when the United States army implemented the surge according to a new implementation of Counter-insurgency doctrine), and another set of

³ Walter Wallace in *The Logic of Science in Sociology* (1971) demonstrates that both inductive and deductive approaches in sociology are important.

events in Afghanistan. All these events have been labeled and characterized by the U.S. Army as war crimes.

The study is not concerned with testing a hypothesis as it is in illuminating patterns of culture evident from primary and secondary data to show patterns specific to American military culture and from there to make conclusions about American culture. The study does not concern itself in testing a theory, only in interpreting and illuminating observations from a novel perspective, as well as from author's direct experiences of participating and observing a court-martial, as well as assisting in preparation for two other courts-martial related with three of the events examined here.

I participated in and observed a court-martial in Vilseck, Germany in 2009 at the U.S. Army Rose Barracks, a U.S. military installation near the much larger Grafenwöhr Training Area, another U.S. Army installation. That participation serves as the primary data for the study. Constitutional law extends first amendment free speech rights to those who write about their work experiences, and this naturally extends to academics who write about work experiences of their own. Furthermore, court-martial records of trial are considered to be public data. Before and during the trial, the attorneys for Sergeant Leahy sought out the opinions of their assistants and consultants in analyzing sworn statements, records of proceedings from article 32 hearings (a military justice procedure analogous to a grand jury hearing), United States Army Criminal Investigation Command crime reports, and videos of Sergeant Leahy's interrogation by United States Army Criminal Investigation Command. As a sociologist, I participated in giving an opinion on the selection of panel, or jury, members, as well as interpreting the

ebbs and flows of the proceeding. The work provided an opportunity for interaction with the accused – SGT Michael Leahy, his defense attorneys, his family, other U.S. Army Trial Defense Service attorneys, and defense expert witnesses. Attendance at the trial also offered an opportunity to observe the reactions from the panel (the jury) during the trial, as well as that of the spectators including civilian journalists and soldiers from SGT Leahy's U.S. army unit.

I also participated in the preparation of the defense teams for the courts-martial of PFC Corey Clagget (one of the companion cases in the Operation Iron Triangle courts-martial). As a sociologist to the defense teams, I helped to read and analyze sworn statements, records of proceedings from article 32 hearings, and United States Army Criminal Investigation Command crime reports. I augmented the sociological and historical background of the trials through research in medical, legal, and organizational aspects of the cases. This included background research on medical literature pertaining to Post Traumatic Stress Disorder and Mild Traumatic Brain Injuries, background research in legal cases pertaining to self-incrimination and mental competency, and organizational research on dysfunctional work environments and narcissistic leadership.

Beyond the work as a sociologist during these trials, I also conducted a content analysis of the legal documentation associated with individual courts-martial and article 32s connected to the various events. Most of this secondary data is in the form of unclassified legal documents produced by United States Army Criminal Investigation Command. At the risk of being repetitive, it is important to recapitulate that legal documents pertaining to courts-martial are considered to be public documents. All

material pertaining to the records of trial from which I quote are regarded by the law as public documents. The records of trial (ROT) include the transcripts of Article 32 hearings, other pre-trial hearings, investigative reports, sworn statements, transcripts of testimony at courts-martial, and other documents. Various news sources have already quoted extensively from the Twitty report in numerous media reports.⁴ Because the Twitty report was obtained from a news source, it is also a public document. In summary, all my usage of government documents in this study is lawful, and the government does not own any copyright to any of this public information. The records of trial (ROT) included documentation pertaining to different events in Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom: the Abu Ghraib

⁴ The reader may refer to the following articles by Hal Bernton: "Soldier reaches plea deal, gets reduced sentence in war-crimes-related case," *Seattle Times* January 5, 2011, "Key defendant in war-crimes case offers plea deal," *Seattle Times* January 26, 2011, "War changed soldier accused in Afghan killings, mother says," *Seattle Times* March 20, 2011, "Army report criticizes leaders in brigade involved in alleged war crimes," *Seattle Times* April 4, 2011, "Star witness in war-crimes trial no longer in isolation cell," June 19, 2011, "Stryker soldiers allegedly plotted to kill Afghan civilians," *Seattle Times* August 24, 2010, "Stryker soldier Jeremy Morlock faces court-martial in Afghan killings," *Seattle Times* October 15 2010, "Fast-paced probe laid foundation for murder charges against Lewis-McChord soldiers," *Seattle Times* October 26, 2010, "Hearing set for soldier in war-crimes case," *Seattle Times* November 5, 2010, "Army outlines war-crimes case at Lewis-McChord; most witnesses mum," *Seattle Times* November 9, 2010, "Lewis-McChord soldier found guilty of 3 murders in war-crimes case," *Seattle Times* November 10, 2011, and "War-crimes case against soldiers who served in Afghanistan has vulnerabilities," *Seattle Times* December 26, 2010. The reader can also refer to the following articles by Adam Ashton: "Army looks at officers who oversaw group of alleged war criminals," *The News Tribune* November 23, 2010, "Army review of Stryker deployment stays under wraps," *The News Tribune* March 7, 2011, "Misconduct ignored in Afghan killings?" *The News Tribune* April 10, 2011, "5th Brigade dysfunctional, report says," *The News Tribune* March 24, 2011, "Lewis-McChord GI gets 24 years for killing Afghans," *The News Tribune* March 24, 2011, "A commander out of step," *The News Tribune* October 16, 2011, "Platoon lost to lack of discipline," *The News Tribune* October 16, 2011, "The lost platoon," *The News Tribune* October 16, 2011, "Lost platoon's 'leader of trust' had dark side," *The News Tribune* October 16, 2011, "Platoon leader had a dark side," *The News Tribune* October 17, 2011, and "'Leader of trust' had dark side," *The News Tribune* October 17, 2011. The reader may further refer to Michelle Tan's article "Report blames lapses on Stryker commander," *The Army Times* November 27, 2011. The reader may also read Jon Anderson's article "Allegations swirl around Lewis-McChord platoon," *The Army Times* September 11, 2010. The reader may finally refer to Sean Naylor's article "Stryker soldiers say commanders failed them," *The Army Times* December 21, 2009.

Detainee Abuse in 2004, Operation Iron Triangle in 2006, and the killing of prisoners by U.S. Army soldiers in the Jihad canton of Baghdad in 2007.

CHAPTER II

LITERATURE REVIEW

There are few studies specifically of courts-martial in American history. The history of Puritans and courts-martial go back to Oliver Cromwell's New Model Army and the prosecution and execution of Leveller Puritans for mutinies at Corkbush, Bishopsgate, and Banbury during the English Civil Wars. While general histories of the English Civil Wars and specialized histories of the New Model Army and Oliver Cromwell mention Corkbush and Bishopsgate, there is no specific study to those courts-martial.

Given the large number of courts-martial during the Second World War, there are few historical studies of courts-martial from 1941 onwards. The execution of the only soldier to be thus punished for desertion since the Civil War is chronicled in William Bradford Huie's *The Execution of Private Slovik* ([1954] 2004). Slovik's execution was again described in *Rudder: From Leader to Legend* (2011) by Thomas M. Hatfield in relation to COL James Earl Rudder, a former president of Texas A&M University; Rudder was responsible for organizing the firing squad which executed Slovik. Histories of discrimination against African-American soldiers and sailors account for several history books including *The Interpreter* (2005) by Alice Kaplan, which describes how 55 of the 70 U.S. soldiers executed in Europe were African-Americans. The mutiny of African-American sailors for unsafe working conditions at Port Chicago, California during World War II and the resulting courts-martial are chronicled in *The*

Port Chicago Mutiny ([1989] 1993) by Robert Allen. The mutiny of African-American sailors for mistreatment while serving in Seattle during this same period is covered in *On American Soil: How Justice Became a Casualty of World War II* (2005) by Jack Hamann. *Black Soldiers in Jim Crow Texas, 1899-1917* (1995), by Garna Christian, chronicles courts-martial against African-American soldiers during World War I and concludes that the courts-martial were discriminatory.

Still within the subject of military justice and closely related to courts-martial is the imprisonment of American soldiers, including a book on the U.S. Army prison facility in the United Kingdom. *Lichfield (The U.S. Army on Trial)* (1997) by Jack Gieck, is a history of a U.S. Army prison described by Stars and Stripes newspaper towards the end of World War II as “a concentration camp for American soldiers run by American soldiers”. *Mutiny at Salerno: An Injustice Exposed* (1995) by Saul David also chronicles courts-martial related to the Second World War. James Weingartner’s articles on the Biscari and Voerde massacres are historical studies of U.S. Army war crimes and courts-martial during the Second World War.

Memoirs about courts-martial are another approach to courts-martial, though there are few memoirs by attorneys, judges, witnesses, or the accused. *Vietnam Stories: A Judge’s Memoir* (1997) by Crouch is a memoir of Vietnam War courts-martial by a military judge. *Tortured* by Winckler (2009) is a biography of Lynndie England, one of the soldiers convicted for the Abu Ghraib abuses. *Those Gallant Men: On Trial in Vietnam* by John Stevens Berry (1984) and *Honor Restored* by Denzil D. Garrison (2006) are other memoirs of Vietnam War courts-martial.

A novel on American courts-martial from the point of view of an outsider is *OK, Joe* ([1976] 2003) by Louis Guilloux. Guilloux was a novelist before and after the Second World War who worked as an interpreter for the U.S. Army after the D-Day landings in 1944. Guilloux writes about racial discrimination in sentencing of African-American soldiers in Europe, and is the basis for the non-fiction work *The Interpreter* (2005) by Alice Kaplan. Although the book by Guilloux is a novelization, it is still based on facts and is meant to be serious social commentary about American culture and its perception by Europeans.

In addition to histories, memoirs, and novelizations, journalists have written about courts-martial. The most significant account of courts-martial, and specifically related to U.S. Army war crimes, is *My Lai 4* (1970) by Seymour Hersh. Another but more obscure account of Vietnam War courts-martial, though not related to war crimes, is *Kangaroo Court Martial* (1969) by Jolls and Aponte, which chronicles race biases in the trials of two African-American marines during the Vietnam War.

The expert legal analysis and study of courts-martial is another approach into the subject. Gary Solis provides an expert legal analysis of the Vietnam War era war crime in *Son Thang: An American War Crime* (1997), which compares and contrasts that war crime with the My Lai massacre. An expert legal analysis of the U.S. military justice system and war crimes is *Atrocity and American Military Justice in Southeast Asia* (2010) by Barnett. *The Vietnam War on Trial* (2002) by Michal Belknap is a legal history of My Lai. A history of courts-martial for a wide variety of charges (including currency manipulation) during the Vietnam War is *Military Justice in Vietnam* (2007) by

William Allison.

One would expect to find psychology studies of courts-martial. However, psychology studies related to war crimes tend to focus on the war crime event separated from the war crime trial. Examples of psychology studies include *The Lucifer Effect* (2007) by Philip Zimbardo and *Fixing Hell* (2008) by Larry James.

The sociological study of courts-martial was pioneered by Stjepan Mestrovic. The three sociological studies related to courts-martial and military justice are *The Trials of Abu Ghraib* (2007), *Rules of Engagement?: A Social Anatomy of an American War Crime - Operation Iron Triangle, Iraq* (2008), and *The "Good Soldier" on Trial: A Sociological Study of Misconduct by the US Military Pertaining to Operation Iron Triangle, Iraq* (2009). Mestrovic's books focus on the role of reference groups and social character in war crimes. The books do not look at the Puritan elements of the military justice system in the treatment of war crimes and conduct of courts-martial.

There is a vast library of fiction and non-fiction books on the Puritans and Puritanism. Within sociology, four books which relate closest to my subject are *The Protestant Ethic and the Spirit of Capitalism* (1905) by Max Weber, *Wayward Puritans: A Study in the Sociology of Deviance* ([1966] 2005) by Kai T. Erikson and *Democracy in America* ([1835] 2003) by Alexis de Tocqueville. Despite Weber's book enjoying secure placement in the firmament of sociology classics, the work remains rich with insights which remain to be investigated fully. The concept of the Iron Cage in relation to the making of war by Protestant or Puritan cultures such as the United States and Great Britain is an unexplored area. Erikson's book is an interpretation of Durkheim's

social theory which argues that social deviance is useful for communities in maintaining moral boundaries. *Democracy in America* is a book which anticipates Freud by making the observation that to understand a nation, as one would understand a person, it is necessary to return to the moment when that person was in his or her mother's arms. This proto-Freudian framework (Tocqueville died in 1859 just three years after Freud's birth in 1856) was written before the age of psychoanalysis but still examines how the Puritan character of the colonies influence American social life.

The Puritan Mind ([1930] 1961) by Herbert W. Schneider makes the argument that Puritanism as a political philosophy and way of life has come to an end. Schneider writes that "though the cause of Puritanism is certainly dead, the issues and motives which dominated the struggle are still alive" (p. 208). Schneider's observations on Puritanism have parallels with the later observations by David Riesman in *The Lonely Crowd* ([1950] 2001). Schneider ([1930] 1961), for example, wrote of the "loss of the sense of sin" where:

... the "sense of sin became a genteel tradition, cherished in the imagination long after it had been surrendered in practice (p. 98).

Riesman noted that Puritanism had become attenuated, just as Schneider had observed. Riesman's observation that inner-directed societies lose the sense of guilt as the cardinal emotion organizing social habits as those societies gradually become other-directed. That Puritanism continues, in whatever attenuated form, deracinated from its theological, philosophical, and emotional groundings makes present-day Puritanism postemotional.

In my research, I used other history books on Puritans and Puritanism as background reading. Among these books were *Law and Society in Puritan*

Massachusetts: Essex County, 1629-1692 by David Thomas Konig (1981). Konig devotes a chapter on magic and Puritan law, though it deals with civic law. Several books on Witchcraft trials informed my reading of Erikson's *Wayward Puritans* ([1966] 2005). *Entertaining Satan: Witchcraft and the Culture of Early New England* by John Putnam Demos (1982), *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* by Carol F. Karlsen ([1987] 1989), and *In the Devil's Snare: the Salem Witchcraft Crisis of 1692* by Mary Beth Norton (2003) are all respected works on the phenomenon. *Entertaining Satan* by Demos (1982) looks at the Witchcraft trials through a psychosocial perspective, while *The Devil in the Shape of a Woman* by Karlsen ([1987] 1989) examines the economic and demographic bases of the witchcraft panic, and *In the Devil's Snare* by Norton (2003) examines the witchcraft crisis as a scapegoating phenomenon in relation to Puritan defeats against the Wabanki people in the recently fought First and Second Indian Wars (better known today as King Phillips' War and King Williams' War).

Background reading for this study included writings from Puritans themselves. During Operation Iron Triangle, soldiers were addressed by their commander who gave a speech modeled after the speech delivered by Patton in the eponymous movie (*Patton*, directed by Franklin J. Schaffner, 20th Century Fox, [1970] 2006). In real life, Patton consciously modeled his own speeches after those given by Oliver Cromwell, which lead me to consult *Speeches of Oliver Cromwell* edited by Ivan Roots (1989) and *Oliver Cromwell's Letters and Speeches : With Elucidations* edited by Thomas Carlyle (1845) (Weingartner 1989:37). Another book which was a source for background reading was

History of the Rebellion and Civil Wars in England: Begun in the Year 1641 by Edward Hyde, 1st Earl of Clarendon ([1717] 1807). *The Swedish Discipline, Religious, Civile, and Military* [*The Swedish Discipline*] published in 1632 by John Dawson was primary source material for *the Swedish Articles of War* adopted by Cromwell's New Model Army. *The Swedish Articles of War* are also found as an appendix to Winthrop's ([1886] 1920) *Military Law and Precedents*. Another primary source book was *The Discovery of Witches* by the infamous Witchfinder General Matthew Hopkins (1647). The techniques described by Hopkins for interrogating suspected witches parallel contemporary techniques in Army Field Manuals FM 2-22.3 *Human Intelligence Collector Operations* (Headquarters, Department of the Army 2006), FM 3-19.3 *Law Enforcement Investigations* (Headquarters, Department of the Army 2005), and FM 34-52 *Intelligence Interrogation* (Headquarters, Department of the Army 1992). Examples of Puritan literature include *The Pilgrim's Progress* by John Bunyan ([1678] 1962) and *The House of the Seven Gables* by Nathaniel Hawthorne ([1851] 1981).

Most of the books mentioned above lack social theory, unless indicated otherwise. I examined war crimes through the lens of social theory. By this, I do not mean that I engaged in theory construction or used positivistic techniques. I mean that I used social theory to illuminate, understand, and give meaning to social events and issues (Park and Burgess 1920).

As indicated above, *Wayward Puritans: A Study in the Sociology of Deviance* by Kai Erikson ([1966] 2005), *The Protestant Ethic and the Spirit of Capitalism* by Max Weber ([1905] 1976), and *Democracy in America* by Alexis de Tocqueville ([1835]

2003) immediately and directly address Puritanism within a sociological framework.

The McDonaldization of Society by George Ritzer ([1993] 2004) is a sociological examination of the Iron Cage as it exists in contemporary times.

The Lonely Crowd by David Riesman ([1950] 2001) informs the study by contributing the concepts of tradition-directed, inner-directed, and other-directed social character to different societies. Tradition-directed social character pertains to the drives and motivations that are socially organized within individuals in tribal societies. Tradition-directed individuals and societies organize social habits primarily around the emotion of shame. Inner-directed social character pertains to the drives and motivations that are socially organized within individuals in societies marked by transitional growth (decreasing death rates and higher birth rates), mobility, rapid accumulation of capital, expansion in the production of goods and people, expansion in exploration, colonization, and imperialism (Riesman [1950] 2001:14). Inner-directed individuals and societies organize social habits primarily, but not exclusively, around the emotion of guilt. Puritan societies in Britain and North America in the seventeenth century would be examples of societies in transition from tradition-directed social character towards inner-directed social character or of inner-directed societies with persisting elements of tradition-directed social character. Other-directed social character pertains to the drives and motivations that are socially organized within individuals in societies marked by an incipient decline in population in a post-agricultural, post-industrial economy (Riesman [1950] 2001:18). Other-directedness is marked by wasteful consumption, surplus or mass production, and a service-oriented economy (Riesman [1950] 2001:18). Other-

directed individuals and societies organize social habits primarily around the emotion of anxiety – in particular anxiety regarding the opinions of their peers – and are not as affected by the emotions of guilt or shame. Other-directed social character is defined by manipulation, faked sincerity, recycled but vapid outpouring of sentiments, shallowness, and superficiality. Contemporary American society in the latter half of the twentieth century to the present is an other-directed or even post-other-directed society.

My study also will refer to *Understanding Media: The Extensions of Man* by Marshall McLuhan ([1964] 1996). McLuhan himself extended many of the ideas established by Riesman into an analysis of media. McLuhan develops his own terminology so that inner-directed social character is homologous to the concept of typographic man and woman, and other-directed social character is homologous to the concept of graphic man and woman. McLuhan's insights into media illuminate some of the practices by the contemporary, other-directed, and graphical U.S. Military.

Different aspects of contemporary, other-directed, and graphical society is further described in contemporary society. My examination of narcissistic elements of contemporary society and its institutions relies on an interpretation of Thorstein Veblen made in *Thorstein Veblen on Culture and Society* by Stjepan Mestrovic (2003). The interpretation of Veblen's perspective and my analysis differs from that made in *The Culture of Narcissism* by Christopher Lasch ([1979] 1991), but still references Lasch. Additionally, I interpret elements of contemporary society and its institutions relying on *Postemotional Society* by Mestrovic (1997), *Post-Modernism and the Social Sciences: Insights, Inroads, and Intrusions* by Pauline Rosenau (1992), and *Malignant Self-Love:*

Narcissism Revisted by Sam Vaknin (2007). In extending the understanding of narcissism in its relation to Puritanism, I rely on insights into American exceptionalism made by Seymour Martin Lipset (1996) in *American Exceptionalism: A Double-Edged Sword*. Another book by Lipset (1990) that addresses American exceptionalism is *Continental Divide: The Values and Institutions of the United States and Canada*.

My study will examine responsibility and revenge in a Puritan context. Emile Durkheim's ([1893] 1997) *The Division of Labor in Society* establishes a groundwork for revenge within societies held together by mechanical solidarity. Paul Fauconnet ([1928] 1978), a disciple of Durkheim, wrote *Responsibility*, a study of responsibility and revenge extending Durkheim's ([1893] 1997) observations in *The Division of Labor in Society*. *Personality and Culture in Easter European Politics* by Dinko Tomasic (1948) and *Blood Revenge: The Enactment and Management of Conflict in Montenegro and other Tribal Societies* by Christopher Boehm ([1984] 1991) discuss revenge and responsibility in tradition-directed societies using the Balkans as a point of departure into the subject, which is then generalized towards other tradition-directed societies. The ways in which revenge and responsibility are carried out in tradition-directed societies serve as a point of comparison and contrast for revenge and responsibility in Puritan institutions and societies. I refer to *The Moral Judgment of the Child* by Jean Piaget ([1932] 1997) to explore issues related to the assignment of subjective and objective responsibility in contemporary military courts-martial. To extend Fauconnet's insight into responsibility and the making of scapegoats, I refer to *The Redneck Manifesto: How Hillbillies, Hicks, and White Trash Became America's Scapegoats* by

Jim Goad (1997). *The Redneck Manifesto* is a book which explores the way that poverty and whiteness interact in making poor and working-class, white people targets for scapegoating. In the courts-martial that I examine, I use Goad's framework in identifying that the accused soldiers were all members of minority groups vulnerable to scapegoating, including white Americans from rural areas, who Goad refers to as "rednecks, hillbillies, and white trash."

As background for understanding contemporary military institutions and groups, the reader may refer to *Men Against Fire: The Problem of Battle Command* by S.L.A. Marshall ([1947] 2000). Marshall's book is a cultural study of an inner-directed American army during World War II, and studies the behavior of American soldiers from a cultural perspective. The first two volumes of *The American Soldier* by Samuel Stouffer, et al., (1949) is a study of behavior and attitudes of American soldiers during the Second World War⁵. There are no comparable studies of contemporary, other-directed American soldiers. However, both of the books by Marshall and Stouffer serve as starting points for understanding contemporary American soldiers, their reference groups, and their military. *On Killing* by LTC Dave Grossman ([1995] 1996) is a psychological study which advances some of the observations made by Marshall and Stouffer concerning the natural psychological and social barriers that normal people have to killing, including the barriers soldiers have to killing on the battlefield.

I also use history books and memoirs in studying war crimes in the Global War

⁵ See *The American Soldier: Adjustment During Army Life, Volume I* by Samuel A. Stouffer, Edward A. Suchman, Leland C. DeVinney, Shirley A. Star, and Robin M. Williams, Jr. (1949) and *The American Soldier: Combat and Its Aftermath, Volume II* by Samuel A. Stouffer, Arthur A. Lumsdaine, Marion Harper Lumsdaine, Robin M. Williams, Jr., M. Brewster Smith, Irving L. Janis, Shirley A. Star, and Leonard S. Cottrell, Jr. (1949) both by Princeton University Press.

on Terror. However, I am not engaged in historiography or use history as historians do. Historians study events. I refer to these history books and memoirs in order to provide social context. I use *Lynching to Belong: Claiming Whiteness Through Racial Violence* by Cynthia Skove Nevels (2007) to examine issues relating to retributive justice in central Texas. *Lone Star Stalag: German Prisoners of War at Camp Hearne* by Michael R. Waters ([2004] 2006) looks at the history of a prisoner of war camp for captured German soldiers in central Texas. The humane and lawful treatment of prisoners of war at Camp Hearne is a stark contrast to official policies and cultural attitudes towards prisoners of war or “detainees” in the Global War on Terrorism.

I look at the English civil war as war in which English-speaking Puritans applied their Puritan army discipline and laws. There are many books on Oliver Cromwell, the New Model Army, and the English Civil Wars. In order to acquire some familiarity with the subject I used *Civil War: The Wars of the Three Kingdoms 1638-1660* by Trevor Royle (2004), *The Civil Wars 1637-1653* by Martyn Bennett (1998), and *Cromwell's War Machine: The New Model Army, 1645-1660* by Keith Roberts (2005). *Cromwell's War Machine* provided insights into daily life in the New Model Army, including surprising information about rations, the use of printed material, and the use of uniforms by that army.

In the course of preparing my study, I was asked by defense lawyers to give social and historical context to the taking of human remains as trophies of war. Two books which deal with the subject are *Wartime: Understanding and Behavior in the Second World War* by Paul Fussell (1989) and *The Faraway War* by Richard J. Aldrich

(2005). Both books describe the taking of Japanese soldiers' human remains as war trophies by American servicemen, literally a taboo phenomenon that was widespread in the Pacific theater of World War II.

In order to broaden the appeal of my study, I refer to accounts of "The Troubles" or the paramilitary war in Northern Ireland beginning with Bloody Sunday in 1972, the massacre of Irish Catholic civilians by British paratroopers. The British Army is another contemporary, Puritan army, and studying it serves as a comparison to the U.S. Army. I should note that the British Army and British society in general are not as other-directed as American society. The elements of inner-directedness and even tradition-directedness are stronger among the British than among Americans. *Belfast Diary: War as a Way of Life* by American journalist John Conroy (1987) is a memoir of life in a war zone. *Cage Eleven* by Gerry Adams ([1990] 1993) and *Bobby Sands: Writings from Prison* by Bobby Sands (1998) discuss the treatment of prisoners of war by the British, and stands as a point of comparison and contrast for the treatment of prisoners by American soldiers at Abu Ghraib and Camp Hearne. *Falls Memories: A Belfast Life* by Gerry Adams ([1984] 1993) gives an Irish Catholic perspective of life in Northern Ireland, and it highlights the more tradition-directed elements among Irish Catholics during that conflict.

In order to understand the social context of the war in Iraq, *The Old Social Classes and the Revolutionary Movements of Iraq* by Hanna Batatu ([1978] 2004) is an indispensable work. Batatu's book is considered a contemporary version of *Democracy in America*, only focusing on contemporary Iraqi society. *The Old Social Classes and*

the Revolutionary Movements of Iraq is a book similar to *Democracy in America* by Tocqueville ([1835] 2003) or *Black Falcon and Grey Lamb* by Rebecca West ([1941] 1994) in that it is a seminal work on a region's history. *Imperial Life in the Emerald City* by Ravij Chandrasekaran (2006) described American behavior and attitudes in Iraq after the invasion. The book *Imperial Life in the Emerald City* is the non-fiction version of *The Ugly American* by William J. Lederer and Eugene Burdick (1958), only brought into the Internet age and set in Southwest Asia as compared to *The Ugly American* which was set in Southeast Asia. *Beyond the Green Zone: Dispatches from an Unembedded Journalist in Occupied Iraq* by independent journalist Dahr Jamail (2007) is another book in a similar vein to *Imperial Life in the Emerald City*. *Riley and His Story: Me and My Outrage, You and Us* by Monica Haller and Riley Sharbonno (2011) is a photo-memoir of everyday life in Abu Ghraib during the same time that the abuses were taking place. All the books on the war in Iraq were written prior to 2007 when the U.S. Army officially changed its doctrine to Counter-insurgency. The war crimes which occurred at Abu Ghraib and Operation Iron Triangle occurred before the transition to the new doctrine, and the Baghdad canal killings took place after the change to a Counter-insurgency doctrine.

In order to understand the role of magic, one can refer to *The Broken Circle: A True Story of Murder and Magic in Indian Country* by Rodney Barker (1992). Barker writes of Navajo self-help use of magic in settling feuds in a contemporary setting. *The World of the Witches* is by anthropologist Julio Caro Baroja ([1961] 2001), who writes of witchcraft and village life in historical and contemporary Spain. I use both works to

better understand and extend observations by Durkheim ([1915] 1995) and Fauconnet ([1928] 1978) on the use of magic in its relation to religion and vice versa.

In order to establish a rough familiarity of military law *Court-Martial of Apache Kid: Renegade of Renegades* by Clare V. McKanna, Jr. (2009), serves as an outstanding primer. The book describes the trials of Apache Kid under tribal, civilian, and military law . The book contains an excellent introduction into the history of military law. *Military Law and Precedents, Second ed. Revised and Enlarged, 1920* by William Winthrop ([1886] 1920) is an indispensable book on the subject. The book has been referred to extensively in cases relating to military commission trials in Guantanamo appearing before the Supreme Court such as *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006). Other books on military that I used were *Arming Military Justice Vol. I: The Origins of the United States Court of Military Appeals, 1775-1950* by Jonathan Lurie (1992), *Pursuing Military Justice Vol. II: The History of the United States Court of Appeals for the Armed Forces, 1951-1980* by Jonathan Lurie (1998), *Military Justice in America: The U.S. Court of Appeals for the Armed Forces, 1775-1980* by Jonathan Lurie (2001), and *Swords and Scales: The Development of the Uniform Code of Military Justice* by William T. Generous, Jr. (1973).

The documents that are included in this work regarding the abuse at Abu Ghraib comprise official investigation reports and records of trial. Two investigation reports widely available are *The Final Report of the Independent Panel to Review Department of Defense Detention Operations* (James Schlesinger in Strasser 2004) and *Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade* (MG George

Fay in Strasser 2004).

The documents pertaining to Operation Iron Triangle, Iraq included sworn statements and records of trial. The documents available for the Baghdad canal killing cases included a video of an interrogation, sworn statements, and records of trial. The other documents relevant to the Baghdad canal killing cases include Article 32 proceedings (the equivalent of a grand jury in the military justice system) for SGT Michael P. Leahy, Jr., SFC Joseph P. Mayo, SPC Steven A. Ribordy, SSG Cunningham, SGT Charles Quigley, SPC Belmor G. Ramos, and MSG John E. Hatley

Mild traumatic brain injuries (mTBI) and Post Traumatic Stress Disorder (PTSD) formed part of the overall social context in the various cases. A good introduction to the subject of mTBI is *Head Games: Football's Concussion Crisis from the NFL to Youth Leagues* by Christopher Nowinski (2006), a former football player for Harvard University and former professional wrestler in the World Wrestling Entertainment (WWE). *Invisible Wounds of War Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery* edited by Terri Tanielian and Lisa Jaycox and published by the Rand Corporation (2008) examines the treatment of soldiers and veterans of the wars in Iraq and Afghanistan. The Rand Corporation publication states the shocking and incredible figure of 300,000 soldiers estimated to have suffered from permanent traumatic brain injuries, a finding that is disputed by "The Care of War Veterans with Mild Traumatic Brain Injury – Flawed Perspectives" by Charles Hoge, Herb Goldberg, and Carl Castro (2009) published in *The New England Journal of Medicine*.

Medicine and the law intersect. Many of the cases of mTBI and PTSD in a legal setting bring up questions of the legality and validity of confessions and responsibility. Also in my role as part of the defense team I analyzed cases where brain injuries or PTSD was used as a defense for excluding confessions or testimony in both military and civilian trials. “Know Your Ground: The Military Justice Terrain of Afghanistan” by CPT Eric Hanson (2009) published in the *The Army Lawyer* describes the challenges of practicing military law in Afghanistan, where the U.S. Army is sprawled across “two hundred camps, forward operating bases, combat outposts, firebases, and observation posts” (Hanson 2009:36). Another article relevant to these cases is “Solving the Mystery of Insanity Law: Zealous Representation of Mentally Ill Servicemembers” by MAJ Jeremy Ball (2005) published in the *The Army Lawyer*.

To orient oneself to the issues of mental competency and self-incrimination, there is a wide range of legal sources. One such source is the Texas Code of Criminal Procedure Title 1 Chapter 46b: *Incompetency to Stand Trial*. Articles relevant to self-incrimination in the military justice system can be found in various volumes of *The Army Lawyer* including “‘I Really Didn’t Say Everything I Said’: Recent Developments in Self-Incrimination Law” by MAJ Christopher Frederickson, et al., (2006) “Self-Incrimination: Big Changes in the Wind” by LTC Robertson et al. (2004), “What’s Done is Done: Recent Developments in Self-Incrimination Law,” “2008 New Developments in Self-Incrimination” by LTC James Varley (2008), “The Miranda Paradox, and Recent Developments in the Law of Self-Incrimination” by MAJ Timothy C. MacDonnell

(2001), “Bless Me Father For I Have Sinned: A Year in Self-Incrimination Law” by LTC David Robertson et al. (2003), and “The Armor: Recent Developments in Self-Incrimination Law” by MAJ Martin H. Sitler, et al. (2000). I referred to *Miranda v. Arizona*, 384 U.S. 436 (1966), and cases that dealt with active military personnel or veterans in cases citing a brain injury as a mitigating factor in limiting confessions or culpability including: *United States v. Timothy J. Ellis* (57 M.J. 375; 2002 CAAF Lexis 1247), *State of Louisiana v. Henry Joseph Anderson* (996 So. 2d 973; 2008 La. Lexis 1744), *United States v. Andrew P. Ober* (66 M.J. 393; 2008 CAAF Lexis 768), *United States v. Ashontia K. Harrow* (65 M.J. 190; 2007 CAAF Lexis 831), *United States v. Ronald D. Cole* (54 M.J. 572; 2000 CCA Lexis 254), *United States v. Trent D. Thomas* (2009 CCA Lexis 276), *United States v. Timothy Oldani* (2009 U.S. Dist. Lexis 50538), *Danny L. Montgomery v. Eric K. Shinseki, Secretary of Veterans Affairs* (2010 U.S. App. Vet. Claims Lexis 1680), *John Patrick McDonald v. State of Minnesota* (1998 Minn. App. Lexis 253), *State of Louisiana v. Steven Michael Presson* (2008 La. App. Lexis 837), *Jonathan Stewart v. Bryan Kapustinski* (2008 Conn. Super. Lexis 591), *United States v. Richard C. Breshnahan* (62 M.J. 137; 2005 CAAF Lexis 1105), *Richard C. Nagell v. United States Court of Claims* (1982 U.S. Cl. Ct. Lexis 2377), and *United States v. Justin Inabinette* (66 M.J. 320; 2008 CAAF Lexis 664).

Military units ultimately are workplaces. Studies of socially toxic workplaces are relevant, including studies particular to workplaces where the leadership or management are narcissistic and produce toxic work environments. Vaknin’s (2007) *Malignant Self-Love: Narcissism Revisted* discusses narcissistic personality disorders in

the workplace. Vaknin writes that narcissists treat other workers as objects to be exploited, and that narcissists make impulsive decisions. One such article includes “It’s All about Me: Narcissistic Chief Executive Officers and Their Effects on Company Strategy and Performance,” by Arijit Chatterjee and Donald C. Hambrick (2007) published in *Administrative Science Quarterly*. “CEO Charismatic Leadership: Levels-of-Management and Levels-of-Analysis Effects” by David Waldman and Francis Yammarino (1999) published by the *Academy of Management Review* looks at the effects of charismatic leadership including the practice of circulating (or not circulating) among employees and projecting leadership from a distance, as is common in military settings.

Since narcissists produce toxic workplaces, different articles examine the effect of narcissists on their employees. *The Impact of Managerial Leadership on Stress and Health Among Employees*, a dissertation of the Karolinska Institute in Sweden by Anna Nyberg (2009) presents evidence that leadership with Narcissistic characteristics has adverse effects on the stress and health of workers in a workplace. The effects of toxic workplaces are further explored in “Toxic Work Environments: What Helps and What Hurts” by Lindsey Chamberlain and Randy Hodson (2010) published in *Sociological Perspectives* and in “Job Stress, Incivility, and Counterproductive Work Behavior (CWB): The Moderating Role of Negative Affectivity” by Lisa Penney and Paul Spector (2005) published in the *Journal of Organizational Behavior*. “Toxic Decision Processes: A Study of Emotion and Organizational Decision Making” by Sally Maitlis and Hakan Ozcelik (2004) published in *Organization Science* examine how negative

emotions, such as fear and anger, experience by a single worker do not dissipate with the experience of a single worker. The emotions of fear and anger in a toxic work environment become amplified as if in an echo chamber. “Regulation and the Sociopathic Firm” published by Gregory A. Daneke (1985) in *The Academy of Management Review* examines how sociopathic firms resist government regulation, and in fact, exaggerate sociopathic behaviors as a result of regulatory pressure.

CHAPTER III

PURITAN MILITARY LAW: ORIGINS AND CHARACTER

The concept of the Iron Cage is well known in sociology, but may be understood in a new way in relation to criminal justice systems, in particular the military justice system. The term has been interpreted to mean that in societies influenced by the Protestant ethic, there is an increased rationalization in social life (Ritzer [1993] 2004). The description is one of life becoming ever more mechanical and disenchanting. The Iron Cage may be understood in a new way through a reading of Mestrovic's concept of post-emotionalism (Mestrovic 1999), and by Weber's observations consistent with his other works. The emotional component of the Iron Cage should always complement the observation that society is becoming increasingly rationalized: social life is not only becoming more mechanical, but also more inhumane. The passages dealing with the Iron Cage in *The Protestant Ethic and the Spirit of Capitalism* are:

The Puritan wanted to work in a calling; we are forced to do so. For when asceticism was carried out of monastic cells into everyday life, and began to dominate worldly morality, it did its part in building the tremendous cosmos of the modern economic order. This order is now bound to the technical and economic conditions of machine production which to-day determine the lives of all the individuals who are born into this mechanism, not only those directly concerned with economic acquisition with irresistible force. Perhaps it will so determine them until the last ton of fossilized coal is burnt. In Baxter's view the care for external goods should only lie on the shoulders of the 'saint like a light cloak, which can be thrown aside at any moment.' But fate decreed that the cloak should become an Iron Cage.

Since asceticism undertook to remodel the world and to work out its ideals in the world, material goods have gained an increasing and finally an *inexorable power* over the lives of men as at no previous period in history. To-day the spirit of religious asceticism – whether finally, who knows? – has escaped from the cage. But victorious capitalism, since it rests on *mechanical*

foundations, needs its support no longer. *The rosy blush* of its laughing heir, *the Enlightenment*, seems also to be *irretrievably fading*, and the idea of duty in one's calling prowls about in our lives like the *ghost of dead religious beliefs* [emphasis added] (Weber [1905] 1976:181-2).

The concept of the Iron Cage can be applied to the military justice system in particular, and all of the American justice system in general. The justice system in the military can be understood as a mechanized factory where the unit of output is the conviction. In the 1987 film *Robocop* (directed by Paul Verhoeven, Orion Pictures), a cyborg policeman follows a narrow set of protocols in enforcing the law in the dystopian, futuristic city of Detroit. People believe that *Robocop* is only a movie, but closed-circuit television surveillance of American cities, internet surveillance through software – which allows for government surveillance of communications based on “criminal” or “terroristic” keywords – and unfettered, back-door access by the government to search engine and social media websites have brought America into *Robocop's* world. The process by which military personnel are investigated, charged, tried, convicted, and imprisoned follows this mechanical, McDonaldized, and inhumane pattern of the Iron Cage. The system demands that soldiers are investigated by Robocops, tried by Roboprosecutors, stand trial before a Robojury, and are sentenced by Robojudges: the human elements of the individuals involved are expected to be suppressed.

Each year, the United States Court of Appeals for the Armed Services publishes its Annual Report of the Code Committee on Military Justice. An examination of the reports published between 1997 and 2009 show a consistent and stable pattern of “efficiency” in the production of convictions in courts-martial. Despite the Armed Service branch or its size (the U.S. Army and U.S. Navy are the largest branches, the

U.S. Coast Guard is the smallest), the pattern and “efficiency” of convictions are high – above 90% (see Table 1, Table 2, Table 3, and Table 4 below).

Table 1: Military Justice System Statistics for the United States Army, 1997-2009

U.S. Army, Military Justice Statistics	1997	1998	1999	2000	2001	2002	2003
Number of General Courts-martial	741	685	737	731	770	788	689
Convictions	701	639	692	653	739	757	657
Convictions – Percentage	94.60%	93.28%	93.89%	89.33%	95.97%	96.07%	95.36%
Number of BCD* Special Courts-martial	312	273	422	386	354	592	644
Convictions	271	250	401	314	331	574	631
Convictions – Percentage	86.86%	91.58%	95.02%	81.35%	93.50%	96.96%	97.98%
Number of Summary Courts-martial	396	489	487	666	672	858	858
Convictions	381	464	459	638	645	793	812
Convictions – Percentage	96.2%	94.9%	94.3%	95.8%	96.0%	92.4%	94.6%
U.S. Army Average Active Duty Strength	486,668	484,054	473,809	482,176	480,783	516,599	493,563
U.S. Army, Military Justice Statistics	2004	2005	2006	2007	2008	2009	Average
Number of General Courts-martial	647	825	749	809	674	638	729.46
Convictions	628	777	723	772	631	584	688.69
Convictions - Percentage	97.06%	94.18%	96.53%	95.43%	93.62%	91.54%	94.37%
Number of BCD* Special Courts-martial	677	700	573	625	484	518	504.62
Convictions	663	680	556	610	469	491	480.08
Convictions - Percentage	97.93%	97.14%	97.03%	97.60%	96.90%	94.79%	94.20%
Number of Summary Courts-martial	755	1,252	1,140	1,223	1,252	946	845.69
Convictions	711	1,170	1,074	1,128	1,153	NA	785.67
Convictions - Percentage	94.2%	93.5%	94.2%	92.2%	92.1%	NA	94.2%
U.S. Army Average Active Duty Strength	494,291	492,728	574,456	636,778	655,378	584,685	527,382

*BCD, Bad Conduct Discharge

Source: *Annual Report of the Code Committee on Military Justice* for FY 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009

Table 2: Military Justice System Statistics for the United States Navy and Marine Corps, 1997-2009

U.S. Navy/USMC Military Justice Statistics	1997	1998	1999	2000	2001	2002	2003
Number of General Courts-martial	548	470	349	428	481	499	315
Convictions	511	459	317	398	454	481	291
Convictions - Percentage	93.25%	97.66%	90.83%	92.99%	94.39%	96.39%	92.38%
Number of BCD* Special Courts-martial	2,698	2,322	2,102	2,381	2,264	2,188	1,854
Convictions	2,586	2,309	2,009	2,298	2,222	2,144	1,815
Convictions - Percentage	95.85%	99.44%	95.58%	96.51%	98.14%	97.99%	97.90%
Number of Summary Courts-martial	1,631	1,783	1,565	1,883	2,103	2,098	1,990
Convictions	1,589	1,762	1,529	1,802	2,074	2,078	1,955
Convictions - Percentage	97.4%	98.8%	97.7%	95.7%	98.6%	99.0%	98.2%
U.S. Navy and USMC Average Active Duty Strength	556,559	550,287	544,896	546,514	553,430	557,210	557,716

U.S. Navy/USMC Military Justice Statistics	2004	2005	2006	2007	2008	2009	Average
Number of General Courts-martial	313	359	278	297	269	234	372.31
Convictions	282	339	250	256	236	205	344.54
Convictions - Percentage	90.10%	94.43%	89.93%	86.20%	87.73%	87.61%	91.84%
Number of BCD* Special Courts-martial	1,872	1,610	1,299	1,049	984	878	1,807.8
Convictions	1,807	1,549	1,240	931	898	834	1,741.7
Convictions - Percentage	96.53%	96.21%	95.46%	88.75%	91.26%	94.99%	95.74%
Number of Summary Courts-martial	1,954	1,980	1,789	1,505	1,713	1,871	1,835.8
Convictions	1,924	1,968	1,774	1,498	1,672	1,851	1,805.8
Convictions - Percentage	98.5%	99.4%	99.2%	99.5%	97.6%	98.9%	98.36%
U.S. Navy and USMC Average Active Duty Strength	550,677	542,970	530,613	517,963	530,733	532,621	544,015

*BCD, Bad Conduct Discharge

Source: Annual Report of the Code Committee on Military Justice for FY 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009

Table 3: Military Justice System Statistics for the United States Air Force, 1997-2009

U.S. Air Force Military Justice Statistics	1997	1998	1999	2000	2001	2002	2003
Number of General Courts-martial	527	442	421	438	490	564	351
Convictions	489	411	396	404	463	534	329
Convictions - Percentage	92.79%	92.99%	94.06%	92.24%	94.49%	94.68%	93.73%
Number of BCD* Special Courts-martial	178	304	333	320	340	384	471
Convictions	178	288	313	306	318	351	441
Convictions - Percentage	100.00%	94.74%	93.99%	95.63%	93.53%	91.41%	93.63%
Number of Summary Courts-martial	70	76	91	139	126	119	101
Convictions	69	73	90	135	125	118	100
Convictions - Percentage	98.6%	96.1%	98.9%	97.1%	99.2%	99.2%	99.0%
U.S. Air Force Average Active Duty Strength	370,732	378,981	358,353	351,448	348,921	357,537	367,855

U.S. Air Force Military Justice Statistics	2004	2005	2006	2007	2008	2009	Average
Number of General Courts-martial	356	422	341	239	203	222	385.85
Convictions	316	388	297	207	174	187	353.46
Convictions - Percentage	88.76%	91.94%	87.10%	86.61%	85.71%	84.23%	90.72%
Number of BCD* Special Courts-martial	514	517	455	472	360	419	389.77
Convictions	468	478	426	444	338	386	364.23
Convictions - Percentage	91.05%	92.46%	93.63%	94.07%	93.89%	92.12%	93.86%
Number of Summary Courts-martial	157	144	140	148	105	114	117.69
Convictions	154	144	139	145	103	114	116.08
Convictions - Percentage	98.1%	100.0%	99.3%	98.0%	98.1%	100.0%	98.57%
U.S. Air Force Average Active Duty Strength	376,044	362,593	349,732	349,732	327,848	328,164	355,995

*BCD, Bad Conduct Discharge

Source: Annual Report of the Code Committee on Military Justice for FY 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009

Table 4: Military Justice System Statistics for the United States Coast Guard, 1997-2009

U.S. Coast Guard Military Justice Statistics	1997	1998	1999	2000	2001	2002	2003
Number of General Courts-martial	6	18	6	10	15	4	8
Convictions	6	17	6	9	15	4	8
Convictions - Percentage	100.00%	94.44%	100.00%	90.00%	100.00%	100.00%	100.00%
Number of BCD* Special Courts-martial	9	21	17	23	17	23	18
Convictions	9	20	17	23	17	23	18
Convictions - Percentage	100.00%	95.24%	100.00%	100.00%	100.00%	100.00%	100.00%
Number of Summary Courts-martial	10	8	3	11	18	11	20
Convictions	10	8	3	10	18	11	20
Convictions - Percentage	100.0%	100.0%	100.0%	90.9%	100.0%	100.0%	100.0%
U.S. Coast Guard Average Active Duty Strength	34,341	35,293	35,534	35,754	35,647	36,773	39,619

U.S. Coast Guard Military Justice Statistics	2004	2005	2006	2007	2008	2009	Average
Number of General Courts-martial	12	7	16	16	13	12	11
Convictions	12	5	16	13	12	9	10.1538
Convictions - Percentage	100.00%	71.43%	100.00%	81.25%	92.31%	75.00%	92.65%
Number of BCD* Special Courts-martial	27	45	32	24	19	19	22.6154
Convictions	25	45	31	23	19	19	22.2308
Convictions - Percentage	92.59%	100.00%	96.88%	95.83%	100.00%	100.00%	98.50%
Number of Summary Courts-martial	12	21	31	31	28	14	16.7692
Convictions	12	21	31	31	28	14	16.6923
Convictions - Percentage	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	99.3%
U.S. Coast Guard Average Active Duty Strength	40,226	40,908	40,867	41,498	42,603	43,042	38,623

*BCD, Bad Conduct Discharge

Source: Annual Report of the Code Committee on Military Justice for FY 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009

Weber addressed the emotional and irrational component of the Iron Cage.

Rather, Weber addressed how there is a nullity or absence of genuine emotions. The passage which addresses the irrational, emotional side of the Iron Cage is:

No one knows who will live in this cage in the future, or whether at the end of this tremendous development entirely new prophets will arise, or there will be a great rebirth of old ideas and ideals, or, if neither, *mechanized petrification*, embellished with a sort of *convulsive self-importance*. For the last stage of this cultural development, it might well be truly said: “*Specialists without spirit, sensualists without heart; this nullity imagines that it has achieved a level of civilization never before achieved*” [emphasis added] (Weber [1905] 1976:182).

Weber prefigures various contemporary sociologists in identifying the dysfunctions and dangers of a society trapped within the Iron Cage. The convulsive self-importance that Weber refers, as well as the prediction that a mechanically petrified society imagines itself as the pinnacle of civilization, prefigures the observations of cultural narcissism before Lasch (1991), who does not credit Weber. That there is a mechanical petrification of old ideas and ideals prefigures the mechanical production of emotion in contemporary American society described as postemotional in the work of Mestrovic (1999). The idea that specialists without heart are a fixture in narcissistic societies is an element in postemotional societies. For example, in both military and civilian justice systems the majority of cases are settled through plea-bargains with only a small minority going to court (Mestrovic 2009:262). Guilt and innocence are therefore left unresolved through a trial process, which is the constitutional right of the accused (Mestrovic 2009:262). In fact, an awareness exists that going an individual adhering to his or her innocence and claiming the individual right to a trial faces penalties for doing so: prosecutors in a form of official vindictiveness raise the severity

of charges and potential prison sentences for individuals who refuse to accept plea bargains (Oppel 2001). There is a nascent awareness in Europe that the American justice system forms a larger pattern of barbarity and injustice in American society along with other elements such as police brutality or an almost dogmatic belief in the death penalty (Pilkington 2011c). Both lawyers for the prosecution and defense live with these daily facts, and whatever outrage or discomfort exists as a result of it seldom comes to the surface.

The administration of Puritan justice, historically described by Erikson, shows both the mechanical and emotion-less nature in the prosecution of crimes. Erikson refers to the prosecution of crimes in Puritan Massachusetts as being motivated by “a relentless kind of certainty,” corresponding to the mechanical nature of rationalization, and with a character of “cold righteousness,” corresponding to the postemotional aspect of the Iron Cage (Erikson [1966] 2005:189). The struggle within the Iron Cage between “the great rebirth of old ideas and ideals, or, if neither, mechanized petrification” is evident in the earliest history of Puritan Massachusetts. In Puritan jurisprudence, these two impulses are in constant antagonism with each other. These philosophies are evident in both the establishment and administration of law in early Massachusetts as they were with the establishment and administration of law among the American armed forces. At the core of both arguments was the need to establish the principal reason for the law, whether the law fulfilled a need for justice or whether it fulfilled a need for discipline. The reason for being would have a profound impact on the character of punishment and on the fates of individuals.

Erikson in *Wayward Puritans: A Study in the Sociology of Deviance* [1966 (2005)] demonstrates that in 1636 a debate proceeded which pitted the two most prominent men of the Massachusetts Puritan colony in conflict with each other (p. 185). John Winthrop and Thomas Dudley disagreed on the nature and character of discipline among the colonists, with Winthrop advocating leniency in actions brought to court and Dudley being “committed to a policy of harsh Biblical justice” (Erikson [1966] 2005:185). Erikson remarks that Puritans react to crises with meetings, and in typical Puritan fashion, the prominent men of Massachusetts met to dispute the issue (Erikson [1966] 2005:186). A prominent man in the community siding with Thomas Dudley accused John Winthrop as acting “too remissly in point of justice”, and that Winthrop did not prosecute offenders with “the vigor expected of a Puritan magistrate” (Erikson [1966] 2005:186). Erikson notes Winthrop’s response to this point:

[I]t was his [Winthrop’s] judgment, that in the infancy of a plantation, justice should be administered with more lenity than in a settled state, because people were then more apt to transgress, partly of ignorance of new laws and orders, partly through oppression of business and other straits; but, if it might be made clear to him [Winthrop], that it was an error, he would be ready to take up a stricter course ([1966] 2005:186).

Winthrop argued against the hard-line position that gravitated towards law serving as a tool primarily for discipline. Erikson notes that on the following day, the conference reconvened and made their decision that “strict discipline, both in criminal and martial affairs, were more needful in plantations than in a settled state, as tending to the honor and safety of the gospel” ([1966] 2005:186). Winthrop lost his case, and the earliest impulse in the administration of the courts in the Puritan colony would be that of discipline, not justice.

The argument between these two impulses, justice or discipline, take a similar parallel in the development of military law. As clearly stated by the conference's decision of Winthrop's time, the Puritan colony would give preference to the impulse of discipline in the administration of military law. McKanna's overview of American military legal history in *Court-Martial of Apache Kid: Renegade of Renegades* [2009] also notes the primacy of discipline in the administration of American military law. As stated earlier, American law has an odd pedigree; George Washington during the American Revolutionary War adopted the 1762 British Articles of War, themselves derived from Swedish Articles of War adopted by the British military in 1639 (McKanna 2009:65). Medieval military law fulfilled the need of kings or generals in the field to wield unlimited powers of discipline over their soldiers (McKanna 2009:65). Discipline, not justice, was the literal order of the day when it came to military law. American military law, which has resisted change, is basically at its core medieval law. In fact, the British Articles of War adopted by the Continental Congress became even more medieval and severe: George Washington increased the maximum number of lashes that could be meted as punishment from thirty-nine to one hundred (Lurie 1992:5; Winthrop [1886] 1920:968)

Erikson makes the same observation that the nature and character of colonial, Puritan law in the Massachusetts colony was medieval in nature. Winthrop urged leniency in the application of law with discipline "scaled according to the nature of the situation" (Erikson [1966] 2005:187). In other words, Winthrop advocated what Piaget would describe as subjective morality in relation to the unique circumstances of cases

being argued before civil and military courts. The clergy which opposed Winthrop were arguing in favor of “the language of sheer religious absolutism” that “discipline cannot be molded to fit the shifting circumstances of the time but must remain fixed and ultimate to protect the universal law of morality, the honor and safety of the gospel”. In Piaget’s term, the argument that carried the day was framed in terms of objective morality. Erikson encapsulates the ideas behind the clergy’s reasoning in the sentence:

Crook not God’s rules to the experience of men, but bring them unto the rule, and try men’s estates herein by that ([1966] 2005:187).

The idea that was the foundation for American law was thus based on objective morality, which denied the unique circumstances of every individual case, and which placed the origin of law and order not in the evolving experience of the courts, but in a divine origin (Erikson [1966] 2005:187). Erikson concludes:

Thus, at the very moment England was learning to regard the law as a product of human experience, Massachusetts reaffirmed the old medieval conviction that law is a permanent set of standards written into the design of the universe and wholly unmoved by changes in the human condition ([1966] 2005:187).

Erikson notes that Puritan attitudes toward deviancy and punishment began with an understanding that crimes against the public order were crimes against the very symmetry and orderliness of nature itself, and not against an understanding of justice that fluctuated and developed with the experiences of a community ([1966] 2005:187).

John Winthrop may have lost the argument that law should primarily serve the impulse of justice rather than discipline in the early days of the Massachusetts colony (Erikson [1966] 2005:186). Erikson notes even that Winthrop accepted the ruling of the conference “with his usual courtesy”, and that the meeting ended “with ‘a renewal of

love amongst them” ([1966] 2005:186). However, the minority argument, still rooted in Puritan thought and sentiment, that laws serve the needs of justice continued in American jurisprudence not just in a juridical sense, but even in a genealogical sense. McKanna notes that in the nineteenth century, it was another Winthrop, COL William Winthrop, who would become the foremost critic of American military law, making arguments for leniency and urging that courts accede to the impulse of justice. COL William Winthrop was in fact, a descendant of John Winthrop, early colonial governor of Massachusetts (Morgan 1965:iii).

COL William Winthrop served in the Bureau of Military Justice during the Civil War beginning in 1863, where he served in the capacity of deputy judge advocate general for nineteen years (McKanna 2009:66; Morgan 1965:iii). COL William Winthrop’s book on the origin and history of military law, *Military Law and Precedents*, the seminal work in the study of American military law, was published in 1886 (McKanna 2009:66; Morgan 1965:iv; Lurie 1992:28). William Winthrop’s book has remained a standard reference in the military beginning in the nineteenth century and into the present moment (McKanna 2009:66). In fact, *Military Law and Precedents* is cited in Supreme Court decisions regarding the imprisonment and trials of suspected terrorists in Guantanamo, including *Hamdan v. Rumsfeld, Secretary of Defense, et al.* (McKanna 2009:79). Based on his expertise and as his tenure teaching military law at the U.S. Military Academy, William Winthrop was assigned to rewrite the Articles of War in the early 1870s (McKanna 2009:66). McKanna characterizes William Winthrop’s recommendations as liberal when compared to the adversarial points of view in the U.S.

Army; though in the end result the changes were moderate (2009:66-7).

For example, the “liberal philosophy” that guided William Winthrop’s proposed changes increased the number of amendments in the Articles of War from 101 to 128 (McKanna 2009:66). However, basing his reforms on the experience of the U.S. Army during the American Civil War (experience being a key point in the administration of law as justice and not as discipline), William Winthrop made changes to accommodate the large size of industrial-era armies and in maintaining discipline (McKanna 2009:67). McKanna states that despite the focus on discipline, William Winthrop added two articles that provided modest protection for soldiers’ rights: article 70 that required a soldier be brought to trial within eight days and article 93 which allowed defense counsel or the judge advocate to ask for a continuance in the court-martial proceedings (2009:67). Although these proposals were modest, they were influenced by civilian law and the guarantee to defendants of a speedy trial (McKanna 2009:67). As judge advocate general, William Winthrop advocated even more liberalizing reforms based on changes in the federal and state systems (McKanna 2009:68). These changes that William Winthrop advocated included statute of limitations for desertion, and the right to an attorney for the accused (McKanna 2009:68). The statute of limitations for desertion, defection, or avoiding the draft does not exist to this day; in 1965, an American Sergeant by the name of Charles Robert Jenkins defected to North Korea while stationed in South Korea (McCurry 2004). Jenkins eventually left North Korea for personal reasons in 2004, and turned himself in to U.S. military authorities in Japan (McCurry 2004). Jenkins was given a token

sentence of 30 days at Fort Leavenworth's United States Disciplinary Barracks, the military's maximum security prison, and he was given a dishonorable discharge for a crime he committed nearly four decades previously (McCurry 2004). The images of Jenkins at his court-martial in Japan, as shown in a documentary film (*Crossing the Line*, directed by Daniel Gordon and Nicholas Bonner, Kino International, [2006] 2008), are disconcerting and bizarre; they are those of an elderly, frail man wearing a U.S. Army uniform with sergeant's stripes walking into a military court room.

The long arm of military justice, and its ability to maintain official, rational grudges through limited statutes of limitations was an endearing quality to William Winthrop's chief rival in reforming the Articles of War, General William T. Sherman (Generous 1973:48; McKanna 2009:68). Sherman resisted and rejected civilian influence on military law; he stated:

It will be a grave error if by negligence we permit the military law to become emasculated by allowing lawyers to interject into it the principles derived from their practice in the civil courts (Generous 1973:48; McKanna 2009:68).

McKanna states that the legal establishment and the majority in the officer corps, as represented by Sherman, regarded William Winthrop's views as heretical (2009:69). McKanna's description of the nonconformist view espoused by William Winthrop as heretical is not an exaggeration; Piaget's description of objective morality in societies held together by mechanical solidarity (i.e., societies ruled by tradition and shunning innovation) regard laws and rules as divine in inspiration and origin. In sociological terms, the views of William Winthrop were heretical to the establishment. Despite the established credential as an expert in the field and his experience as a military judge,

William Winthrop's views were fiercely resisted by the military establishment which above all deferred to the impulse of discipline over the impulse of justice. Like his antecedent John Winthrop, William Winthrop's views would be publicly known and publicly repudiated. However, as stated above, just as William Winthrop would serve as a voice for his ancestor's point of view in a new time and place, so too does William Winthrop's work, *Military Law and Precedents*, serve as his voice for justice, albeit moderate, within the military legal system. For example, Winthrop's description of four preconditions for the exercise of jurisdiction over civilians was cited extensively in *Hamdan v. Rumsfeld, Secretary of Defense, et. al* (McKanna 2009:79).

The voices of the two Winthrops were in the minority, and the voices that sanctioned severe discipline in the colonial legal system of the Massachusetts Puritans and the legal system of the American military prevailed. Puritan theology and ideology (in practice, one and the same) characterized the attitudes towards the legal process and Punishment (Erikson [1966] 2005:190). Erikson notes that the character of Puritan justice was its prosecution of crimes with "cold righteousness" (Erikson [1966] 2005:189). Whereas the prosecution of criminals or deviants in other parts of the world might be enthused with feelings of rage and revenge, the prosecution of criminals in Massachusetts was motivated by "a relentless kind of certainty" (Erikson [1966] 2005:189). This is in line with Weber's characterization of Puritanism as being the enemy of spontaneity, that Puritanism is characterized by "the strict avoidance of all spontaneous enjoyment of life" ([1905] 1976:53). The prosecution of the accused in Puritan Massachusetts had a "flat, mechanical tone" (Erikson [1966] 2005:189).

The “cold righteousness” and “mechanical tone” of Puritan justice correspond directly to contemporary courts-martial. The mechanical and cold application of punishments in Puritan courts of colonial Massachusetts, with little to no serious regard for mitigating factors or social context, are similar to the objective application of responsibility in the courts-martial studied. Piaget’s ([1932] 1997) understanding of moral development in children from objective to subjective assessments of morality can illuminate the mechanical, emotion-less, and Puritanical character in war crimes courts-martial of the Global War on Terrorism.

Piaget is better known for his theory of cognitive development in children, which is crudely recapitulated in sociology and psychology textbooks. His theory on the moral judgment of children is virtually unknown in sociology. However, Piaget uses Durkheim’s sociology in tandem with psychology to explain the moral development in children. Explicitly, Piaget draws comparisons to the development of morality in children as being “parallel rather than contradictory to Durkheim’s doctrine of the social genesis of respect and morality” (p. 53). Children between the ages of three and seven are aware of rules, but attribute their origin and character as being divine and obligatory (Piaget [1932] 1997:91). At the age of eight and older, children are autonomous and their autonomy connects them in cooperation with each other (Piaget [1932] 1997:93).

The two stages of development have direct parallels with Durkheim’s characterization of societies held together by mechanical solidarity and societies held together by organic solidarity. In societies held together by mechanical solidarity, penal

law is essentially religious in nature (Durkheim [1893] 1997:49). Penal law and punishments with a repressive character are the defining features of morality and law in mechanical solidarity societies.

Children below the age of eight and mechanical solidarity societies apply standards of objective responsibility to individual infractions. Under the criteria for objective responsibility, the motivations behind an action are not given the same weight in assessing responsibility as the immediate results of an action, that is, if motivations are even considered. In Piaget's study, children were presented with a pair of stories in which the results of characters' through different intentions break a rule. For example, in one story a child is called to dinner and accidentally breaks fifteen cups in responding to his parents' orders to come, while in another story a disobedient child is trying to take jam he is not supposed to eat and accidentally breaks one cup. Younger children with an objective understanding of responsibility may or may not notice the mitigating details of the two stories (such as the motivation which lead to the infraction), but ultimately focus on results and ignore motivation in assessing guilt and punishment. One child's answer is typical: the character that breaks fifteen cups should get two slaps, while the character that broke one cup should get one slap (Piaget [1932] 1997:125).

The repressive features of a society held together by mechanical solidarity become starkly apparent in the court-martial of Jeremy Sivits, a private in the U.S. Army who did not design or order the abuses at Abu Ghraib but nonetheless was swept up into its vortex. In his court-martial, Sivits was prosecuted for his part in the scandal, which was the taking of a single, solitary photograph of abuse during his single, solitary visit to

the site within the prison where abuse was taking place. Sivits, like the other low-ranking soldiers swept up into the scandal, was charged with conspiracy.

As Piaget states, children with an objective view of morality focus on the results of one's actions rather than the motivation or mental state under which one has during the commission of an act. This quality of disregarding motivation and focusing on the end results can be seen in the explanation of a conspiracy charge, as said to Sivits by the military judge in his court-martial:

Now, in a conspiracy the agreement does not have to be in any particular form or expressed in formal words. It is sufficient if the minds of the parties reach a common understanding to accomplish the object of the conspiracy, and *this may be proved by the conduct of the parties*. The agreement does not have to express the manner in which the conspiracy is to be carried out or what part each conspirator is to play. *The overt act required* for this offense does not have to be a criminal act, but it must be a clear indication that the conspiracy is being carried out. *The overt act* may be done either at the time of or following the agreement. *The overt act* must clearly be independent of the agreement itself, that is, it must be more than merely the act of entering into the agreement of an act necessary to reach the agreement [emphasis added] (Sivits Record of Trial).

In order to prove conspiracy, it is not necessary for the government to prove the state of mind or motivation by the individual, the act itself is proof of a conspiracy. More importantly the overt act does not have to be criminal in nature. In theory, and in practice, individuals are found guilty of conspiracy charges for which the smallest detail – a nod, the phrase “let’s go”, or nothing at all – is sufficient to prove a conspiracy based on an act that occurs later in time.

In the case of SPC Sivits he was working at night and had just completed his assigned duties, which were to refill generators with fuel so that they would run through the night (Sivits Record of Trial). A staff sergeant by the name of Ivan Frederick was in

Jeremy Sivits's work area. SSGT Frederick asked Sivits if he would like to come to the "hard site", or the area of the prison that holds high valued inmates, or a tier-1 "detainees" in the Army jargon. Sivits testified:

Staff Sergeant Frederick, he'd come down, he had to print some paperwork on our computer, on the company TOC [Tactical Operations Command] computer. After he was done, he asked me if I wanted to walk down to the hard site with him, and I said, "Yes" (Sivits Record of Trial).

Sivits testified that SSGT Frederick was the NCOIC during the shift, or the noncommissioned officer in charge.

The equivalent that can be drawn between Sivits, a soldier with a rank of E-3, being asked to accompany Frederick, a noncommissioned officer with a rank of E-6, to a part of the prison is like that of the child responding to a parent's request to come to the dining room. Sivits had no knowledge that he was walking into trouble, just as a child in Piaget's story has no idea that by entering a room he will knock over fifteen cups. Sivits was asked by the Military Judge, "Did you know what he wanted to bring you over for?" (Sivits Record of Trial). Sivits replied:

He just wanted me to come down and talk with him because we started a conversation there, and we were talking and there wasn't much for me to be doing in the company TOC [Tactical Operations Command] as long as I had a radio (Sivits Record of Trial).

When Sivits and Frederick arrived at the hard site, Sivits described the following:

And like I said, there were seven detainees and there were maybe three, maybe four guards there. And I asked Sergeant Frederick if he wanted me to escort one of the detainees down to the tier. He said, "Yes, go ahead." So, I took the detainee by the arm and took him down to the hard site – or down to the 1-Alpha tier, sir (Sivits Record of Trial).

The military judge then asked Sivits if at that point Sivits thought that "something was

going to happen to the detainee when they got to the other end, something inappropriate or illegal”, and Sivits responded not at that time (Sivits Record of Trial). Sivits walked into a situation where guards were stomping on prisoners’ feet and toes, but after turning his prisoner, or detainee, over to the guards, he “just kind of stood back after that” (Sivits Record of Trial). Again, this would be like a child walking into a room where other children are breaking cups.

Sivits took one photo of the prisoner abuse, and it was not a photo he took out of his own initiative. Another soldier, CPL Graner, had drawn back his fist as if to punch a detainee and asked Sivits to take the photo (Sivits Record of Trial). The military judge asked Sivits why he took the photo, and Sivits responded “because he asked me to take it, Your Honor” (Sivits Record of Trial).

The military judge asked Sivits about his motivation for engaging in the conspiracy, so-called, to abuse detainees.

MJ [Military judge]: Now, before you walked in there, did you ever discuss doing this with them or anything like that?

ACC [Accused, Specialist Sivits]: Negative, Your Honor.

MJ: But once you go in there, by your actions and their actions, do you believe and admit that you formed an agreement to maltreatment of these detainees?

ACC: Yes, I do, Your Honor (Sivits Record of Trial).

Again, the assessment of responsibility objectively by children below the age of eight is to ignore the motivation or mitigating circumstances of the action and judge culpability commensurate with the resulting action. So a child in the story who innocently breaks fifteen cups, according to one subject of Piaget’s interviews, would assign two slaps as a punishment, or one slap more than the child in the story who broke a single cup in the commission of a deliberate naughty action (stealing jam) ([1932] 1997:125).

The application of objective responsibility as a machine-like response to perceived deviant behavior is one aspect of the military justice system as an Iron Cage; another aspect is in the mechanical execution of rituals. In *The Moral Judgment of the Child* Piaget ([1932] 1997) states that in children's play of games, there is ritual consecration to actions in order to make them legitimate in the eyes of their peers. Children engaging in a game of marbles that Piaget observed would use the power of the spoken word in order to make validate or delegitimize actions such as the order of play or how many marbles the winner can take at the game of the game. In the record of trial for United States against SGT Michael P. Leahy, Jr., there was a similar ritual of consecration which unfolded at the beginning of the trial in which the government's lawyers and the defense lawyers try to outmaneuver each other.

Piaget states that in the game of marbles he observed played in Switzerland, a child playing the game would use expressions in order to announce a play that would give that child a particular advantage (such as starting from an advantageous distance, starting in an advantageous position in the order of players, being able to take a large share of winning marbles, etc.). By verbalizing the intention of a certain play, the player was consecrating the act and the opponents would be powerless against that player's decision.

Players could also anticipate certain consecrations and prevent them by means of interdictions. Piaget gives the example that a player may try to get an advantage over other players by uttering "prems" (for premier or first), or a geographic variation thereof, in order to start first. However, an opponent might anticipate a certain consecration to a

play and preemptively utter an interdiction. For example, in Neuchâtel, a play could be preemptively nullified by pronouncing the term of the operation preceded by a prefix (in that location it was “fan”, a corruption of “defendu”). “Fan-du-prems” as an interdiction would nullify another player’s attempt to call “prems”.

Of course, in a modern court room, the term of interdiction that can potentially nullify an adversary is “objection”. Just as in the game of marbles there may be interdictions of “fan-du-mien”, “fan-du-tien”, or “fan-du-prems”, attorneys in a courtroom setting also will use objections to preempt moves. An outsider could almost update and transpose the terms from French to English to describe courtroom maneuvers, such as fan-du-juror, fan-du-witness, or fan-du-evidence where an attorney might try to include or exclude a certain juror, witness, or piece of evidence. In a courtroom, though, a judge sits as a supposed impartial party that acts as an arbiter between the players’ disputes.

From observations made at SGT Leahy’s court-martial and from reviewing the Record of Trial, it is obvious that before the trial even begins, the lawyers involved in the case try to gain advantages through actions which they must consecrate first, with either written words in documents filed with the court, or with spoken words in the courtroom. For example, In SGT Leahy’s trial, several of the soldiers in his platoon had pleaded guilty in order to receive reduced sentences for testifying on the behalf of the prosecutor. One such witness was a staff sergeant, who had previously been punished for fist-fighting. Before the trial began, the attorneys for Leahy tried to prevent the witness from testifying through a motion to “impeach” the witness. Before the trial

began, the defense had filed “a motion to exclude the testimony” of the witness. Under the rules of the game, the appeal was filed in written form, which the judge declared to be “Appellate Exhibit XXVII”.

The act of including that particular witness at the last moment, of which the prosecutors announced to the judge and to the defense attorneys, can be seen to be analogous to the act of consecrating a future play by a child in Piaget’s study. The defense attorneys’ appeal, filed as “Appellate Exhibit XXVII” can be seen as an interdiction, and the government’s attorneys’ response, “Appellate Exhibit XXVIII” can be seen as a counter-interdiction. In Leahy’s trial, the staff sergeant was allowed to testify despite Leahy’s attorneys’ written and verbal explanations in court explaining their reasoning, and adding to their interdiction by citing previous successful interdictions (*United States versus Pomarleau*, 57 M.J. at 351, 2002 Court of Appeals and *Taylor versus United States*, 484 U.S. 400).

The military judge in the trial would have to decide whether the bolster interdictions (the citation of previous cases) or the counter-interdiction of the prosecutors would stand. In his ruling, the judge decided that the prosecutors had not shown bad faith nor had they delayed in order to gain an advantage. The reality constructed in court was that the prosecutors had done neither of these things, and the judge’s ruling allowed the attorneys to make their next moves and counter-moves.

The prosecutors’ move to include the testimony of their witness, and the defense attorneys’ countermoves to exclude the testimony was not the only example of one-upmanship in the trial. In the beginning of the trial, there were several other maneuvers

that laid the groundwork for the remainder of the trial. The prosecution successfully included a late witness before the trial, in labeling one incident “the wounded detainee murder” during opening arguments. The defense attorneys for Leahy succeeded in preventing their expert witness in PTSD from not being allowed to testify, and in excluding several jury members it found unfavorable.

Both the court-martial as an action committed in a U.S. Army courtroom and a game of marbles played by Swiss children in the 1920s share in common that they are social games. The court-martial, as is any trial, is a high stake social game for the parties involved directly, such as the accused in a court-martial, and a game for the reputations of the lawyers involved. The juridical complexity seen in a game of marbles among children is seen in a court-martial, only more so. Piaget’s thesis centers on the “rules of the game” and leaves the task of studying the psychology of consecration and interdiction, as well as the psychology of social games to others. That route is open for others to explore.

The consciousness of the rules extends beyond the similarities in vocalizing consecration and interdictions, but also in the way that both children and lawyers understand the origin of the rules of their perspective games. Piaget in interviewing a five year old child, FAL, inquires into the origins of the rules. The child states that “Grown-up gentlemen” discovered the rules, including his father, grandfather, and older people in Neuchâtel including God (!). Similarly, only among legal experts are the origins of the *Uniform Code of Military Justice* known. The rules to that game, for example, were attributed to “the British” by military attorneys, though earlier

codifications from Swedish articles of war served as a basis for British military law in 1621 and for other countries' military legal systems during the seventeenth century.

The power of vocalizing consecrations and interdictions extends beyond the actions the lawyers in court describe of themselves towards the actions alleged to have been carried out by the accused. An action, once labeled by a lawyer, can become a consecrated act exonerating the accused individual or an interdicted act damning him or her. An example out of many in the courts-martial was the act of trial counsel (the prosecuting attorneys) in labeling the actions of the accused soldier as constituting assault. In order to prosecute and convict SGT Javal Davis for his part in the Abu Ghraib prison scandal, it was the strategy of trial counsel, the Army's prosecutors, to depict Javal Davis as a soldier disregarding rules and engaging in abuse. In particular, Trial Counsel's strategy was to depict the actions of SGT Davis as "assaulting" individual prisoners at Abu Ghraib. Sociologists study the social construction of reality, and the court-martial of Javal Davis serves as an example of how reality is socially constructed among different parties with different agendas.

The ultimate goal of the prosecution was to construct the social reality that Javal Davis was culpable of breaking the law, and more specifically of willingly assaulting detainees at Abu Ghraib. Therefore, any of the actions that SGT Davis undertook in his duties as a guard at Abu Ghraib were construed by Trial Counsel as being acts of "assault" of which SGT Davis committed out of his free will or more specifically out of a personal "choice".

The competing narrative to the one the prosecution ultimately constructed, and

which was not reported by the national media, was that Abu Ghraib was unlike any prison, its prison guards were not trained for their work, and that “personal choices” at Abu Ghraib were not entirely personal but suspended in an area between personal constraints, such as morality and character, and Davis’ social environment (27).

In an attempt to preempt the counter-narrative by the defense, Trial Counsel used a double-bind question to plant the idea that “assaults” had taken place. Trial Counsel asked “did he have a choice to assault those men that night?”. The question implies that whatever action Davis took, by choice or not, constituted “assault”. In a prison environment, prison guards attempt to control prison inmates who may or may not cooperate. When prisoners do not cooperate, prison guards take action along a continuum of responses in order to ensure that the prisoners ultimately comply. At the extreme end of the spectrum, guards may resort to physical force in order to ensure a prisoner’s obedience towards some end, such as leaving a prison cell from which a prisoner refuses to emerge. If a prison guard applies physical force outside of what is standardized and codified constitutes “assault”. Sometimes the distinction of what constitutes justified physical force and assault is a very fine one. In fact, in some cases it can be both.

Although it is against the Geneva Conventions and the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* for United States military personnel to use chemical weapons, the United States observes no such restrictions when it comes to interactions between its law enforcement agencies and its own civilian population. In Texas prisons, the guards

are armed primarily with personal chemical weapons which they can use on individuals. In a riot or hostage situation, Texas prison guards use lachrymatory (tear gas) grenades to subdue prisoners.

In his testimony during the court-martial for Javal Davis, the defense witness argued the point that training was necessary in order for a prison guard to know not to assault a prisoner (Davis Record of Trial). Trial Counsel derided the observation that the 372nd MP company had not been trained for the mission, bringing in a tangential point that “a number” of the 372nd soldiers were correctional officers in the civilian world. A battalion is typically made up of about 800 soldiers, two soldiers of which in the 372nd, according to news reports, were correctional officers in their civilian roles. The implicit assumptions are that civilian prisons in different states operate under the same guidelines, but also that civilian prisons are run like U.S. military prisons. While civilian prisons incorporate elements of the military in their operations (e.g. corrections officers have ranks similar to the ones in the military), civilian prisons are an imitation and not an exact duplicate of the U.S. military prison system.

When it comes to what constitutes “assault”, the definitions vary among the different state prison systems, the federal prison system, and the immigration prison system. The Utah and South Dakota state prison systems allow for the use of unmuzzled dogs as an authorized use of force to extract uncooperative prisoners from their cells, though only Utah makes a common practice of it (Fellner and Reiter 2009)⁶. The use of an unmuzzled dog to subdue a prisoner in Utah is not considered assault while the

⁶ Human Rights Watch reports that only one dog is retained by the South Dakota state prison system for this purpose, which the South Dakota prison system denies ever using.

similar use of dogs in other prison systems, such as the other five states which allow muzzled dogs within their prisons, would constitute “assault” (Fellner and Reiter 2009). An unmuzzled dog present within a prison, such as Abu Ghraib, is the exception, not the norm, for American civilian corrections officers. Even if MPs had experience as corrections officers in their civilian lives, the presence of unmuzzled dogs used as weapons on prisoners would have been far outside the norm. Other weapons available to corrections officers, such as tasers, are likewise permitted in some states and restricted in other states, so for Trial Counsel to assume that even civilian corrections officers share a consensus about what constitutes “assault” by a corrections officer on an inmate within a prison environment is disputable.

Physical acts in the civilian world outside of prisons can be construed as “assaults” given the status of the individual committing the act. Within a state prison system, one’s status determines if one’s actions are considered “assault”. Prisoners are at the bottom of the status hierarchy in state prisons, with outside contractors not too far above them. Outside a prison environment in the civilian “free world,” there is a similar dynamic. A police officer may touch a person he or she stops, but should a civilian touch a police officer by tapping him or her on the shoulder, shaking hands, or patting him or her on the back, such touching would readily be interpreted as assault.

Although the conditions were vastly different at Abu Ghraib, there was a similar element in that status did determine if one’s actions were construed as “assault” or not. Military intelligence, CIA, FBI, and military contractors present at Abu Ghraib were privileged: their actions were never challenged by a U.S. military court as being

“assault”. On the contrary, it was taboo at the Abu Ghraib trials to even mention the initials “CIA” or even utter “CIA agents” (who strangely had to be referred to as “person number one” and “person number two”, even after the initials “CIA” had already been uttered in court). The soldiers who were tagged as “criminals” committing acts of “assault” suffered from having low statuses: having membership as military police rather than military intelligence, having minority status as women, Black, coming from rural states (most were from West Virginia with the exception of Javal Davis) or small towns, all were enlisted personnel (i.e. they were not commissioned officers), and all were reservists.

The mechanical and inhumane character of the Puritanical justice system is described by Erikson:

Perhaps the most terrifying thing about punishment in Massachusetts Bay, after all, was not its fierceness but its cold righteousness. Even the most merciless persecutions in other parts of the world were characterized by a degree of human sentimentality, if only because the participants were moved by feelings like rage, pity, revenge, or fear, but in Massachusetts Bay, justice was governed by a relentless kind of certainty. Little attention was paid to the motive of the offender, the grief of the victim, the anger of the community, or any other human emotion: the whole process had a flat, mechanical tone because it dealt with the laws of nature rather than with the decisions of humans (Erikson [1966] 2005:188-189).

Every word that Erikson wrote of trials in Massachusetts apply to the courts-martial of the Baghdad canal cases. In the court-martial of Sergeant Michael Leahy, the members of the insurgent sniper team that Leahy and his fellow soldiers were accused of killing were never identified by name – they were always referred to male detainees of Middle Eastern descent. No evidence was submitted in any way concerning the anger of the insurgent sniper team’s community: no written documents were provided, and no Iraqi

witnesses took the stand to testify how the death of the Iraqi insurgents had angered or saddened their families and neighbors. The trial indeed had a “flat, mechanical tone.”

For example, when reading instructions to the trial panel (the equivalent of a jury), the trial judge presiding over Michael Leahy’s court-martial detailed down to the last penny how much pay he would be forfeiting:

FORFEITURES: This court may sentence the accused to forfeit all pay and allowances. A forfeiture is a financial penalty which deprives an accused of military pay as it accrues. In determining the amount of forfeiture, if any, the court should consider the implications to the accused and his family of such a loss of income. Unless a total forfeiture is adjudged, a sentence to a forfeiture should include an express statement of a whole dollar amount to be forfeited each month and the number of months the forfeiture is to continue. The accused is in pay grade E5 with over 5 years of service, the total basic pay being \$2,334.90 per month. If reduced to the grade of E-4, the accused’s total basic pay would be \$2,127.60. If reduced to the grade of E-3, the accused’s total basic pay would be \$1,859.70. If reduced to the grade of E-2, the accused’s total basic pay would be \$1,568.70. If reduced to the grade of E-1, the accused’s total basic pay would be \$1,399.50.

This court may adjudge any forfeiture up to and including forfeiture of all pay and allowances.

The mandatory minimum sentence in this case will require the accused, by operation of law, to forfeit all pay and allowances during the period of confinement. However, if the court wishes to adjudge any forfeitures of pay, or pay and allowances, the court should explicitly state the forfeiture as a separate element of the sentence (Leahy Record of Trial).

This flat, mechanical aspect of the procedure was read with the enthusiasm most people reserve for unpleasant household tasks, and it was characteristic of the manner in which the judge issued instructions during the trial. Smokers among the spectators at the trial would use these long moments when instructions were read to exit the court-room and smoke outside.

The mechanical and flat feature of Puritan justice has a connection to predestination and confessions according to Erikson:

On the one hand, deviants are doing little more than following a [predestined] script which absolutely requires them to perform whatever delinquencies they are later punished for, and thus they cannot really be “blamed” for their misconduct – at least in the way we have since learned to use the term. In this respect, punishment in Massachusetts had an almost sacrificial quality: culprits were asked to accept punishment not because they could have “helped” it in any reasonable sense but because the logic of the universe simply required it of them.

On the other hand, offenders who came before the bench did so as free persons, entirely responsible for their own actions ([1966] 2005:192).

Confessions in seventeenth century Massachusetts and confessions in twenty first century U.S. Army court-rooms played the role of lifting responsibility off of the shoulders of the wider community and entirely onto the accused individuals.

Erikson notes that a curious feature of Puritan justice is the “extraordinary efforts” made by judges and judicial officials to extract formal expressions of repentance from convicted felons ([1966] 2005:194). The main purpose of public repentance was partly to purge the felons’ souls and to give a chance to the accused to appeal for the community’s sympathy or pity (Erikson [1966] 2005:194). In fact, among the Puritans there are many occasions in which a court reduced its original sentence after hearing an accused person’s confession and promise of reform (Erikson [1966] 2005:194). Erikson states that the role of confessions was even more complex because they did more than give a chance for clemency on behalf of the accused; the courts still found it of utmost importance to extract repentance from members of the community condemned to the gallows ([1966] 2005:194-5). Erikson notes:

It is important to remember, however, that repentance is a public ceremony of admission as well as a private act of contrition. To repent is to agree that the moral standards of the community are right and that the sentence of the court is just. To repent is to say (a phrase the Puritans loved to repeat) that one has

“sinned against his own conscience” and entirely understands why the community has to punish or even kill him ([1966] 2005:195).

Here it is important to note that in every trial for soldiers accused of war crimes, the soldiers made a public admission of their remorse, and issued apologies for their actions.

The role of these public acts of contrition, according to Erikson, is to allow the individuals, even when they are condemned, to “move back into the community as a witness to their own execution” ([1966] 2005:195). He further states:

If the whole affair sounds a little like ritual sacrifice, we may all the more easily understand another element which may have been present in the Puritan attitude toward repentance – that the people of the community, vaguely aware of the contradictions of their own doctrine, were somehow anxious for the condemned person to forgive *them* [emphasis in the original] (Erikson [1966] 2005:195).

Erikson says that in the Massachusetts Puritan colony, identifying people as deviants revealed circularities of Puritan theory:

Deviants plunge into a life of sin, impelled by forces beyond their control; yet in the final moment they are able to make a certain sense out of this inexorable process when they *consent* [emphasis in the original] to the destiny which spells their destruction and when they stand on the scaffold and testify that the laws about to destroy them are altogether reasonable and fair ([1966] 2005:195).

The victims of Puritan justice, according to Erikson, were asked to endorse the action of the court and to share in the judgment against themselves.

In the Baghdad canal killings specifically, but in the various war crimes of the American War in Iraq the soldiers involved were thrashed about by social forces outside of their personal control. These social forces included a poisoned command climate in which the moral and legal clarity of orders and missions had become entirely occluded. Soldiers suffered from personal wounds – both physical and psychological in nature – which impaired their judgment. Soldiers were underequipped, poorly fed and housed,

overworked, and deprived of sleep. The soldiers belonged to groups which were shuffled back and forth between brigades and regiments that left them without a sense of being integrated. The conditions under which the soldiers committed actions labeled as “war crimes” were not conditions that the soldiers created for themselves. Just as the Puritans demanded that the condemned forgive Massachusetts, it is evident that the U.S. Army through its military court system was asking its soldiers to forgive it for sending them into battle beyond the limits of endurance, injured in spirit and body, underequipped, confused, and poorly lead.

CHAPTER IV

PURITANISM AND RESPONSIBILITY

U.S. military justice is Puritanical in its origin as well as in its character, and is apparent in the way that it assigns responsibility and punishment. Rather than being a system of laws in which the ultimate goal is restorative justice, as would be characteristic of a society held together by organic solidarity, U.S. military justice is a system of laws in which the ultimate goal is to impose retribution as a means of discipline. Despite the superficial characteristics of being held together by organic solidarity, the American military at its core is an institution more akin to one bound by mechanical solidarity. In essence and in practice, American military justice is primitive. Actions are not judged by the internal motivations of the accused, but judged at face value as delictual. Another point concerns itself to the hypocritical value of individualism in Puritanism and its practice of collectively punishing groups. In the various trials soldiers are routinely punished collectively. Beyond collective punishment, the military also violates its purported Puritan value of the individual by making scapegoats of representative soldiers as a way of punishing larger groups of soldiers.

Alexis de Tocqueville ([1835] 2003) made the early observation that Puritans were “sectarian fanatics” who passed “strange and despotic laws” (p. 51). Most people mistakenly believe that *Democracy in America* is a “hymn of praise” to the American republic, its government, its people, and its way of life. Tocqueville himself disabuses

the reader from this notion early in his text:

It would be a bizarre mistake to think that I intended to write a hymn of praise; whoever reads this volume will be fully convinced that such was never my plan, any more than it has been my aim to advocate any form of government in particular; for I belong to those who believe that absolute perfection is almost never a feature of a system of laws (p. 23).

On the contrary, Tocqueville examines the uniquely Puritan foundations of the American republic and finds that the religious character of the Puritans was intertwined with their politics:

The founders of New England were both sectarian fanatics and noble innovators. Although held together by the most restricting ties of certain religious beliefs, they were free of every political prejudice.

From that arose two inclinations which, though different, were not in opposition and we can easily discern their traces in the morals as well as the laws of the country (p. 55).

Morality and laws in American, and the notion of punishment, had its origins in America's Puritan roots.

Tocqueville wrote in an age before Durkheim and before Freud. Yet, Tocqueville is a proto-Durkheimian in seeing that the character and institutions of the American society emerge out of a religious womb. Just as Freud would state that childhood is the psychological origin of the adult, Tocqueville, as a proto-Freudian, stated that the character of a nation is found in its origins and early struggles:

Step back in time; look closely at the child in the very arms of his mother; see the external world reflected for the very first time in the yet unclear mirror of his understanding; study the first examples which strike his eyes; listen to the first words which arouse within him the slumbering power of thought; watch the first struggles which he has to undergo; only then will you comprehend the source of his prejudices, the habits, and the passions which are to rule his life. The entire man, so to speak, comes fully formed in the wrappings of his cradle.

Something similar happens in the case of nations; they always carry the marks of their beginnings. The circumstances which accompanied their birth and contributed to their development affect the remainder of their existence.

Were it possible to return to the very elements of social groupings and to examine the first monuments of its history, doubtless we could discover the source of the prejudices, habits, and ruling passions, in fact of every ingredient of what we call the national character (p. 37).

Tocqueville noted that two distinct branches, one northern and one southern, of the Anglo-American family developed, but that the social theory of the nation comes from its northern, i.e. Puritan, branch:

It is in these English colonies of the North, better known as the New England states, that were brought together the two or three main ideas which today constitute the social theory of the United States (p. 42).

Tocqueville remarks that the Puritans were unique. Unlike the settlers of other colonies in the Americas, Tocqueville notes that the Puritans were not greedy speculators nor adventurers (p. 42). Neither were the Puritans driven out of their country because of poverty or wrongdoing:

They were not forced to abandon their native land by necessity; they left behind a social position they might well have regretted and an assured livelihood. Nor did they move to the New World in order to better their lives or to increase their wealth. They tore themselves away from the comforts of their native land to obey a purely intellectual need; by suffering the inevitable deprivations of exile, their object was the triumph of an idea.

The immigrants, or, as they so aptly styled themselves, the Pilgrims, belonged to that English sect given the name of Puritan by the austerity of their principles. Puritanism was not only a religious doctrine; it linked itself in several respects to the most prominent democratic and republican theories (Tocqueville [1835] 2003:43).

Although Tocqueville is generous in describing the Puritan motivation as an idea, others might describe it as a delusion: America in the early 1600s was a wild frontier that others avoided, full of wild beasts and wild men, sharp and violent winters, and cruel

and fierce storms (p. 45). Britain's colonies in America during the 1600s can be thought of as being the "Siberia" of the seventeenth century. In *The Redneck Manifesto*, Goad remarks that banishment to the Americas was a punishment in seventeenth and eighteenth century Britain, with many people convicted (usually of petty theft) begging for alternate punishments:

British convicts began arriving here in large lumps – an estimated fifty thousand during the 1700s [a similar sized population to New York City in that era] – after Parliament's passage of the Transportation Act in 1718. The law provided that convicted felons could be 'transported' overseas as slave laborers. Convict-slaves were frequently referred to as 'transports.' Transportation was viewed second only to the death penalty in severity. According to one historian, convict deportation became 'Britain's foremost punishment after 1718.' It was considered preferable to hanging, but far worse than being whipped or branded. A British judge in 1741 concluded that a thief whom he'd convicted didn't qualify as 'an Object of mercy and therefore ordered him, instead of being burnt on the hand, to be Transported for Seven Years.' Convicted felons often begged for whipping or burning instead. A thief named Mary Stanford requested to be hanged rather than be banished overseas. To the average British subject of the day, America represented a savage, frightening wilderness, more Siberia than Disneyland (Goad 1997:69).

The Puritans were the ones who voluntarily wanted to live in that savage, frightening wilderness of North America.

Tocqueville remarked on the laws that the Puritans passed, which he describes as "unusual," "bizarre," "harsh," "crude," "despotic," and "aberrations." Many of these same words still apply to military justice, which is the closest living descendant to Puritan colonial law. Tocqueville remarks:

There is nothing more unusual or at the same time more enlightening than the laws passed during this period [of Puritan colonization in New England]; it is there that the key to the great social mystery which the United States now presents to the world is to be found (Pp. 48-49).

The Puritans, according to Tocqueville, despite having enlightened minds implemented

legislation that was barbaric:

Among these significant records, we shall particularly mark as one of the most characteristic, the code of laws which the small state of Connecticut enacted in 1650.

The lawmakers of Connecticut turned their attention initially to penal legislation for the composition of which they had the bizarre idea of using biblical texts.

‘Whosoever shall worship a God other than the Lord shall be put to death.’ *This was their opening statement.* After that, ten or twelve similar measures taken verbatim from Deuteronomy, Exodus, and Leviticus.

Blasphemy, witchcraft, adultery, rape were punished by death; grave offenses perpetrated by a son upon his parents were dealt the same penalty. Thus legislation belonging to a crude and half-civilized nation were transferred to the heart of a society endowed with enlightened minds and gentle ways. Never was the death penalty more frequently prescribed and never more rarely enforced (p. 49).

The laws of Connecticut have many similarities to the original Articles of War of Gustavus Adolphus. Article 1 of the *Swedish Articles of War* prescribed death for witchcraft, idolatry, enchanting weapons. Article 2 concerned blasphemy, whether committed under the influence of alcohol or not, and mandated that a blasphemer “shall be put to death without all mercy.” Sometimes the punishments were less severe: punishment for anyone drawing a sword in the presence of a general “with the purpose to doe mischief with it” would “lose his hand for it” (*Swedish Articles of War* 35).

Tocqueville ([1835] 2003) remarks that the Puritans were concerned with the moral order of their society, which implies responsibility for actions by its members:

The overriding concern of these legislators [who enacted the 1650 Connecticut code of laws] is the preservation of moral order and good practices in their society; thus they proceed continually to penetrate to the heart of man’s conscience and not a single wrongdoing escapes the condemnation of the magistrate. The reader may have noticed the harshness of the law against adultery and rape. The simplest relations between unmarried people were strictly repressed. The judge was empowered to inflict one of the following three penalties upon the guilty: a fine, a lashing, or marriage, and, if the records of the

old courts of New Haven are to be believed, prosecutions of this kind were common enough. On 1 May 1660, we discover the decision to fine and punish a girl accused of having uttered a few immodest words and of having allowed herself to be kissed (p.50).

The Puritanical repression of “the simplest relations between unmarried people” still exists in the military justice system. An attorney in Vilseck, Germany informed me that even if a married couple serves in the same unit, it is against Army law for them to have sexual intercourse without the explicit permission of their commanding officer. Military law also forbids public displays of affection, such as kissing and holding hands, between married people if one of them is wearing a uniform in public, though some leeway is given at homecomings and departures. Tocqueville remarks how the law is replete with warnings and punishments of mundane actions:

The *Code of 1650* is peppered with warning measures. Laziness and drunkenness are harshly punished. Innkeepers cannot serve more than a certain quantity of wine to each customer. Fines or a lashing are used to repress any lying considered harmful. In other places the legislator, utterly oblivious of the great principles of religious freedom that he himself demanded in Europe, used the fear of fines to force attendance at church, going so far as to inflict harsh punishments and often death on Christians wishing to worship God in ways other than his own. In fact, he is obsessed with such a zeal for rules that he is preoccupied with considerations quite unworthy of him. Thus we find, in this same code, a law forbidding the use of tobacco. Yet we must not lose sight of the fact that there was no imposition of these *strange and despotic laws*. They were freely voted in by all the interested parties, whose customs were even more austere and puritanical than the laws. In 1649, a solemn association was formed in Boston to issue warnings concerning the worldly indulgence of long hair.

Such *aberrations* no doubt bring discredit to human reason. They witness to the inferiority of our nature which has a poor grip on what is true and fair and more often than not simply chooses between two excesses [emphasis added] (p. 51) .

While Tocqueville commends the democratic, egalitarian nature of the Puritans, he remarks that American law does not always reflect that nature (Pp. 55-58). In fact,

American civilian law, like its military counterpart, is like a Frankenstein monster made with different, mismatched, and disproportioned parts:

The social condition, religion, and customs of the first immigrants have surely exercised a huge influence upon the fate of the new country. However, they did not found an entirely new society from their own totally original ideas because no one can possibly release himself from the past. They succeeded in mixing, either intentionally or unwittingly, their own ideas and practices with other practices and ideas derived from the education or traditions of their native country. (Tocqueville [1835] 2003:57).

Tocqueville in particular denounces American criminal and civil law that combines on one hand English, aristocratic elements that favor the wealthy and leave the business sphere of life unfettered and on the other hand Puritan elements of austerity, severity, and discipline:

American civil and criminal law recognizes only two courses of action: prison or bail. The first step in this procedure is to obtain bail money from the defendant or, on his refusal, to imprison him. After that, they examine the validity of the accusation and the seriousness of the charges.

Clearly such a legislative procedure disadvantages the poor and favors only the wealthy.

The poor man cannot always find the money for bail, even in a civil matter. If he is obliged to await justice from prison, his enforced constraint soon reduces him to a wretched state.

By contrast, the wealthy man always evades prison in civil matters. Furthermore, if he has committed an offense, he has no difficulty wriggling out of the punishment which should come his way. After providing bail money, he vanishes. Therefore, it can be stated that the only penalty inflicted upon him by the law boils down to a fine. Could there be any legislation more aristocratic than that (p. 57).

Tocqueville's observations hold true even in 2011. As of the date of writing, only one executive and three other senior officials of Taylor, Bean & Whitaker, a mortgage banking firm, have been convicted of fraud by the Department of Justice for their role in the housing bubble and subsequent "Great Recession" (Black 2011).

In *Responsibility*, Fauconnet notes that the Puritan innovation in law was to assign individual responsibility over collective responsibility to large groups of people or even to all of society. Fauconnet, being a follower of Durkheim, notes the religious character of law:

It is remarkable that laws, secular in their inspirations and subjectivist in their tendency, derogate from their principles to prescribe ritual sanction for accidents or to incriminate penally certain involuntary sacrileges. But here again it is necessary to go beyond the penal system of the State to achieve in its full expansion the objective responsibility that criminal law admits only exceptionally, and that it tends to eliminate. Its proper domain is religion, as we shall see ([1928] 1978:II 44).

Moreover, Fauconnet noted that laws in societies develop towards ideals of individualized responsibility (p. VIII 1). Despite this development towards individualized responsibility, the notion of collective responsibility does not disappear (Fauconnet [1928] 1978:VIII 1). Instead, Fauconnet observes that new forms reminiscent of collective responsibility appear:

If we can be satisfied with an approximate formulation, we may say that in the course of its evolution responsibility has become individualized. Collective and communicable in primitive societies, responsibility is, in principle, strictly personal in the most civilized societies. How has a responsibility communicable in its nature become rigorously individual?

This phenomenon depends upon multiple causes which do not act in the same manner or at the same time on vendetta, or on religious sanctions or on punishment. The preponderant cause is the influence exerted by the sanctionee [translator William Jeffries' term for someone who incurs a sanction], and its effect is restrictive, diminishing the field of extension of responsibility. Still, there are counter-currents. In our individualistic societies, some new forms of responsibility have appeared which remind us of collective responsibility. We shall attempt to show, by some examples, what underlies the complex equilibrium we label as individual responsibility (Pp. VII 8-9).

These newer forms of collective responsibility are partially embodied in organs of the legal system such as courts of appeal, as well as clemency and parole boards. However,

the major new form reminiscent of collective responsibility is the court of public opinion. Fauconnet, for example, writes of First World War veterans tried for minor crimes, and whose valor and service provoked the sympathy of juries presiding over their cases:

The same individual may be, simultaneously, the object of two opposed judgments of responsibility, where he has lost merit on the one hand and has gained merit on the other. Our conceptualized image of such an individual is then found at the confluence of two contrary currents, and remuneratory responsibility can check penal responsibility. The jury often acquit an accused, even though they are convinced he has committed the incriminated act, because in his domestic, professional, or civic life he has performed acts surpassing the common standards of morality. During the First World War, the French legislature regulated a reaction of this kind, by the law of July 5, 1918, 'tending to extinguish public action against those authors of delicts or minor infractions who have distinguished themselves by their brilliant feats in the army' ([1928] 1978:VIII 8-9).

The court of public opinion, which is not an institution, sometimes finds its expression within the legal system by animating legal organs towards its own ends. In the United States this is better understood as jury nullification. The action of the French legislature noted above is almost like a public exorcism by one institution in society of the spirit of public opinion which had taken possession of another institution in society. In the American military justice system, the court of public opinion can animate the organs within the military justice system. In *The Good Soldier on Trial*, Mestrovic (2009) notes:

Undaunted, Mr. Nathan said he was seeking Congressional involvement and eventually, Congressional hearings on the Iron Triangle cases. He felt that the clemency and parole board would not act favorable toward his clients unless Congress got involved (p. 34).

The lawyer Geoffrey Nathan, represented William Hunsacker in clemency proceedings

(Mestrovic 2009:31).

Nathan's belief that public opinion can influence courts of appeals or clemency boards is rooted in historical precedence. William Calley's conviction of 22 counts of premeditated murder, and his sentence of life imprisonment and hard labor, provoked an outpouring of public sympathy. The governors of Alabama, Georgia, Indiana, Mississippi, and Utah publicly disagreed with the court-martial's decision and sentence, and the legislatures of five other states (Arkansas, Kansas, Texas, New Jersey, and South Carolina) passed resolutions formally asking the U.S. Army for clemency ("1971 Year in Review: Calley Trial, Foreign Affairs" 1971; Frum 2000). In a day when people could still send telegrams, the White House received over 5000 in support of Calley (Cookman 2007). In a public opinion poll, 69% of Americans believed that Calley was made a scapegoat for larger policies and strategies put in place by political and military leaders (Cookman 2007). As a result of public opinion animating legal and political institutions, Calley's sentence was changed to house arrest, of which he served for three and half years.

The strand running through these contemporary cases and even My Lai is the inadequacy of legal systems in their ability to place responsibility for social conditions. Puritanical courts focus on specific acts committed by individuals, but they are unable to assign collective or even individual responsibility for the social climates which make specific criminal acts possible. In their innovation towards individual responsibility, Puritans made a trade-off for being able to assign responsibility for social climates which produce widespread abuses and crimes. One can detect attempts by courts-martial to

attach responsibility for the social climate to the soldiers, but these can be dismissed as failed or counterfeit attempts.

One example (out of many) of a failed attempt to transfer responsibility for a social climate unto an individual can be found in the trial of Jeremy Sivits. SPC Jeremy Sivits was a mechanic serving with the 372nd Military Police Company in Abu Ghraib; he had not been trained to serve as a prison guard, nor was he. Sivits took one photograph out of which the U.S. Army pulled three charges: conspiracy to maltreat detainees, maltreatment of detainees, and dereliction of duty for negligently failing to protect detainees from abuse, cruelty and maltreatment. In the movie *Apocalypse Now* (directed by Francis Ford Coppola, United Artists, [1979] 2006), the main character and narrator of the movie, Captain Benjamin L. Willard (played by Martin Sheen), utters the line that charging someone for murder in Vietnam was like handing out speedy tickets at the Indy 500. Charging Jeremy Sivits for taking one photo at Abu Ghraib is similarly like handing out tickets at the Indy 500. Another soldier, Riley Sharbonno, compiled photographs he took at Abu Ghraib into a 470 page book titled *Riley and His Story* (Turse 2011). In a review for Truthdig, Nick Turse writes and then quotes Sharbonno of the drive behind nearly everyone at Abu Ghraib taking photos of the mundane and the spectacular:

About to go into its second printing, “Riley and his story” offers readers something unique and haunting: a look through the eyes of a veteran who served at perhaps the most notorious locale of the Iraq War, one that historians will catalog alongside My Lai, No Gun Ri, Samar and Sand Creek—notable sites of past American atrocities. Sharbonno, a nurse at the infamous Abu Ghraib prison in 2004 and 2005, offers us a tour of his tour of duty through some of the 1,000 photographs he took. But these aren’t the photos of Abu Ghraib that we’ve seen before. There are no detainees on leashes or nude human pyramids or unmuzzled

dogs menacing naked defenseless men. Still, this young veteran's pictures offer a clear vision of the awfulness that is war.

"Many events during my time in Iraq were too complex, too horrific, or beyond my understanding. There were simply too many things I witnessed there on a given day to process, so I stored them as photos to figure out later," writes Sharbonno, who provides snippets of text—taken from conversations with Haller [the co-author] over a period of three years—that narrate his photos throughout the book (Turse 2011).

Riley explains that in the midst of confusing situations, soldiers took photographs to reassure themselves that what they were seeing was real, and that the photographs would serve to understand events at some future point:

A large part of the book consists of pictures from one mass-casualty situation. Bloody shots. Gory shots. Shots of medical professionals moving with rapidity. "Holy shit. Is this really happening?" So I just snapped pictures," he writes in the midst of the morbid montage. Picture after picture. Pictures of parts of humans turned into chop meat. Unidentifiable bits of bodies torn open. Why is a nurse taking pictures through all of this? we're left to wonder. Why, at one point, does Sharbonno even pick up someone else's camera and start taking pictures with it? Why isn't he doing something medical? If the emergency room tent is filled to capacity with staff, why is he there potentially getting in the way? And if he isn't in the way, why isn't he lending a hand? But then, if we look closely, we notice Sharbonno is apparently in some of the photos. (We can tell by his name tape on the back pocket of his pants.) So he was apparently lending a hand. Then who took these photos? Maybe someday Sharbonno will sort all of this out for us, but in this book he doesn't (Turse 2011).

Sivits wasn't unique in the fact that he was taking photographs for other people with their cameras of unique situations. At the time of the scandal the photos of abuse and torture at Abu Ghraib were characterized as souvenirs and compared to the photographs taken of lynchings in the American South (Sontag 2004). Susan Sontag for *The New York Times Magazine* wrote:

If there is something comparable to what these pictures show it would be some of the photographs of black victims of lynching taken between the 1880's and 1930's, which show Americans grinning beneath the naked mutilated body of a black man or woman hanging behind them from a tree. The lynching

photographs were souvenirs of a collective action whose participants felt perfectly justified in what they had done. So are the pictures from Abu Ghraib (2004).

One should note that the soldiers who stood trial for the abuses at Abu Ghraib were from the American South, and Sontag's comment seems to extend the collective and unresolved guilt of lynching unto those soldiers. Writing for *the New Yorker*, Philip Gourevitch (2011) offers a different perspective that the photographs taken at Abu Ghraib were "unofficial documents of an official policy that was supposed to be kept secret."

Out of that singular photo, the United States Army tried to put the responsibility for the social climate on Sivits. The prosecutor in his arguments for sentencing stated that Sivits "knew these [acts] were improper, against Army values, against human values, against the law" (Sivits Record of Trial). The prosecutor even tried to pin on him the failure of the U.S. Army in the ongoing war in Iraq for the one photograph that Sivits took. Trial counsel unsuccessfully tried to enter an article from Time magazine with the title "How the Prison Scandal Sabotages the U.S. in Iraq" as an exhibit during the court-martial. It should be noted that the defense attorney for Sivits did not object, inexplicably, to the prosecution's attempt to submit the Time magazine article, and that the military judge, in effect, intervened on behalf of Sivits:

MJ [Military Judge]: Prosecution Exhibit 2 for identification is admitted.

Prosecution Exhibit 3 for identification is being offered?

TC [Trial Counsel]: Yes, sir, we have an Article from Time.com that is titled "How the Prison Scandal Sabotages the U.S. in Iraq."

MJ: Any objection to Prosecution Exhibit 3 for identification?

DC [Defense Counsel]: No, Your Honor.

MJ: One moment. [Pause.] Despite the lack of objection, government, the court's not going to admit Prosecution Exhibit 3 for identification. There are

opinions in here that would never be admissible at a trial and a lot of this has nothing to do with this case or this particular accused. Accordingly, the court finds it to be irrelevant on sentencing in this case (Sivits Record of Trial).

To understand how extreme it is to hold a photographer or a cinematographer responsible for recording an infamous image, one needs to imagine Abraham Zapruder being prosecuted for filming President Kennedy's assassination or to imagine George Holliday being prosecuted for filming the beating of Rodney King at the hands of Los Angeles Police officers. In essence, Jeremy Sivits was court-martialled for filming – with still photography – what was perceived in the Arab and Muslim world as the U.S. Army's equivalent of the Rodney King beating.

The social condition present in Abu Ghraib indeed was improper, against Army values, against human values, and against international, military, Iraqi, and American law. Sivits had no hand in drafting the orders or policies that established these social conditions at Abu Ghraib, and if his hand was anywhere (save for the one time it pressed a camera button) it was under the hood of a vehicle making repairs. The United States is still plagued with the guilt for Abu Ghraib because world public opinion refuses to believe that the U.S. Army punishing low-ranking soldiers for the crimes committed at that Iraqi prison have exiated the United States military or its government.

On the other hand, the type of public outrage that accompanied the punishment of William Calley for his part in the role of My Lai is wholly absent from contemporary war crimes trials. There is no outpouring of support the soldiers accused of war crimes committed at Abu Ghraib and elsewhere in Iraq and Afghanistan. Worse still, the public has been duped by the government and their accomplices in the media into

believing that soldiers spontaneously, without orders or extreme extenuating circumstances, came up with ideas on their own to torture and kill prisoners and civilians. To believe that soldiers would behave in a manner contrary to their psychological and sociological predispositions is similar to believing in the discredited and ridiculous notion of spontaneous human combustion. Yet the government and the media very skillfully have pawned the fallacious notion of spontaneous war crimes to the American public. In the case of William Calley in an earlier war, the American public at different levels of society would have none of it. Calley's support came from ordinary citizens, governors, and legislatures. In the contemporary cases resulting from the wars in Iraq and Afghanistan, high profile support for accused soldiers is absent. As Nathan and Mestrovic have noted, powerful law firms, which represent accused terrorists in Guantanamo have no interest in representing accused American soldiers. Even organizations who normally advocate for rights in light of gross judicial injustices avert their gaze.

Americans during the Vietnam War era refused to blame My Lai entirely on William Calley because there was a feeling of collective responsibility for his actions. The prosecutor in Calley's trial aptly noted so:

President Nixon immediately ordered Calley released to house arrest, just three and a half years of which he would serve before being freed entirely by a federal judge. Aubrey Daniel, the Army lawyer who prosecuted Calley, and who wrote a letter of protest rebuking Nixon for his involvement, would later say of the reaction: "It was a country that wanted this war to end and a country that didn't want to believe that this had happened. But if it did, it wanted to say that it's our fault collectively, and not his fault."

Such a sense of collective responsibility does not seem to be shared by the generation that has grown up with the wars in Iraq and Afghanistan, and that has read about such wartime atrocities as the gang rape, murder and immolation

of a 14-year-old girl near al-Mahmudiyah, Iraq; the killing of women and children in Haditha; the abuse of prisoners at Abu Ghraib; and the executions of Iraqis in a Baghdad canal and of the three men in the Iron Triangle. Indeed, it's hard to imagine any significant mobilization of support for the American soldiers and marines charged with these crimes, much less a public outcry that would persuade elected officials to intervene on their behalf (Mogelson 2011).

Fauconnet notes that in societies held together by mechanical solidarity, society is collective and communicable, and not personal, as in societies held together by organic solidarity (Fauconnet [1928] 1978:VIII 1). In other words, the history of responsibility is one of responsibility becoming personal rather than collective or communicable (Fauconnet [1928] 1978:VIII 1). However, even as societies become more “civilized” (in Fauconnet’s terms), there are counter-currents to the assignment of personal responsibility (Fauconnet [1928] 1978:VIII 1). Fauconnet, like his teacher Durkheim, recognized that though society makes the transition from one held together by mechanical solidarity to one held together by organic solidarity, the characteristics of mechanical solidarity (e.g. the notion of collective responsibility) never wholly disappear and are transformed.

In fact, every crime committed in “civilized societies” first arouses a feeling of collective responsibility (Fauconnet [1928] 1978:VIII 1). However, responsibility is like a very hot potato: one never wants to be left holding it for very long with bare hands. Even if a collective feeling of responsibility is felt in every criminal act, the response by society is to pass the feeling of responsibility to those worthy of punishment. This is the rule, but Fauconnet notes:

We have said that the emotion aroused by a crime is propagated in waves. The entire society, then – people and things – should always be responsible for all crimes. However strange this may seem, the truth remains that society tends to

regard itself as wholly responsible for each crime, and one of the functions of punishment is precisely to discharge society from that responsibility. Nevertheless, the obvious fact is that the number of a society's members to whom punishment for crime is applied is always relatively small, compared with the number of those whom punishment does not reach. In other words, irresponsibility is the rule, and responsibility is the exception. We all believe that men and things are protected against responsibility which threatens them. The positive and permanent sentiments felt for men and things interpose a check to the destructive and transient sentiments born of a crime. A compromise is established. Wherever the moral barrier protecting any member of the society is strong enough to halt the propagation of anger and horror, there is irresponsibility. Even in the societies where responsibility communicates itself, its propagation is always counteracted. Irresponsibility has merely the appearance of a purely negative notion; actually, irresponsibility results from the opposed resistance of positive forces. (Fauconnet [1928] 1978:VIII-1).

Interestingly, Fauconnet seems to metaphorically compare responsibility to flooding; crime arouses “waves” of emotion, and society can choose to place moral “barriers” to restrict the waves of emotion from touching any of its members. A parallel can be seen between the ordinary crime taking place in society and the normal flow of a river. In both cases, barriers keep an acceptable sense of normality. Occasionally, an unexpected or large crime may take place in society, just as an unexpected or large flow of water may cause the river to flood. In the past, and in both cases, society could throw up barriers in extreme cases to protect members who normally would not be affected. In present times, the moral and physical barriers protecting members of society during extreme moments seem to be weak or absent. In the recent Mississippi river flooding, the U.S. Army Corps of Engineers have opened levees and dams normally meant to protect Cajuns in Louisiana in order to prevent flooding elsewhere; in the war crimes trials, public outrage, which should act as a moral barrier to individual responsibility for social conditions, is absent (Sainz and Sedensky 2011). As a clear example of how

society chooses who can and cannot be protected by barriers, moral or otherwise, was the story reported in the media on flooding in Memphis, home to much of America's folk and popular musical heritage:

The Mississippi River rose Monday to levels not seen in Memphis since the 1930s, swamping homes in low-lying neighborhoods and driving hundreds of people from their homes. But officials were confident the levees would protect the city's world-famous musical landmarks, including Graceland and Beale Street, and that no new areas would have any serious flooding (Sainz and Sedensky 2011).

Graceland and Beale Street were protected by levees, and the NBA playoff game at the FedExForum between the Memphis Grizzlies and Oklahoma City Thunder was scheduled to continue despite the flooding of hundreds of homes in Memphis (Sainz and Sedensky 2011).

The same pattern seen in the flooding of the Memphis or other natural disasters in the United States is seen in these trials: the military and the media place moral barriers to protect the privileged while the "small people" are left without protection. The phrase "small people" is a quote from BP Chairman Carl-Henric Svanberg to refer to the residents along the Gulf of Mexico coastline during the Gulf of Mexico disaster, the worst environmental disaster in United States history (Gerhart 2010). In relation to the flooding metaphor, the way "big people" were protected from responsibility for Abu Ghraib was by lifting the moral barriers protecting the "small people," the soldiers, who carried out orders. This was done through the fallacious narrative of rotten apples acting independently, which was successful because of widespread collaboration among the mainstream media. The false narrative, of spontaneous rotten apples, perpetrated by the military and their collaborators in the media is a form of sabotage perpetrated on the

public. Sabotage, as defined by Thorstein Veblen, is the purposeful withdrawal of efficiency from a system. There is an emotional end to the military-media sabotage of the full narrative: it is meant to keep the public indifferent, and if not indifferent, to redirect public anger towards the officially sanctioned end. The same New York Times Magazine article explaining Aubrey's explanation of Nixon's pardon of William Calley, addresses the issue of collective responsibility:

If we lack a sense of collective responsibility for these more recent war crimes, Mestrovic blames this on our readiness to believe that such occasional iniquities are aberrations perpetrated by a derelict few, rather than the inevitable result of institutional failures and, more generally, the nature of the conflicts in which we are engaged. It is much easier to accept the assessment of the officer who told General Twitty that the Fifth Brigade had "absolutely the worst command climate I have ever operated under" but that nonetheless "nothing about the unit climate led to the killings . . . that was simply the work of a sociopath."

The New York Times Magazine article raised an important issue: what is the impact of multiple deployments to troops not just when they return home, but when they are redeployed to other wars? This is an element of the social climate in which soldiers operated under in all the cases where prisoners or civilians were killed. To what extent can soldiers in Afghanistan be held personally responsible for operating in a social climate or command climate of revenge? Soldiers additionally are under the strain of having served under multiple deployments. The impact of multiple deployments on the behavior of soldiers and the groups to which they belong has not been formally studied:

Stephen N. Xenakis, a retired brigadier general and a former senior adviser to the Defense Department, told me that while extensive research has been done on the psychological effects of deployments for veterans trying to reintegrate into society, the Army has so far failed to examine how those same effects influence soldiers when they return to war. "What's it like for the guy who's now on his fourth combat tour, and how effective is he?" Xenakis asked me. "And does he have other problems? I don't know that the system, either from the leadership

standpoint — the combat-effectiveness standpoint — or the medical side, is asking that” (Mogelson 2011).

Although the psychological and social effect of multiple deployments to different war zones has not been studied extensively in the social sciences, similar events have been recorded by historians.

Following the First World War, many veterans of the British army found work as temporary constables in the Royal Irish Constabulary. The RIC, or known better as the Black and Tans because of their uniforms, were technically a police force or constabulary, but they were effectively a British army of occupation to suppress Ireland. Although the task of the Black and Tans was to suppress the Irish uprising by targeting IRA and Sinn Fein insurgents, the Black and Tans distinguished themselves by notorious attacks on Irish civilians. One can see parallels between British veterans of the Western Front being sent to Ireland and American veterans of the war in Iraq being sent to Afghanistan; of British veteran-soldiers sent to fight the IRA but instead massacring civilians and of American veteran-soldiers sent to fight the Taliban but instead killing regular Afghani people. If the British experience can reveal America’s fate in Afghanistan it is that to this day, nearly one hundred years after the 1921 Irish uprising, the Black and Tans are despised and the term “Black and Tan” is a pejorative one in Ireland for Britons. A song condemning the Black and Tans, “Come Out Ye Black and Tans” written by Dominic Behan in the 1920s, is still publicly performed in Ireland and by Celtic F.C. soccer fans in Scotland, with lyrics such as:

Oh, come out you Black and Tans;
Come out and fight me like a man;
Show your wife how you won medals down in Flanders;

Tell her how the I.R.A. made you run like hell away
From the green and lovely lanes in Killeshandra.

Come, tell us how you slew
Them ol' Arabs two by two;
Like the Zulus, they had spears and bows and arrows;
How you bravely faced each one,
With your sixteen pounder gun,
And you frightened them poor natives to their marrow.

Coincidentally, the Arabs referred to in the lyrics were the Iraqis whose nationalist struggle for freedom was also suppressed by the British Army. Sent to pacify Ireland, the Black and Tans instead inflamed its people even further.

What makes the parallel between Ireland 1921 and Afghanistan 2011 stranger still is that the British veterans in Ireland, like their American counterparts in present day Afghanistan, were sometimes under a command climate of revenge, and this usually resulted in the deaths of unarmed and innocent civilians. George C. Marshall, Chief of Staff for the Army during the Second World War noted:

Once an army is involved in war, there is a beast in every fighting man which begins tugging at its chains. And a good officer must learn early on how to keep the beast under control, both in his men and himself (Mogelson 2011).

Officers have a duty to protect soldiers from the repercussions of illegal acts through the use of discipline. In criminal cases such as the ones examined for the contemporary wars in Iraq and Afghanistan, officers did the exact opposite: through the abuse of discipline the Army's command structure, officers have exposed their soldiers to criminal liability. In Ireland of the 1920s, the beasts in the hearts of British veterans broke their chains. The Black and Tans carried out reprisals against IRA and Sinn Fein attacks on civilians through such acts as cutting off the town of Tralee from food

supplies for a week, through kidnapping and killing a Catholic priest in Galway, and burning and ransacking many towns and villages throughout Ireland, including the city center of Cork. Smyth, a veteran British officer of the Western Front, and the Divisional Police Commissioner for Munster, issued aggressive rules of engagement to shoot dead civilians who failed to surrender:

Now, men, Sinn Fein have had all the sport up to the present, and we are going to have the sport now. The police are not in sufficient strength to do anything to hold their barracks. This is not enough for as long as we remain on the defensive, so long will Sinn Fein have the whip hand. We must take the offensive and beat Sinn Fein at its own tactics...If a police barracks is burned or if the barracks already occupied is not suitable, then the best house in the locality is to be commandeered, the occupants thrown into the gutter. Let them die there—the more the merrier. Should the order ("Hands Up") not be immediately obeyed, shoot and shoot with effect. If the persons approaching (a patrol) carry their hands in their pockets, or are in any way suspicious-looking, shoot them down. You may make mistakes occasionally and innocent persons may be shot, but that cannot be helped, and you are bound to get the right parties some time. The more you shoot, the better I will like you, and I assure you no policeman will get into trouble for shooting any man (Wilson 211).

As reprisal for Smyth's order, a six man IRA squad shot him in the head as he smoked a cigar at the Cork and County Club (Dwyer 2005:149-150). The actions of unofficial reprisals by the Black and Tans ultimately earned the condemnation of members of parliament, Anglican Archbishops, and the British King, although it is noted that the British government had a policy of "official reprisals" beginning in December 1920 (Ainsworth 2001:8).

The two elements of the narratives that 1) war crimes are perpetrated solely by "rotten apples" acting on their own, and that 2) reprisal attacks are permissible when they are officially sanctioned is slowly working its way into the American collective conscience. A recent satirical video by the Onion News Network, a satirical newspaper

and website, recently featured a fictitious court-martial of a drone airplane for firing missiles into an Afghan wedding party (“US Predator Drone TR425 on Trial for Killing Innocent Afghan Civilians”). *The Onion* (whose motto is “Report first, ask questions later”) used many of the clichés used for Abu Ghraib and the other trials in their fictitious report by using phrases such as “these atrocities were the work of one drone acting alone” and condemning the drone as “just one bad robotic apple” (“US Predator Drone TR425 on Trial for Killing Innocent Afghan Civilians”). A screen grab of a fake newspaper headline even reads “Atrocity in Afghanistan: Who is Responsible?” The prosecutor in the video says in court to the drone, “You seem to relish the destruction of innocent people. You even videotaped your actions” (“US Predator Drone TR425 on Trial for Killing Innocent Afghan Civilians”). Of course, the line is meant to be humorous because the drone is not a person, is not responsible for its actions but acts under commands of a pilot thousands of miles away, and because videotaping is a necessary function of carrying out its mission. The photographs, rather than being characterized as the photographic evidence of encounters and their aftermath were portrayed in publications as sadistic war trophies. The soldiers were under orders that whenever an Afghani was killed, they were to photograph the face of the person in order to document the death. The photograph widely circulated of Jeremy Morlock moving the head of a body so the face is visible to the camera was characterized in the following manner:

In a break with protocol, the soldiers also took photographs of themselves celebrating their kill. In the photos, Morlock grins and gives a thumbs-up sign as he poses with Mudin’s body. Note that the boy’s right pinky finger appears to have been severed. Staff Sgt. Calvin Gibbs reportedly used a pair of razor-sharp

medic's shears to cut off the finger, which he presented to Holmes as a trophy for killing his first Afghan (Boal 2011).

From the photograph, it is not clear if Morlock is in fact giving a thumbs up hand signal. Rather than being portrayed accurately as Puritanical, systematic, and functional photographs, the photographs were mischaracterized as nonpuritanical, idiosyncratic, and sadistic.

In both Abu Ghraib and the Afghanistan killings cases, there are soldiers photographed smiling while standing or crouching over dead bodies. Although this was portrayed as sadism on the part of the soldiers, Sabrina Harman in Abu Ghraib and Jeremy Morlock in Afghanistan, there are simple explanations for their behavior. Americans as a peculiar, cultural habit smile in all of their photos. The smile doesn't necessarily mean anything. An additional explanation is that workers try to liven up the atmosphere when they carry out dull, unpleasant, and dirty work. Workers in kitchens, for example, will try to break up the monotony of work by bringing in a radio or by horsing around. Rather than being inhuman, gallows humor surrounding death is a normal defense reaction. In the case of Sabrina Harman, Abu Ghraib was a place of death and danger: the prison was isolated in the middle of the Sunni Triangle, the most kinetic (i.e. violent) part of Iraq during the insurgency phase of the war. The prison was under daily attack, and the American soldiers were fully cognizant of being understaffed to both operate the prison and to defend against attacks.

A second historical case in addition to the above example of British First World War veterans serving in Ireland, which should be pursued later in more detail as a case in comparative genocide studies, is that of American Civil War veteran soldiers and

officers being used to wage America's Indian Wars of the latter half of the nineteenth century.

The court-martial of Michael Leahy took place at Rose Barracks in Germany outside of the town of Vilseck even though Rose Barracks was not his home base. Rose Barracks, however, is the home base for the 2nd Stryker Cavalry Regiment, which is known as the 2nd Dragoons and is one of the oldest, continuous regiments in the U.S. Army. In an event named the Baker Massacre (also the Marias Massacre, after the nearby Maria River), the 2nd Dragoons under Colonel Baker in 1870 attacked a friendly Blackfoot Indian village in reprisal for attacks by a tribe of Piegian Indians. The death toll of the Blackfoot village was almost entirely women, children, and elderly as most of the men were hunting. The number killed in the historical record varies: a Blackfoot scout in the 2nd Dragoons counted 217 dead bodies, which differed from the count of 173 dead bodies reported by drunken white soldiers. The 2nd Dragoons in 1870 were under the command of General Philip Sheridan, who as a Union Army officer of the Civil War distinguished himself by practicing the first use of scorched earth tactics in military history, an event known as "The Burning" by survivors and witnesses of Shenandoah. After the Civil War, President Grant appointed Sheridan with the task of pacifying the Indians of the Great Plains. Sheridan blocked an official investigation of the Marias Massacre, and Blackfoot Indians through generations have kept the Marias Massacre alive through oral tradition. In the Internet age, the Blackfoot tribe posts videos of its members retelling family stories of the massacre.

In the case of the 2nd Dragoons and the Baker Massacre, the moral barrier

protecting the soldiers was present in society at large. *The New York Times*, in an 1870 article commented on the need for an investigation into the massacre without impugning the individual officers and enlisted soldiers:

If Col. Baker's report is the best showing that can be made for his scout, we decidedly do not subscribe to the declaration that "too much credit cannot be given to the officers and men of the command for their conduct during the whole expedition." That they exhibited great fortitude in the march, and that they attacked with courage what they supposed a powerful foe, is clear, and indeed the bravery and endurance of the troops was never questioned; but that such slaughter of women and children was necessary to discover that all the [Blackfoot] men were dead or had fled, is of course preposterous to suppose. The affair demands investigation ("The Montana Massacre – Col. Baker's Report").

A similar voice coming from the contemporary media, that "bravery and endurance of the troops" should not be questioned, but that all these cases demand investigation, is the exception and not the rule. The country's reaction to Calley's conviction and sentence expresses a similar notion that the individual soldier not be made the scapegoat for an entire affair. As detailed above, the citizens of the nation collectively took responsibility for the massacre, placing it back on themselves after they had it seen placed unjustly entirely on Calley.

In the current wars in Afghanistan and Iraq, there is no similar reaction or feeling that soldiers are unjustly burdened with the entire responsibility for the various war crimes. Qualitatively the wars in Iraq and Afghanistan have been different from American wars in more inner-directed eras. During the Second World War, American citizens and businesses participated in a ration and price-control program which controlled the consumption of such goods as gasoline, meat, shoes, fats (butter and margarine), and coffee (Blum 1976:227). Memory and popular culture have

romanticized rationing, removing the historical realities of black markets and widespread discontent with ration boards and the federal agency, the OPA (Office of Price Administration), under which they operated (Blum 1976:97). However, despite Americans being unhappy with rationing, and finding ways around it through black markets, they nevertheless took part in it as a shared national sacrifice. The inner-directed presentation of war was of a national project in which every member of the society had a small role. That's markedly different from the other-directed presentation of war as a consumer product that is to be passively consumed, even enjoyed, like a sporting event. In September 2002, Andrew Card, President Bush's chief of staff was quoted as saying, "from a marketing point of view, you don't introduce new products in August" in explaining why the White House waited until September to press for public support for an invasion of Iraq ("Quotation of the Day"). A year before in December 2001, the Bush Administration outsourced marketing of the war to the Rendon Group, a public-relations firm that specializes in "perception management" (Bamford 2005). John Rendon, the head of the Rendon Group, was given the moniker "The Man Who Sold The War" by *Rolling Stone* magazine, a play on words referencing the David Bowie song "The Man Who Sold the World" (Bamford 2005). Americans have not been asked to make meaningful sacrifices by their government. The only Americans using a ration card system are those military families and individuals who are subjected to rationing at on-base commissaries.

In the absence of the country assuming final, collective responsibility for war crimes committed in Iraq and Afghanistan, that transient, collective responsibility has

been transformed: soldiers themselves have been made to assume responsibility beyond that of their own individual and immediate actions. As stated above, the soldiers are forced to be responsible for social conditions. One example that brings the issue into focus is the photograph, again, of Jeremy Morlock crouching over the body of a dead Afghani teenager, Gul Mudin. The picture, even when taken in context, is horrible: Mudin is obviously dead having been shot, he is facing the dirt, his clothes are stripped, and a soldier crouches above his corpse, smiling and tilting Mudin's lifeless face towards the camera. The cliché is that a photograph is worth a thousand words, but sometimes photographs leave out the important ones. Morlock and his fellow soldiers were under orders, as has been described, to photograph the dead. Mudin's body is naked because their orders included directions to disrobe Afghans killed in action in order to examine the bodies for any possible tattoos. The photograph was taken as part of Morlock's work and duty as a soldier, not as a sadistic war trophy as has been portrayed by military prosecutors and their collaborators in the media. The military, through their prosecutors and with the help of collaboration in the media, has marketed these false narratives in order to advance their own "perception management" of the wars.

In these public but artificial narratives, soldiers are held responsible for each others' actions even when they have no knowledge of what has transpired. This is true if a soldier, such as Ramos, was inside an armored personnel carrier with its loud engine running as his fellow soldiers shot prisoners outside, out of sight and out of earshot at a canal in Baghdad. This is also true of Megan Ambuhl who was one floor above the

beating that Jeremy Sivits was photographing in the floor below, entirely oblivious to what was taking place in another part of Abu Ghraib Prison. In selling the narrative of spontaneous rotten apples, the military and their collaborators in the media engage in an act of magical thinking: that the acts of the soldiers are self-contained and isolated (even when the soldiers act in groups) from policy and strategy.

The collective responsibility that should finally rest with society becomes transformed in two ways: first, soldiers are collectively punished on behalf of those who established the social conditions leading up to war crimes and secondly, the world attributes responsibility to the United States and its military for the crimes committed at Abu Ghraib and elsewhere.

A common feature in all the war crimes cases connected with America's wars in Iraq and Afghanistan is the charge of conspiracy. In court a conspiracy charge is explained to the panel (jury of military officers) by the military judge as follows:

The agreement in a conspiracy does not have to be in any particular form or expressed in formal words. It is sufficient if the minds of the parties reach a common understanding to accomplish the object of the conspiracy, and this may be proved by the conduct of the parties. The agreement does not have to express the manner in which the conspiracy is to be carried out or what part each conspirator is to play. The overt act may be done either at the time of or following the agreement. You are advised that there is no requirement that all co-conspirators be named in the specification or that all co-conspirators be subject to military law (Leahy Record of Trial).

Ambrose Bierce defined patriotism as the last refuge of a scoundrel; the charge of conspiracy can similarly be described as the last refuge of a desperate and vindictive prosecution. Defense lawyers have noted that conspiracy can be whatever the government wants it to be (Mestrovic 2009:223). Mestrovic in analyzing conspiracy

described it:

I have often heard military judges read this same speech on conspiracy, and each time I find it perplexing. In plain English, and with regard to the reference group of ‘the people,’ the legal definition of conspiracy states that one does *not* have to conspire in the ordinary sense of the term (use words, have a plan, delegate responsibility, act in secret, and so on) in order to be guilty of conspiracy in the legal sense. Note that the conspiracy does not even ‘have to be in any particular form.’ Lawyers, judges, and to some extent juries supposedly determine what is in ‘the minds of the parties’ who are accused of conspiracy, even if their overt behavior does not correspond to what is allegedly in their minds. I have heard exasperated defense attorneys state that conspiracy is whatever the government wants it to be. And government prosecutors frequently charge suspects with conspiracy in order to obtain more severe sentences and also to convict other alleged co-conspirators of more serious crimes. As the judge informed Hunsacker, a co-conspirator need not be convicted of the overt crime in question – being a co-conspirator automatically makes one guilty of what someone else did (p. 223).

What complicates matters even more regarding the charge of conspiracy in a military setting, is that every mission is essentially a conspiracy to engage in pre-meditated legal killing of sorts (Mestrovic 2009:164). As Mestrovic describes:

In sum, under contemporary civilian conspiracy laws that are used in military contexts, any soldier who was a member of a platoon in which a crime was committed is potentially guilty of conspiracy simply for being a part of that platoon. Much is ‘lost in translation’ in this switching of reference groups (military versus civilian) for judging the meaning of killing, conspiracy, pre-meditation, aiding, and other legal terms. It is not at all clear that a killing in civilian society has the same meaning as a killing on a military combat mission, even if both killings result in the legal charge of murder (2009:164).

The charge of conspiracy in criminal law, even more so in military law, is like a funhouse mirror image of a contract in civil law. In a criminal conspiracy, an agreement to take part in a crime can be interpreted in an infinite number of ways: a gesture, a glance, the nod of a head, a tone of voice, an action, etc. To prove a conspiracy has taken place, the government is practically without the burden of providing proof that a

document of any kind exists outlining the alleged criminal act and detailing the delegation of activities among the conspirators. Compare this to a contract in civil law where agreements must conform to established norms or else be subject to challenge. The smallest deviations from established norms in contracts are sufficient to make that contract unenforceable or void. Contracts can be voided if it is proven that one of the parties did not consent willingly because of incapacity, undue influence or duress. Yet in all these cases the soldiers appear to enter into conspiracies under conditions that would be deemed highly unusual under contract law: PTSD, mild traumatic brain injuries, sleep deprivation, legal and illegal use of drugs, or operating under the influence of an anomic social climate. In criminal law, ambiguity is allowed to exist in determining that a conspiracy exists. In civil law, no ambiguity is allowed to exist in the determination that a contract exists.

When there is a failure in assuming collective responsibility, unwarranted responsibility falls on scapegoats. Outside of the war crimes trials, other examples exist in society. One such example is the current scapegoating of teachers in the media and by political and business figures. Just as Abu Ghraib was blamed on “a few bad apples,” problems in schools and among students are blamed on “a few bad teachers” who fail to “engage” their students. Rather than assume the responsibility of creating and maintaining poor social conditions for students and children, American society is slandering teachers, or in the words of Gabor Mate, a best-selling Canadian psychologist who is virtually unknown in the United States:

Well, you have to ask, how do children learn? How do children learn? And learning is an attachment dynamic, as well. You learn when you want to be like

somebody. So you copy them, so you learn from them. You learn when you're curious. And you learn when you're willing to try something, and if it doesn't work, you try something else.

Now, here's what happens. Caring about something and being curious about something and recognizing that something doesn't work, you have to have a certain degree of emotional security. You have to be able to be open and vulnerable. Children who become peer-oriented—because the peer world is so dangerous and so fraught with bullying and ostracization and dissing and exclusion and negative talk, how does a child protect himself or herself from all that negativity in the peer world? Because children are not committed to each others' unconditional loving acceptance. Even adults have a hard time giving that. Children can't do it. Those children become very insecure, and emotionally, to protect themselves, they shut down. They become hardened, so they become cool. Nothing matters. Cool is the ethic. You see that in the rock videos. It's all about cool. It's all about aggression and cool and no real emotion. Now, when that happens, curiosity goes, because curiosity is vulnerable, because you care about something and you're admitting that you don't know. You won't try anything, because if you fail, again, your vulnerability is exposed. So, you're not willing to have trial and error.

And in terms of who you're learning from, as long as kids were attaching to adults, they were looking to the adults to be modeling themselves on, to learn from, and to get their cues from. Now, kids are still learning from the people they're attached to, but now it's other kids. So you have whole generations of kids that are looking to other kids now to be their main cue-givers. So teachers have an almost impossible problem on their hands. And unfortunately, in North America again, education is seen as a question of academic pedagogy, hence these terrible standardized tests. And the very teachers who work with the most difficult kids are the ones who are most penalized.... The difficult kids are kicked out, and teachers will be afraid to go into neighborhoods where, because of troubled family relationships, the kids are having difficulties, the kids are peer-oriented, the kids are not looking to the teachers. And this is seen as a reflection. So, actually, teachers are being slandered right now. Teachers are being slandered now because of the failure of the American society to produce the right environment for childhood development (Maté 2010).

Teachers are blamed for not being “entertaining enough” in the classroom, and are told to emulate the anomic media environment in which students are immersed, an environment steeped in fast paced, usually inappropriate conversation and dysfunctional behavior. In reality-television and mainstream news programs, ideas are seldom developed beyond a few shallow, superficial banalities, and hardly anyone speaks

beyond a few words or even a sentence before being rudely interrupted or insulted. A lecture or seminar environment where people speak calmly, show respect yet are allowed to disagree is a healthy environment, but ironically, because of its radically different appearance to the anomic environment of nearly everything else established teaching methods have come under attack. The phrase “the lunatics have taken over the asylum” comes to mind when describing the plight of teachers and education in general facing this particular form of American social upheaval. The anomic elements insidiously working their way into American classrooms such as standardized testing, classroom clicker response devices, PowerPoint presentations, are analogous to anomic elements within the military such as the catch and release program, cross-leveling, and PowerPoint presentations.

By refusing to take on the collective responsibility of these actions, the United States is paying several prices. Although the number of soldiers in these cases is relatively small, the United States is still wasting good soldiers and their futures by sending them to prison, rather than keeping them in the Army where they can continue to perform their duties. The other price the United States pays is that it is on a road to becoming a pariah state for failing to acknowledge its mistakes. When a country fails to assume proper, final collective responsibility for its crimes, other countries will place a stigma on it. This has been the fate for Serbia and its refusal to acknowledge its collective responsibility for war crimes and crimes against humanity throughout the former Yugoslavia. Likewise, Turkey is similarly stigmatized for its refusal to acknowledge its genocide of the Armenians and its ongoing cultural genocide of the

Kurds, where it is even illegal to speak the Kurdish language on broadcast media or for parents to give their children Kurdish names on official birth certificates.

Sometimes the world in general fails to hold a nation responsible for its crimes, but the victims and their descendants never forget. In the United States, this is the case for the Blackfoot Indians who pass down their family stories of the Baker Massacre though few Americans and few outside the United States know the specific details, although the general feeling that the United States Army is responsible for grave injustices against the Native Americans is felt in other countries. Likewise, Italy benefits from a positive image and reputation despite its sordid history in Africa – it is estimated that half of the Libyan people died when Italy invaded and occupied Libya as a colony, and in Abyssinia the Italian military engaged in horrific war crimes such as using chemical weapons or dropping military prisoners from airplanes. In India, it is well known there that the United Kingdom through its policies and its military created famines in order to subjugate restive populations. In Ireland, every British injustice seems to have worked itself into folk music to the extent that an entire genre of Irish rebel songs exists. The Arab and Muslim world now places a mark of shame on the United States for its actions in Iraq and Afghanistan. The United States can try to cheat its fate by failing to accept responsibility, or it can redeem itself by seeking reconciliation with the Arab and Muslim world.

CHAPTER V

PURITANISM AND REVENGE

In the American military justice, and the American military in general, the “instinct for revenge”, and the element of collective punishment are present. In a very Puritan mode of operation, what in other cultures is a spontaneous expression of uncontrollable emotion is transformed into sublimated emotion hidden behind systems and techniques. The court-martial system, then, is not the product of an exalted state of being that exists in a purely rational, civilized, or modern mindset, but rather is a ritual of degradation and revenge that has been adapted to fit the Puritan esthetic of action: revenge and retribution can happen, but only in certain ways. In a larger sense, the wars in Iraq and Afghanistan from the very policies which set them in motion, to the acts of soldiers on the ground, and the courts-martial that deal with certain actions, constitute an entire structure of revenge that follows a Puritan esthetic.

Durkheim in describing law and punishment describes the conditions of each in societies held together by mechanical solidarity (or societies held together by sameness) and higher order societies held together by organic solidarity. In more primitive societies, Durkheim states the following about punishment:

In the first place, punishment constitutes an emotional reaction. This characteristic is all the more apparent the less cultured societies are. Indeed primitive peoples punish for the sake of punishing, causing the guilty person to suffer solely for the sake of suffering and without expecting any advantage for themselves from the suffering they inflict upon him ([1893] 1997:44).

Punishment in primitive societies aims to fulfill an emotional need for retribution:

When the punishment is applied solely to people, it often extends well beyond the guilty person and strikes the innocent – his wife, children or neighbors, etc. This is because the passionate feeling that lies at the heart of punishment dies down only when it is spent. Thus if, after having destroyed the one who was its most immediate cause, some strength of feeling still remains, quite automatically it reaches further. Even when it is sufficiently moderate in intensity to attack only the guilty person it manifests its presence by its tendency to exceed in seriousness the act against which it is reacting. ([1893] 1997:44).

Thus Durkheim establishes that punishment and the law in societies held together by sameness, or mechanical solidarity, were inseparable from the emotion driving punishment. Even when the person who has committed the act has been punished, and the reason for punishing has been met, primitive societies extend punishment until the emotion driving the vendetta has been spent. In so doing, inanimate objects, family members, and animals share in the punishment (Durkheim ([1893] 1997:44).

American society is not one characterized by mechanical solidarity but primarily by organic solidarity, and arguably its subordinate institutions also are characterized primarily by organic solidarity as well. Durkheim affirms that even when societies reach higher developed forms, the nature of punishment does not change with the official, stated purpose for punishment:

Nowadays, however, it is said that punishment has changed in nature. Society no longer punishes to avenge, but to defend itself. In its hands the pain it inflicts is only a systematic instrument for its protection. Society punishes, not because the punishment of itself affords some satisfaction, but in order that the fear of punishment may give pause to the evilly inclined. It is no longer wrath that governs repression, but well premeditated foresight. Thus the preceding remarks cannot be generally applied: they may only concern the primitive form of punishment and cannot be extended to cover its present-day form.

Yet, in order to justify legitimately so radical a distinction between these two sorts of punishments it is not enough to demonstrate that they are employed for different ends. The nature of a practice does not necessarily alter because the conscious intentions of those implementing it are modified. Indeed it could already have fulfilled the same role in former times without this having been

perceived. In that case why should it be transformed by the mere fact that we realize more fully the effects that it produces? It adapts itself to the new conditions of existence created for it without thus undergoing any essential changes. This is what happened in the case of punishment ([1893] 1997:44-45).

Explicitly, modern American law states its aversion to punishment as vendetta, and in the ways that vendettas are usually executed, through punishment of families, collective punishment, or punishment of inanimate objects and animals. Though the American justice system may convict criminals and punish them as individuals, often families share in the suffering from lost earnings and the fact of having an absent family member apart from the family. What Durkheim states that primitive people sometimes punish for the sake of punishing and cause “the guilty person to suffer solely for the sake of suffering and without expecting any advantage to themselves from the suffering they inflict upon him” applies to elements of the modern American penal system ([1893] 1997:44). In the United States, former prisoners constitute one of the few populations of individuals for which legalized job discrimination still exists. Sociologists have long wondered what the usefulness is of a prison system that creates and promotes the conditions for recidivism, including legalized housing and employment discrimination. This post-sentence punishment that continues long after the imposed court sentence arguably denies former prisoners of human rights and impedes them from contributing as productive members of society.

In modern societies, of which Puritanical societies consider themselves as members, there is a supposed break from the spontaneous emotion driving revenge towards the rational execution of justice. For Weber ([1905] 1976), the Puritan character is characterized by the irrationally driven fear of damnation, and towards a systematic,

methodical struggle with life. The word “fear” appears in Weber’s *The Protestant Ethic and the Spirit of Capitalism* in relation to the individual protestant and his or her fear of damnation:

In spite of the necessity of membership in the true Church for salvation, the Calvinist's intercourse with his God was carried on in deep spiritual isolation. To see the specific results of this peculiar atmosphere, it is only necessary to read Bunyan's *Pilgrim's Progress*, by far the most widely read book of the whole Puritan literature. In the description of Christian's attitude after he had realized that he was living in the City of Destruction and he had received the call to take up his pilgrimage to the celestial city, wife and children cling to him, but stopping his ears with his fingers and crying, "life, eternal life", he staggers forth across the fields. No refinement could surpass the naive feeling of the tinker [or tinsmith] who, writing in his prison cell, earned the applause of a believing world, in expressing the emotions of the faithful Puritan, thinking only of his own salvation. It is expressed in the unctuous conversations which he holds with fellow-seekers on the way, in a manner somewhat reminiscent of Gottfried Keller's *Gerechte Kammacher*. Only when he himself is safe does it occur to him that it would be nice to have his family with him. It is the same anxious fear of death and the beyond which we feel so vividly in Alfonso of Liguori, as Döllinger has described him to us. It is worlds removed from that spirit of proud worldliness which Machiavelli expresses in relating the fame of those Florentine citizens who, in their struggle against the Pope and his excommunication, had held "Love of their native city higher than the fear for the salvation of their souls". And it is of course even farther from the feelings which Richard Wagner puts into the mouth of Siegmund before his fatal combat, "Grüsse mir Wotan, grüsse mir Wallhall--Doch von Wallhall's spröden Wonnen sprich du wahrlich mir nicht". But the effects of this fear on Bunyan and Liguori are characteristically different. The same fear which drives the latter to every conceivable self-humiliation spurs the former on to a restless and systematic struggle with life. Whence comes this difference ([1905] 1976:106-107)?

The restless and systematic struggle for life which the Puritan undertakes has two sources, both of which have their origins not in any particular conscious thought or philosophy but in fear and the need to enact vendettas, both of which are irrational.

In tradition-directed societies, head-hunting among tribal people is a common way to enact feuds, i.e. to carry out acts of revenge. *Blood Revenge: The Enactment and*

Management of Conflict in Montenegro and Other Tribal Societies is a book on the subject of feuding and revenge by anthropologist Christopher Boehm ([1984] 1991). The book is an exploration of feuding in a tribal society, undertaken through field research and interview of subjects along with research in historical documents. Boehm travelled to then-Yugoslavia, in 1963 and 1966, to live in rural, remote areas of Montenegro and study the lingering but fading influences of tribal organization in daily life. The book provides a description of revenge in a non-puritanical society that serves as a comparison for revenge in a Puritanical society such as the United States.

The word “tribe” used to describe the traditional organization of life in non-modern societies has been described as racist. Boehm in his book admits that when anthropologists head out into the world to study tribes, that their destinations are, typically, South America, New Guinea, or Africa, and the implication that tribes and tribal ways are or were extant in Europe is surprising to many people. Boehm states that Europe’s original peoples lost their tribal identities either to conquest by the Romans or by being incorporated into feudal systems in the Middle Ages. The remaining vestiges of tribal life to western Europeans and Americans, perhaps, are best seen in Scottish and Irish clans and septs.

In Montenegro, Boehm stated that the tribesmen were of a type found all over the world, and that their way of life was typical of tribe members. In short, the tribe in Montenegro had the same function as any other tribe: to defend tribal lands. To this end, tribes in general expend their efforts and energy towards warfare, raiding other territorial lands and peoples, and in headhunting (which even in European history is more

prevalent than may be first imagined). The feature that Boehm studies in detail pertains to the act of feuding, in which one clan would enact vengeance on another clan for a perceived transgression.

Boehm explains that clans, which in general are subdivision of tribes, enact feuds to meet two basic goals ([1984] 1991:173). First, feuding in tribal society is an act which signals to outsiders that a clan will not tolerate being dishonored or preyed upon in any way. For example, a clan may enact revenge for a variety of actions, all of which are acts as seen as transgressive upon a sense of honor, from having a clan member insulted by an outsider in a public space, such as a town center, to more extreme and violent actions such as the violation of their women, theft of property, or homicide. The second reason for feuding, according to Boehm, was to act as an alternative to all-out warfare between clans or tribes. Feuding was not “senseless violence” leaving thousands of corpses in its wake, but acts which followed set patterns and rules to keep conflicts between clans and tribes within socially acceptable limits (p. 173). Thus, a single homicide would provoke a feud that would take the lives of a rival clan, but ultimately avert all-out war between people in a community or between people in neighboring communities (p. 173).

Boehm admits that from an ethnocentric, modern point of view, feuding appears barbaric and violent. The alternative to feuding in modern societies is “the rule of law”, which means institutions that operate within society. Modern conflicts are not settled by taking the head of an enemy, but through modern law enforcement, a modern law code, a system of courts, a system of state prisons and jails, legislatures, and other

governmental units that make and implement law. The tribal society is an alternative to a society that operates and must support all of these institutions. Taken from the point of view of the tribal society, a tribesman would say, first, that modern society is a place in which “law” exists in place of “honor”. In modern society, people do not go to court to demand restitution of one’s honor, but to seek compensatory damages or criminal sentences against the aggrieving party. In second place, a critique of the modern “rule of law” is that it weighs down on society with the weight and burden of all its legal institutions. Feuding, even in Texas, is perceived as barbaric, violent, and unacceptable to society. However, the burden of sustaining not one but two prison systems – Texas operates both a state jail system and a state prison system – within the state is seldom questioned as “unreasonable” by the public and government officials, if anything there is the pressure to build more prisons. The costs of running prisons compared to the alternatives are seldom discussed, though the difference is great between paying \$40 per day to imprison someone compared to \$2 per day for probation (which is paid by the offender).

Boehm raises issues that merit further exploration, as the feuding instinct among people with vestiges of tribal affiliation has driven many historical and political events.

In *Personality and Culture in Eastern European Politics*, Dinko Tomasic (1948) writes:

The bellicose and conspirative character of this area did not, however, result exclusively from the power politics of Easter European states and world empires. It was also autochthonous inasmuch as the mountainous regions of Eastern Europe have been inhabited by belligerent herdsmen whose origin can be traced to the great medieval invasions of Ural-Altaic warriors from the Asiatic mainland (p. 221).

For example, it is interesting to note that all the children who survived to adulthood in the Ulyanov family became terrorists and revolutionaries after the Czar hanged their brother. The most famous of the Ulyanov children would later change his name to Vladimir Ilyich Lenin and launch a revolution and civil war to kill the Czar (Reed 2005:16). The psychological-social component of the feud between Lenin in cancelling his family's blood debt with the Czar is usually not a central part of explanations why monarchist Russia became a communist society. Boehm and Tomasic are not considered central or mainstream in explanations behind the Russian revolution of 1917. The rational intellectual and theoretical motivations and components of the revolution are widely discussed in academia; the irrational (i.e. emotional) psychological-social motivations and components are not.

Another example of a modern-era conflict with roots in tribal societies is the conflict in Northern Ireland, which may erupt and return following the resignation of First Minister Peter Robinson. Prior to being part of a modern state with internationally recognized boundaries and modern administration, the northern part of Ireland and the western part of Scotland were contested areas between two huge clans: the Macdonalds and the Campbells. Clans Macdonald and Campbell feuded for nearly 450 years beginning in 1296 (Thomson 2008:xv). Feuding between the two clans approached all-out war, as both clans were able to raise armies numbering over thousands of warriors (Thomson 2008:24-25). Although the sectarian conflict in Northern Ireland had gone into a state of remission with the Good Friday Agreements of 1998, the conflict has returned with the targeted bomb assassination of police and soldiers by various Irish

Republican paramilitary groups (McDonald 2011). In seeing Northern Ireland and western Scotland as the traditional battleground for sectarian and clan warfare, a troubling development has been the 2011 attempted assassination of Celtic FC coaches by mail bombs (Carrell 2011). Celtic FC is a team associated with Scottish Catholics (Carrell 2011).

There are noteworthy details about Scottish and Irish clans. The word clan comes from the Gaelic word *clann*, which means “children” (Adams 1990:1), paralleling the word *zadruga* in Serbian and Croatian for clan or family. Where the anthropologists uses the word *tribe* to describe tribal people and *clan* to describe a subgroup of those people, the convention in Scotland and Ireland is to refer to the tribe as a clan and a clan as a tribe or sept. In fact Gerry Adams, the former president of Sinn Fein, wrote that it was a rite of passage for the males in his *clann* to serve time at Long Kesh Prison for activities against the British government. In his family it was also considered a rite of passage for the women of his *clann* to visit the men, and this was something that was endured by all the members of his *clann* for a period of over twenty years.

The sectarian conflict in Ireland, as well as wars over the succession of the monarchy is partly explained by the fact that Clan Campbell was mostly protestant and the smaller, weaker Clan Macdonald was mostly Catholic. So, after many decades of being against the monarchy as an institution, clan loyalty may change depending on the succeeding monarch’s own religious inclination, as was the case when the Campbells, after many years of hostility to the monarchy, suddenly swore allegiance when a

protestant Elizabeth I succeeded the throne (Thomson 2008:55). While the modern conflict in Northern Ireland is always portrayed as sectarian in origin or in character, the background could actually be described in tribal or even racial terms⁷. In fact, conversion as a potential “solution” is not possible in terminating the conflict as one’s first name or last name identifies an individual as being Protestant or Catholic in Ireland and Scotland. Catholic boys are named Patrick, after the Catholic saint, and Protestant boys are named William, after William of Orange, and so on.

Boehm’s explanation on tribal feuding can be a useful framework in looking at the conflict in Northern Ireland and British history in general. The English Civil Wars had feuding elements and character between the Cromwell family and the family of the executed king, Charles I. Just as in Montenegro, the families took turns in beheading rival members and exhibiting the heads in public. Cromwell famously tried and executed Charles I for treason; historians are in consensus that it the trial and execution had no legal validity⁸. Charles II, upon his return to England, had the body of Oliver Cromwell exhumed from Westminster Abbey and posthumously beheaded (Gaunt 1996:3). Cromwell’s body was hanged in chains at Tyburn, and his head was displayed outside Westminster for over 20 years until a storm knocked it down in 1685 (Gaunt 1996:3-4). This occurred during a period in European history known as the Age of Reason.

Germane to the Global War on Terrorism is the observation by Hanna Batatu

⁷ Interesting to note is that the Greek word *genos* (as in the word genocide) refers to both race and tribe.

⁸ In fact, the trial of Charles I would be unconstitutional under American law which forbids any chamber of Congress to issue a bill of attainder, or a legislative act finding someone guilty and depriving that person of a judicial trial (*U.S. Constitution*, Art. I, Sec. 9).

([1978] 2004) in his landmark study, *The Old Social Classes and the Revolutionary Movements in Iraq*, on social organization within Iraq. Batatu, a Palestinian-American, wrote his study of Iraqi society in 1978, and his book is considered mainstream and central in studies of Iraqi history; Batatu's book is a perspicacious outsider's view of Iraqi society in much the same way that Tocqueville's ([1835] 2003) *Democracy in America* is a perspicacious outsider's view of the United States. In describing the Sunni versus Shiite split in Iraqi society, Batatu ([1978] 2004) cites that during Ottoman occupation of Iraq, the occupying forces and collaborating government officials were Sunni (p. 42). Although Sunnis are a minority of the population, they have been the locus of power in Iraq since modern times. The tribes outside the cities were "powers unto themselves", and their intolerance of the government, along with their association of the government and oppression, facilitated the transition to Shi'ism for many tribes of former Sunnis (Batatu [1978] 2004:42). In Baghdad province alone, Batatu writes that there were over over 110 tribes (Batatu [1978] 2004:16).

Batatu notes that the transition from tribalism to urbanization in Iraq was a gradual, transitional change. Instead of people disappearing into cities and being completely deracinated from the religious and tribal origins, people organized themselves into the *mahallah* or city quarter (Batatu [1978] 2004:46). The *mahallah* retains people's affiliations: the groups that belonged to different faiths, sects, classes, or ethnic and tribal origins lived only in *mahallas* that reflected their origins⁹. Thus, *mahallas* were still organized along tribal lines, and were worlds of their own (Batatu

⁹ The *mahallahs* that Batatu describes in Iraq are not too dissimilar from the *quartieri* (quarters) of some European cities such as Siena in Italy.

[1978] 2004:19). Like tribes, they established laws along the concept of honor and shame, which called for “rising against an outsider who is not from us, whether the result be to our advantage or to our disadvantage”, set rules about when and how much blood money to accept or pay for murders, and the rules by which a member of the *mahallah* could be exiled for shaming himself by stealing, fornicating, or looting (Batatu 20). Just as Montenegrin tribes resisted a strong centralized government, the Iraqi *mahallahs* made their own, similar rules to pay all legal fees to any member arrested by the national Iraqi government for enacting revenge or breaking the law on behalf of the *mahallah*. Similar to what Tomasic (1948) states of Eastern European politics, Batatu makes the point that national politics did not displace old loyalties or old, tribal ways (Batatu [1978] 2004:22). Instead, nationalism in Iraq absorbed some of the psychological elements (Batatu [1978] 2004:22). During the court-martial of SGT Leahy, the soldiers testifying not only knew the word *mahallah* in describing the part of the city they patrolled, but described violence in the *mahallahs* approaching levels of genocide similar to those for other, fragmented and ethnically diverse areas of the world, such as Bosnia or the Brazos Valley of central Texas at the end of the nineteenth century. Specifically, the one million people in the area of operation for Leahy’s Company, lived in four *mahallahs*: Farat, Bayaa, Jihad, and Amel (Leahy Record of Trial).

Stjepan Mestrovic, who was an expert witness in sociology at Michael Leahy’s trial, compared the situation of Leahy’s group of soldiers to the situation of UNPROFOR in Bosnia during the Yugoslav wars. When asked “what happened here?” by Spinner, Leahy’s civilian attorney, regarding the actions by soldiers from Leahy’s company,

Mestrovic answered:

A. ...what I see in this case, from the testimony and everything I've read, is tremendous disorganization, tremendous chaos despite very good intentions. And I would say despite overwhelming obstacles including, as I recall from [the intelligence officer's] testimony, being confronted by ethnic cleansing by Shia and Sunni.

Q. And let's stop and talk about that. In terms of the witnesses that you heard testify in this case, what importance do you play, in terms of your analysis, on [the intelligence officer's] testimony?

A. To me, he's the most sociological because he was talking about large scale rules such as ROEs, detention procedures, circumstances such as ethnic cleansing, the fact that we had a very small unit, Alpha Company, that was confronting a sector with about one million people, I mean, when I think about it compared to my previous work in Bosnia, that's--those are overwhelming odds. It's almost like UNPROFOR, of course----

Q. I'm sorry. It's what?

A. United Nation Protection Force.

Q. Okay.

A. --was dealing with genocide in Bosnia but they had a lot more back up and a lot--many more bodies (Leahy Record of Trial).

The overwhelmingly salient characteristic in Alpha Company's social environment was the tremendous level of violence between Sunni and Shia that surpassed the level of violence in Bosnia during the 1990s. Alpha Company was placed in a sector where there was ongoing genocide. The word "genocide" never appears in the news reports of Leahy's court-martial, nor does the fact that the Iraqi police and the U.S. Army were recovering upwards of 300 civilian bodies daily from the streets. As far as providing or explaining the social environment of the incident, the press displayed a gross deficiency in a sociological imagination.

Alpha Company's role in their Area of Operation was even more difficult than that of UNPROFOR, as noted in Mestrovic's testimony. UNPROFOR, or the United Nations Protection Force, had the role of "peacekeeping" in the midst of what was

definitely not peace: ongoing genocide and war (Mestrovic 1994:89). Alpha Company in places like the Jihad mahallah were expected to perform the role of “peacemaking” in ongoing civil war and genocide between Sunnis and Shias. Mestrovic testified that Alpha Company, in comparison to UNPROFOR, was expected to perform a more difficult mission with fewer soldiers and less support. Even UNPROFOR with its greater resources were helpless in their “easier” mission. Military officers for UNPROFOR conceded, for example, that while they could not control the situation, they could observe and monitor genocide (Mestrovic 1994:89).

A direct parallel to the U.S. Army making peace in a wartime area is found in *Lynching to Belong: Claiming Whiteness Through Racial Violence* written by historian Cynthia Skove Nevels (2007), a book that deals specifically with the history of lynching in the Brazos Valley. *Lynching to Belong* depicts Brazos County as ground zero of racial conflict and even outright racial warfare in Texas in the 1890’s. The contemporary residents of the county live without knowing its bloody history, which reads more like that of civil war torn Bosnia or the Sunni triangle, the hotbed of insurgent activity in Iraq. In the 1890’s, for example, Texas saw an average of 100 lynchings per year, and of these lynchings up to a quarter took place yearly in Brazos County (p. 73).

In that era, central Texas in general was one of the most violent parts of the west. The historian Richard Maxwell Brown remarked that “no region in the United States has surpassed the acute, long-term violence of central Texas” (Bernstein [2005] 2006:12). There are brutal episodes in Waco’s history, and by extension of the region. In 1898, a

judge in Waco running for reelection shot dead two men who had assaulted him (Bernstein [2005] 2006:14). In a separate incident, *The Iconoclast* newspaper editor was shot in the back for publishing a series of stories of sex scandals regarding Baylor College, the local Baptist university, and after his burial outraged Wacoans took shots at his headstone (Bernstein [2005] 2006:15-16). Naturally, all of this paled in comparison to one of the two most infamous events in Waco's history, which was the public lynching in 1916 of a black man named Jessie Washington which attracted a crowd of spectators numbering over 15,000 (Skove Nevels 2007:113)¹⁰. The area comprising Waco and Brazos county has been described as being steeped with "a vicious tradition of mob violence" and of "lying on the fault line where the casual violence of the frontier met the maddog [*sic*] racism of the Deep South (Bernstein [2005] 2006:16)."

In Brazos county, white farmers had organized themselves into a militia, the KKK, to intimidate and kill black farmers, who themselves had formed their own militia numbering two hundred soldiers (Skove Nevels 2007:20-21). This was a period of nearly open warfare, as the Klan would try to intimidate black churches by marching outside church services during daylight hours, and the members of the congregation firing shots at the Klan in defense (Skove Nevels 2007:20). The U.S. Army was called into Brazos County on three separate occasions, sometimes remaining for periods of up to a year, in order to act as nineteenth century peacekeepers, or the UNPROFOR of the Brazos valley (Skove Nevels 2007:21). Soldiers wrote home that Brazos County, and its

¹⁰ The other infamous event associated with Waco is the standoff between the Branch Davidians and the U.S. Federal government in 1993 that resulted in the deaths of four federal agents and eighty-four Branch Davidians.

then county seat of Millican, was “a miserable cut throat hole” where everyone carried knives and revolvers (Skove Nevels 2007:21).

The important thing to note regarding the tension between whites and blacks in Brazos County up to the 1890s, was that the two populations were at a demographic stalemate (Skove Nevels 2007:2, 53). Black residents of Brazos County and German immigrants formed a dominant block of Republican voters that was only broken by a campaign of racial terror by their opposition (Skove Nevels 2007:46-47). The turning point in this stalemate, then, was the influx of Italian, Irish, and Czech immigrants into the Brazos County slowly beginning in 1880 and in full speed by the 1890s. The newcomers would prove decisive in breaking the deadlock between the two groups.

Lynching in Brazos County in the 1890s was a method for terrorizing a population, much like car bombings, suicide bombings, or more controversially, predator-drone missile strikes, are methods of imposing not only violence but constant fear on a population. Comparing the situation to clan warfare in Scotland, Montenegro, or Iraq, the established population of whites in Brazos County (made up of Anglo-Germans) constituted Clan “A”, the population of black farmers in Brazos County constituted a “Clan B”, and the incoming immigrants from Czechoslovakia, Italy, and Ireland could be seen as minor clans or “Clan C”.

Skove Nevels describes lynching as one of several tactics, some given legal status, in which Anglo-Germans in Brazos, and whites in general throughout Texas, would exert influence or power over black people. This included rigging elections, moving election polling places, threatening violence on voters, carrying out

assassinations through methods other than lynching, Jim Crow cultural practices, and formal segregation. Lynching as a particular method of intimidation came to have its own meanings as a ritual through which a minority not regarded as white could claim whiteness.

From a twenty first century, American perspective, it may be difficult to appreciate the fact that people from Bohemia and Moravia in Czechoslovakia, Sicilians from Italy, and Irish immigrants from the western side of Ireland were not automatically accorded white privilege and status in American society. Social-interactionists have posited that what is come to be regarded as common-sense, obvious, and taken-for-granted beliefs and values of everyday life are not natural or innate in people, but are constructed through complex social interactions. Whiteness and its meaning is a socially constructed idea that developed socially and which was only gradually extended to people from Europe in the Brazos Valley whose ancestors were not British or German .

This is a very distinct and clashing description than provided by race and ethnicity functionalist-theorists such as Milton Gordon (1964), who propose a gradual assimilation model for ethnic and racial groups who enter American societies. Gordon's theory regarding assimilation on various levels of social activity – recreation, education, economy, politics – breaks down when examining the case of the different racial groups in Brazos County. In fact, the black citizens of Brazos were politically established and even dominant in the political affairs in the county, like the Anglo-Germans they were protestants, Millican was an economically prosperous town while the mostly white town of Bryan was described as lacking culture. By contrast, the influx of immigrants from

Europe were mostly Catholic, economically were at the bottom of the rung, and not established politically in any way in the county. By Gordon's assumptions, it would have been the black farmers of Brazos county who would have integrated more quickly than the Czechs, Italians, and Irish. This was not the case.

Instead, a sort of racial leap-frog occurred by which the European immigrants bypassed black residents of Brazos within a very short period of about ten years. Skove Nevels (2007) states that Czechs, Italian, and the Irish became white after carrying out acts of lynching against blacks. They became white only after dipping their hands in black blood. Drawing again on the comparison of the clans, this would be like a minor clan "C" (the Czechs or Italians or Irish immigrants) allying with a stronger clan "A" (the Anglo-Germans) in order to make war or feud with a clan "B" (blacks in the Brazos). An example from Scottish history is that of Clan Fraser being closely allied with Clan Campbell in the centuries-long feud with Clan Macdonald. This allegiance was so close that when Scotland officially became part of the United Kingdom through the Act of Union in 1707, the army of warriors from clans Campbell and Frazer became part of the regular British Army as the Royal Highland Regiment of Foot, better known as the Black Watch ("Raising of the Regiment").

The arc of enacting lynchings in the Brazos has its parallels with the arc of enacting blood revenge in tribal societies. In tribal societies, an act that brings shame to a member of one's clan automatically incurs a blood debt that has to be repaid with the death of the offender's clan. In the American South, the justification given for lynching was the notion that a black man or black men had raped a white woman, "imperiling the

virtue and purity” of the women (Skove Nevels 2007:74) or in Boehm’s terminology, shaming her.

Among the Anglo-Germans or Anglo-Saxons, this narrative of the “violated and imperiled” white woman has been used a justification for many things. Goad (1997) in *The Redneck Manifesto* writes that Oliver Cromwell and the Puritans used the narrative of violated and imperiled English women in Ireland as reason to raise an army and carry out a collective lynching of Ireland. In the context of the Iraq War, the Jessica Lynch capture and torture narrative became a central news narrative in the early days of the war, despite the fact that other soldiers from Lynch’s unit, including a black woman named Shoshana Johnson and a Native American woman named Lori Piestewa, were also taken prisoner in the same ambush (Davidson 2004). Recurring news stories about “missing white females” are a continuation of this racist, lynching narrative. Seldom will American news interrupt and perturb its audiences with narratives of missing black or Hispanic women. For years, Hispanic women have been dying violently and in great number in and around the El Paso-Ciudad Juarez metropolitan area without the media attention of a solitary “missing white woman” like Natalie Holloway, who famously went missing in Aruba in 2008.

The anomic nature of the wars in Iraq and Afghanistan are compounded by, on the one hand, the trajectory of revenge in the tradition-directed societies of those two countries, and on the other hand, the inability to comprehend the trajectories of revenge by the U.S. military. An extreme example of a battle near Najaf, Iraq in 2007 demonstrates a common cycle of U.S. and allied forces reacting with overwhelming

military force and consequently instigating an escalating cycle of tribal or familial vendetta. Although Najaf is an extreme example, it shows a common pattern of McDonalidized warfare (i.e. warfare guided by rules of engagement and various military doctrines) instigating tribal cycles of revenge. Dahr Jamail, an American journalist, reported on the battle of Najaf in 2007 for Inter Press Service:

Conflicting reports had arisen earlier on how and why a huge battle broke out around the small village Zarqa, located just a few kilometres northeast of the Shia holy city Najaf, which is 90 km south of Baghdad.

One thing certain is that when the smoke cleared, more than 200 people lay dead after more than half a day of fighting Sunday Jan. 28. A U.S. helicopter was shot down, killing two soldiers. Twenty-five members of the Iraqi security force were also killed (Jamail and al-Fadhily 2007b).

Various Shiite tribes throughout Iraq make a pilgrimage to Najaf every year as part of their faith (Jamail and al-Fadhily 2007b). As the al-Hatami tribe, who are Shia, approached an Iraqi army checkpoint the Iraqi soldiers opened fire and instantly killed the tribe's chief and his wife (Jamail and al-Fadhily 2007a). Jamail reports that the tribe did not mindlessly open fire, leaving open the possibility that the first gun burst from the Iraqi soldiers might have been accidental:

"We were going to conduct the usual ceremonies that we conduct every year when we were attacked by Iraqi soldiers," Jabbar al-Hatami, a leader of the al-Hatami Shi'ite Arab tribe told IPS [Inter Press Service News Agency].

"We thought it was one of the usual mistakes of the Iraqi army killing civilians, so we advanced to explain to the soldiers that they killed five of us for no reason. But we were surprised by more gunfire from the soldiers" (Jamail and al-Fadhily 2007b).

In line with Boehm's observation on tribal societies and their reaction to deliberate killings, the reaction of the tribe was entirely predictable:

Abid Ali who witnessed the Najaf fighting told IPS that a procession of roughly 200 pilgrims from the Hawatim tribe had arrived in the Zarqa area near Najaf to

celebrate the Ashura festival. Following a confrontation over the procession, Iraqi army soldiers at a checkpoint shot dead Hajj Sa'ad Sa'ad Nayif al-Hatemi, chief of the tribe, as he and his wife sat in their car.

Members of the tribe then attacked the checkpoint to avenge the death of their chief.

"It was after this that the Iraqi army called in the Americans, and the planes began bombing civilians," Ali said. "It was a massacre. Now I believe the internal Shia fighting has entered a very dangerous phase" (Jamail and al-Fadhily 2007c).

The conflict quickly escalated when a second tribe, the Al-Khazaali tribe, who were allied with the Hawatim tribe, also reacted to the deaths among the Hawatim:

"Our convoy was close to the Hatami convoy on the way to Najaf when we heard the massive shooting, and so we ran to help them because our tribe and theirs are bound with a strong alliance," a 45-year-old man who asked to be referred to as Ahmed told IPS (Jamail and al-Fadhily 2007b).

The Iraqi soldiers at the checkpoint, having instigated not one but two tribal vendettas called in their own allies, the U.S. and British armed forces, escalating the level of violence by one more degree:

The fighting took place on the Diwaniya-Najaf road and spread into nearby date-palm plantations after pilgrims sought refuge there.

"American helicopters participated in the slaughter," Jassim Abbas, a farmer from the area, told IPS. "They were soon there to kill those pilgrims without hesitation, but they were never there for helping Iraqis in anything they need. We just watched them getting killed group by group while trapped in those plantations."

Much of the killing was done by US and British warplanes, witnesses said (Jamail and al-Fadhily 2007b).

American and British armed forces reportedly used tanks, AH-64 attack helicopters, and F-16 fighter jets ("US, Iraqi forces kill 250 militants in Najaf"). Among the dead were more than 200 Iraqis, in addition to 25 more Iraqis of the Iraqi security forces, and two American soldiers, crewmen of an AH-64 helicopter shot down during the battle (Jamail and al-Fadhily 2007b; Jamail and al-Fadhily 2007c). The events offended public

sensibilities, since the response, which left women and children dead in the military counterattack violated sensibilities as to what were considered legitimate targets; Jamail reported that the event had widespread impact in Iraqi society:

Many Shias in the southern parts of the country and in Baghdad now say they had been fooled earlier by U.S. promises to help them, but that the Najaf massacre has dramatically changed their views.

Significantly, the Association of Muslim Scholars, a group of Sunni Muslims headed by Dr. Harith al-Dhari, issued a statement condemning the Iraqi-U.S. military attack in Najaf against the Hawatim tribe. The statement, which seeks to bridge a Shia-Sunni divide, denounced the killing of dozens of women and children and added, "It was an act of vengeance and political termination" (Jamail and al-Fadhily 2007c).

Sabotage and incompetent intelligence on the part of the U.S. and its allied forces created this moral disaster for the U.S. occupation of Iraq. Jamail reported on the public perception of the Battle of Najaf (as the pro-American forces and mainstream media – the BBC and the Age of Australia dubbed it) or the Massacre of Najaf, as common Iraqis and independent journalists described it:

Ali added that most people in the area believe the U.S. military was told by Iraqi security forces loyal to the pro-Iranian government in Baghdad that "terrorists" or the "messianic cult" was attacking Najaf. They say the misinformation was intended to mislead occupation forces into attacking the tribe (Jamail and al-Fadhily 2007c).

What happened at Najaf on January 29, 2007 demonstrates the social misunderstanding between trajectories of revenge and an inappropriate military reaction, and almost serves as a story of Iraq in miniature. The American armed forces or their allies create an incident which incites a socially acceptable, indeed required, act of revenge. The act of revenge provokes an overwhelming reaction by the U.S. military. Regardless of the facts, the mainstream media apes the characterization of those killed or captured as

“terrorists,” “insurgents,” and in the case of religious pilgrims to Najaf, as members of a “messianic” or “apocalyptic cult.” Despite a tactical victory (after all, the American military lost two soldiers and a helicopter compared to over 200 dead on the opposing side), the American military suffered a moral defeat in the public opinion of the Iraqi people. This is how the U.S. armed forces can “win” every battle in Afghanistan and Iraq and still lose the wars.

Even when the United States military restrains itself from using overwhelming force by choosing to opt for “targeted drone strikes,” it activates the same dynamic of provoking tribal revenge. Although the mainstream media repeats the military’s phrase of “targeted killing” in regard to missile attacks by drone airplanes in Pakistan and Afghanistan, the attacks provoke “collateral damage.” In a May 2009 *New York Times* editorial piece critical of the use of drone plane attacks, David Kilcullen, a counterinsurgency expert and advisor to General Petraeus, and former army officer Andrew Exum wrote:

Press reports suggest that over the last three years drone strikes have killed about 14 terrorist leaders. But, according to Pakistani sources, they have also killed some 700 civilians. This is 50 civilians for every militant killed, a hit rate of 2 percent — hardly “precision.” American officials vehemently dispute these figures, and it is likely that more militants and fewer civilians have been killed than is reported by the press in Pakistan. Nevertheless, every one of these dead noncombatants represents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased (Kilcullen and Exum 2009).

Strangely enough, Kilcullen and Exum write that the Bush administration decision to increase the use of drone strikes followed the assassination of former Pakistani Prime Minister Benazir Bhutto (2009). The United States government, humanitarian

organizations, and media accounts differ widely on the ratio of civilians to militants killed with U.S. officials claiming that since 2008 over 200 drone missile attacks have killed 1,300 militants at the expense of 30 non-combatant deaths (Capaccio and Bliss 2011). In further analysis of drone missile attacks, Kilcullen and Exum write:

Second, public outrage at the strikes is hardly limited to the region in which they take place — areas of northwestern Pakistan where ethnic Pashtuns predominate. Rather, the strikes are now exciting visceral opposition across a broad spectrum of Pakistani opinion in Punjab and Sindh, the nation's two most populous provinces. Covered extensively by the news media, drone attacks are popularly believed to have caused even more civilian casualties than is actually the case. The persistence of these attacks on Pakistani territory offends people's deepest sensibilities, alienates them from their government, and contributes to Pakistan's instability.

Third, the use of drones displays every characteristic of a tactic — or, more accurately, a piece of technology — substituting for a strategy. These attacks are now being carried out without a concerted information campaign directed at the Pakistani public or a real effort to understand the tribal dynamics of the local population, efforts that might make such attacks more effective (2009).

Drone missile attacks have the hallmark as a form of Puritanical revenge: rather than engage in overtly personal, bloody, violent, and emotional killing, the operators of drone airplanes sit in air conditioned comfort thousands of miles away in places such as Creech Air Force Base in Nevada (O'Connell 2010). In killing "militants" with drones, the American military and its intelligence services have McDonaldized killing using flying robots: the underlying and raging emotions compelling revenge, i.e. the irrational driving forces, are concealed by systematic and technological instruments, i.e. the rational weaponry.

Whether the situation arises in Iraq or Afghanistan, the United States is waging a self-perpetuating war: every person's death — whether innocent civilian or guilty

“terrorist,” “militant,” “insurgent,” “guerilla,” or whatever other term is in vogue – triggers the need by family members to exact blood revenge. Even if the person killed was genuinely waging war against the United States, the person’s death creates an obligatory response by a cousin, brother, father, or uncle to avenge that death. This establishes a situation where the companies of the military industrial complex, who want to endlessly produce the weapons of war, have found an endless excuse to wage war – revenge for September 11th, and to produce an endless supply of enemies. Every person the United States kills, whether militant or not, is replaced with another person intent on waging war. The suppliers of weapons are guaranteed buyers for the foreseeable future.

There is a tremendous disconnect between the U.S. military’s war in the skies against terrorists, militants, insurgents, guerillas, or other appellation for the enemy and the military’s war on the ground. In the sky, the official policy is to use drones to carry out assassinations in full knowledge that civilian deaths (“collateral damage”) will happen. On the ground, the official policy seems to be, at least publicly, a complete reversal of heavy-handed ground combat and policing of civilian populations by the U.S. military. “Counterinsurgency” appears to be a product of institutional reaction-formation by the U.S. Military. In *Rolling Stone* magazine, the reporter Michael Hastings, writing on the replacement of outgoing General Stanley McChrystal in Afghanistan with General David Petraeus wrote:

The irony [of Petraeus replacing McChrystal] is that Petraeus had literally written the book on counterinsurgency, the strategy that was failing so miserably in Afghanistan. After serving two years in Iraq, where he oversaw training of the Iraqi army and police, Petraeus returned to Fort Leavenworth, Kansas, in 2005. Fed up with what he saw as the Pentagon's outdated, Cold War mentality, he took it upon himself to assemble a handful of the military's most dynamic thinkers and

to develop a new field manual, called FM 3-24, which became the basis for America's policy in Iraq. "Counterinsurgency is not just thinking man's warfare," the manual grandly declares of the doctrine now known as COIN. "It is the graduate level of war" (Hastings 2011).

Whereas the military's counter-guerilla strategy originate from a more inner-directed era, the counterinsurgency strategy is more overtly other-directed. Counterinsurgency is about the manipulation of propaganda and of faked sincerity. Although counter-insurgency is promoted as "the graduate level of war," the violent elements of war still exist:

Taking over from McChrystal, Petraeus moved quickly to institute his own, more aggressive version of COIN — one that calls for lots of killing, lots of cash and lots of spin. He loosened the restrictions McChrystal had placed on the rules of engagement, giving U.S. soldiers the green light to use artillery, destroy property and defend themselves more vigorously. He drastically upped the number of airstrikes, launching more than 3,450 between July and November, the most since the invasion in 2001. He introduced U.S. tanks into the battle, unleashed Apache and Kiowa attack helicopters, and tripled the number of night raids by Special Forces. The fighting was calculated to force the Taliban to the bargaining table and reduce NATO casualties, which soared to 711 last year [2010] — the highest of the war (Hastings 2011).

The faked-sincerity and manipulation in counter-insurgency comes in treating the ongoing war as a product or service, and in presenting information as a form of advertising campaign:

Above all, Petraeus launched a full-scale offensive to reshape how Congress and the American people view the war. One lesson he learned during the surge in Iraq is that it's not what's happening on the battlefield that counts — it's what people in Washington think is happening. As Petraeus wrote in *The American Military and the Lessons of Vietnam*, his 1987 doctoral dissertation at Princeton, "What policymakers believe to have taken place in any particular case is what matters — more than what actually occurred." Success lies in finding the right metrics, telling the right story, convincing the right people we're not losing. The key to victory, Petraeus concluded, is "perception" (Hastings 2011).

To Petraeus and other military proponents of counterinsurgency, selling war is like selling McDonald's food: the cruelty in each system must be concealed from the public. No images of death or other depressing information seems to escape the gravitational pull of Afghanistan or Iraq, just like no McDonald commercials show animals in high-density feeding lots or workers abused by their supervisors or customers and disgruntled by low wages. The technology that eventually makes it way back to the United States as a police weapon for use on the civilian population? That is like the cheap plastic toy that comes with the happy meal: a remainder of the experience that is part souvenir and part choking hazard.

The institutional reaction formation to the heavy-handedness of public relations disasters such as the revelation of torture at Abu Ghraib has resulted in wild swings of the pendulum towards "counter-insurgency" and "revolving door" policies. These policies can be seen as compensatory actions meant to erase, as if by magic, earlier actions. During the events leading up to the Baghdad canal killings, the army overcompensated for arbitrary arrests and collective punishment by imprisonment. In his book *Beyond the Green Zone*, Dahr Jamail writes of an earlier act of unjust arrest and collective punishment typical of the war in Iraq:

We were in Fallujah to meet with a law professor named Sheikh Hajji Barakat. But we soon found out that the Sheikh had been being [sic] detained by U.S. soldiers for the past three months and was being held at Abu Ghraib prison. The detention continued despite the fact that the U.S. commander in charge of Fallujah had already admitted to the sheikh's family that the man had been found innocent. Each time the family sought his release, they received the same promise: tomorrow.

'Sheikh Hajji Barakat,' extolled his cousin Khamis, 'is a great, honorable man. He even told the Americans his seven sons are involved with the resistance. This doesn't mean that their father is guilty. But they have detained

him illegally anyway.’ It was apparently yet another example of collective punishment (Jamail 2007:81-2).

The policy and actions by the U.S. Army in Iraq were highly erratic, ranging from the collective punishment reported on by Jamail to overly lenient detention policies.

Soldiers at the court-martial of SGT Leahy noted that a revolving door was the de facto policy for detaining suspected insurgents. The soldiers derisively called it the U.S.

Army’s “catch and release” program. In a person, such erratic swings in action and demeanor would signal serious mental problems. In an institution such as the United States Army, such erratic swings in policy signal severe institutional dysfunction.

During the trial of SGT Leahy, an intelligence officer within his regiment provided such details:

Q. Now, I want to talk to you a little bit more about falling under the final brigade that you mention. What brigade was that, 4/1 ID?

A. Roger.

Q. Now, what were the evidence requirements for detaining detainees under that brigade?

A. The evidence requirements never really changed; those were mandated by Corps. It was two witness statements or two separate sources, i.e., human intelligence reports or two TACREPS [tactical reports]. That was all the evidence that would--that was required, officially, for detainees. 4/1 ID was much more restrictive. They set, kind of, their own standard. They didn’t accept a lot of the evidence from sources; they didn’t accept a lot of evidence from TACREPS. It was incredibly frustrating trying to deal with them in terms of getting detainees, once captured, actually sent away, sent to the Bucca Ahori [phonetic].

Q. So, is it safe to say with each brigade you fell under that the policies and procedures changed?

A. Oh, absolutely. Every brigade had different standards, different methods, different entrance requirements to the DHA. Some of them wanted a battalion to screen all the detainees prior to getting them to the DHA; other brigades were fine with us just taking them straight to the DHA. It was quite the mess, especially changing under four different brigades.

Q. And what effect, to your knowledge, did that have down at the unit level?

A. They experienced some massive amounts of frustration, and I--because I had to debrief everybody that came back off of patrol, I got to experience that firsthand. Quite often it was directed my way 'cause as the guy at the battalion level who've managed detainees, quite often they'd think it was my responsibility and, partially, it was to try and make sure that the packets were straight.

Q. Okay.

A. And then, to have to, you know, go pick up the same guys that they brought in 72 hours later to release them and give them their money that created a huge amount of frustration (Leahy Record of Trial).

The action by soldiers in Alpha Company to shoot detainees who had previously shot at them came out of a context of soldiers chronically deprived of sleep, resources, and manpower. The task of the soldiers, to apprehend insurgents, process them, release them, and begin over again brings to mind the myth of Sisyphus, the king who is punished eternally with the task of rolling a boulder up a hill that always rolls back down, forcing him to restart continuously. The Baghdad canal killings resulted out of this context, of human soldiers being forced to perform a Sisyphean task. Just like in the Sisyphus myth, the soldiers seemed to be condemned to do their task for the same "sin" of which Sisyphus was also guilty: refusing to die. This has also been described as the soldiers being placed in Hobson's choice situations – where one is damned either way – described by others: Joseph Heller's "Catch-22", Gregory Bateson's "double bind," or C.W. Mills' "series of traps" (Mestrovic 2009:19).

Despite implementing revolving door "catch and release" programs for detainees, and a "kinder, gentler" counterinsurgency warfare strategy, the United States has already lost the wars in Iraq and Afghanistan with the release of torture photos at Abu Ghraib. The Global War on Terrorism has been described as a "war of ideas." In fact, *The Final Report of the National Commission on Terrorist Attacks Upon the United States* (also

known as *The 9/11 Commission Report*) states the following about the Global War on Terrorism:

Our enemy is twofold: al Qaeda, a stateless network of terrorists that struck us on 9/11; and a radical ideological movement in the Islamic world, inspired in part by al Qaeda, which has spawned terrorist groups and violence across the globe. The first enemy is weakened, but continues to pose a grave threat. The second enemy is gathering, and will menace Americans and American interests long after Usama bin Ladin and his cohorts are killed or captured. Thus our strategy must match our means to two ends: dismantling the al Qaeda network and prevailing in the longer term over the ideology that gives rise to Islamist terrorism (National Commission on Terrorist Attacks Upon the United States 2004:363).

In the war of ideas, the United States has lost. If the goal was for the United States to show its superiority, or at least adequacy, in civilization to the other nations of the world, that objective has been missed. Abu Ghraib displayed that rather than mete out humane and justly ordered punishment, the United States dispenses punishment arbitrarily, sadistically, chaotically, and mostly directed at individuals who were not involved in terrorism or attacks on the U.S. military (Mestrovic 2007:37). Abu Ghraib is not alone in displaying the arbitrary and chaotic character of U.S. foreign and military policies in the Muslim world, but it has become the symbol for it. The world has reacted against Abu Ghraib in turn, immortalizing the torture in art such as the 2006 movie *Valley of the Wolves - Iraq* (the largest budget movie in Turkish cinema when it was made) directed by Serdar Akar and in a series of paintings by the Colombian artist Fernando Botero.

The sociologist Emile Durkheim offers a theoretical perspective on the sort of community-sanctioned acts of violence to which blood feuds and lynchings belong. Durkheim states that the first form of punishment, let alone justice, was vengeance

([1893] 1997:44). Punishment when applied to people would extend “beyond the guilty person and strike even the innocent – his wife, children or neighbors, etc” (Durkheim [1893] 1997:44). Durkheim adds that a characteristic, too, of punishment, even when it was moderate and aimed directly at the perpetrator is to exceed the original crime. In fact, David Dow, a leading death penalty appeals lawyer in the State of Texas for the StandDown Texas Project, a firm that specializes in criminal appeals, states that he approaches his appeals seldom from the grounds that his clients are innocent of their crimes, but that they are innocent of their sentences (Dow 2010). In punishment, “an eye for an eye”, or the punishment not exceeding the pain and suffering of the original crime, from Durkheim’s point of view, is actually tempered punishment or justice.

Durkheim states of punishment among tribal societies:

Even when it [punishment] is sufficiently moderate in intensity to attack only the guilty person it manifests its presence by its tendency to exceed in seriousness the act against which it is reacting ([1893] 1997:44).

According to Durkheim, this is why clan and tribal feuds are not limited to the individual who committed the first transgression, but punishment and vendetta widens its scope to include the kin of the person who starts a feud. Boehm ([1984] 1991) states too, that when paying back a blood debt, some “interest” had to be paid which accrued if the debt had not been paid back in sufficient time. According to the rules of tribal feuding, the reprisal for one murder in a clan feud might call for the killing of two or more opposing clansmen if too much time passes.

However, these elements of punishment or justice (Durkheim specifically states punishment, but the ideas apply to notions of justice) do not disappear with more

“enlightened” or “modern” societies. Durkheim states that punishment or justice:

adapts itself to the new conditions of existence created for it without thus undergoing any essential changes. This is what happened in the case of punishment... The internal structure of the phenomena remains unchanged, whether these are conscious or not. We may therefore expect the essential elements of punishment to be the same as before ([1893] 1997:45-6).

Even in modern justice, Durkheim states there is an “instinct for revenge”, and that punishment has remained an act of vengeance ([1893] 1997:45-6).

Importantly, Durkheim says that punishment is always accompanied with shame and this element remains even in modern justice ([1893] 1997:47). The added element of shame in justice is motivated entirely by emotion (Durkheim [1893] 1997:47). Shaming is done to “repay evil with evil”, as doing so is a form of “additional tribulation” that serves no other purpose. As in primitive societies when punishment was meted out to inanimate objects or to the extended families of individuals, in modern times the “irresistible feelings” of vengeance “often spread to innocent objects. Thus the scene of the crime, the tools used in it, the relatives of the guilty person – all sometimes share in the opprobrium that we heap upon him” ([1893] 1997:47). In reading Durkheim, it may seem ridiculous that primitive societies would punish and target objects as things to be punished and hated, but this basic “instinct for revenge” remains in modern court rooms. It works itself out in the ritualistic display of crime scene photographs, forensic evidence, documents, and other circumstantial evidence presented to juries. Durkheim’s student, Paul Fauconnet, in his study *Responsibility*, continued this line of inquiry. In punishment, Fauconnet examines how society identifies subjects for penal responsibility, including infants, animals, foreigners, family members, moral

persons, and even the dead. Thus, it is no surprise that in collective punishment in societies, sometimes the object of punishment or vendetta include things such as the killing of animals or the desecration of cemeteries or corpses. The latter is relevant, as in both feuding and lynching, the desecration of the dead was an additional act that continued after a person had been killed.

What connects both blood feuds and Brazos County lynchings is the fact that collective punishment was the expression of collective grief. No doubt, those who lynched were scapegoats, but Durkheim states that punishment in primitive societies would also consume innocent bystanders. In modern terminology, the innocent victims of punishment are “collateral damage”, and one can make the connection that even in modern, scientific warfare with “surgical strikes” and multi-million dollar missiles and robot planes, there is the element of primitive punishment in creating “collateral damage”.

Brazos County in 1890's was undergoing tremendous economic hardship from a national economic depression as well as several consecutive years of droughts. In addition, Skove Nevels points out that the incidents of lynching were also more prevalent in counties where the number of black residents equaled or surpassed that of white residents. All these elements, meteorological, economical, and psychological-sociological expressed themselves in acts of mass punishment upon scapegoats. The modern parallel can be seen in the scapegoating of undocumented migrant workers and their families from Mexico. The United States is in a recession, given the sobriquet of The Great Recession, in which unemployment, foreclosure, and personal bankruptcies

are at record levels. People are suffering and are not sophisticated enough to understand the causes and roots of their problems, and expiate their suffering through collective hatred of undocumented workers. During the Great Depression in the 1930s, collective suffering worked its way into attacks of Hoovervilles and the attack on U.S. military veterans marching on Washington in demand for pay during World War I (known as the Bonus Army).

In present times, the “instinct for revenge” is very much alive in American and Texas justice. Bonilla-Silva (2003), for example, makes a claim that at its surface seems at the far end of the political spectrum by stating that the death penalty, which is disproportionately applied when the perpetrator is black or the victims are white, is a form of “high-tech lynching” (p. 201). Historically, the proof is there to back up this claim. Legislation to criminalize and punish lynching and mob-lead executions came about as a result of state and local governments upset at the property damage done to private and public property, including jails. The death penalty continues as a form of socialized, systematic, even McDonaldized form of lynching in the state of Texas: on Texas’ death row in 2004, 41% of the 450 death row inmates were black in a state where blacks are no more than 11.6% of the population (Bernstein [2005] 2006:179). Of all people executed by Texas since the legalization of the practice, 33% have been black (Bernstein [2005] 2006:179).

In both the concepts of institutional racism, described by Stokely Carmichael, and color-blind racism, described by Bonilla-Silva, the concept is that racism is able to disguise itself and appear invisible to its perpetrators. Thus, the heavy policing of

minority neighborhoods, the disproportionate number of arrests of minorities, and the disproportionate lengths in sentencing are acts of institutional racism and color-blind racism, true, but they are also examples of the “instinct for revenge” with disproportionate punishment for blacks and Hispanics than for whites.

The punishment against minorities in “modern justice” continues to be collective and vindictive punishment aimed at the families of the convicted. The institution of the prison also punishes the families of the convicts through many ways. Visitors must submit themselves to a dress and speech code, are patted down before visiting the prisoners if they are allowed “contact visits”, and are monitored as to the intensity, duration, and number of hugs during “contact visits”.

In the American military justice, and the American military in general, the “instinct for revenge”, and the element of collective punishment are present. In the Iraq and Afghanistan wars, soldiers are punished with multiple and long deployments. Soldiers, too, were allowed a mere four hours of sleep per day, which is a type of psychological and physical punishment. The army continues to ignore PTSD as a real illness, and soldiers and marines are routinely punished for being diagnosed with it. In fact, in 2003 the U.S. Army court-martialed a soldier for “cowardly conduct as a result of fear,” a violation of Article 99 – *Misconduct Before the Enemy*” of the UCMJ (Arillaga 2010). A form of misconduct under article 99 includes misconduct when “Any member of the armed forces who before or in the presence of the enemy (5) is guilty of cowardly conduct.” The elements of cowardly conduct are:

- (5) Cowardly conduct.
 - (a) That the accused committed an act of cowardice;

- (b) That this conduct occurred while the accused was before or in the presence of the enemy; and
- (c) That this conduct was the result of fear (Title 10 United States Code § 899 article 99 (1950)).

The explanations for these terms are:

(5) Cowardly conduct.

- (a) Cowardice. "Cowardice" is misbehavior motivated by fear.
- (b) Fear. Fear is a natural feeling of apprehension when going into battle. The mere display of apprehension does not constitute this offense.
- (c) Nature of offense. Refusal or abandonment of a performance of duty before or in the presence of the enemy as a result of fear constitutes this offense.
- (d) Defense. Genuine and extreme illness, not generated by cowardice, is a defense (Title 10 United States Code § 899 article 99 (1950)).

According to Article 99, the maximum penalty for any infraction is death, "All offenses under Article 99. Death or such other punishment as a court-martial may direct." The details of the soldier's case are these:

He deployed to Iraq in September 2003, a 32-year-old staff sergeant trained in intelligence and interrogation. Based at Fort Carson in Colorado Springs, he volunteered to go to war with a team of Green Berets when another soldier couldn't.

Then, only a few days in-country, [the soldier] saw the shredded body of a gunned-down Iraqi. He had what he thought was a panic attack - vomiting, hallucinations. A psychologist concluded he'd had a normal combat stress reaction and recommended rest, then back to duty.

Instead, [the soldier's] commanders shipped him back to Fort Carson, and he was charged with "cowardly conduct as a result of fear," a crime punishable by death under the *Uniform Code of Military Justice*. The last such conviction in the Army occurred during the Vietnam War.

[The soldier] wasn't convicted. He and his attorney produced findings that showed the breakdown was likely a reaction to the anti-malaria drug Lariam, which has side effects that may include paranoia and hallucinations. The Army eventually dropped all charges, finding [the soldier] had "a medical problem that requires care and treatment."

In April 2005, [the soldier] was medically retired from the Army, with full benefits (Arrillaga 2010).

The soldier's lawyer was able to convince the court-martial that his client's actions were

the result of a medical reaction to the drug Lariam (Arrillaga 2010). The soldier had also been diagnosed prior to his discharge with PTSD, and had he been found “cowardly” as a result of PTSD, he might not have received a medical discharge, ironically. The accusation of cowardice has followed the soldier into the civilian world, as the charge prevented him from employment in law enforcement because his “background wasn’t suitable for employment” as a police officer (Arrillaga 2010).

Courts-martial are a form of collective punishment, not just on the soldier on trial, but on the soldier’s family and on the soldier’s unit. At Leahy’s court-martial, many soldiers from his company and regiment came in his support, including his battalion’s sergeant major, the senior ranking enlisted soldier. During the comfort breaks throughout the trials, the soldiers in the gallery, as well as the attorneys in the trial and Leahy’s family, would wait nearby in the waiting rooms for witnesses, the hallways, or right outside the small courthouse. One could overhear conversations and get a general idea of sentiments and reactions. After SGT Leahy was found guilty of premeditated murder, the atmosphere in and out of the courtroom was funerary. In the hallway outside the courtroom during a break, agonized soldiers remarked to each other that they felt as if they were attending a funeral and not a trial. Another soldier, a sergeant in Alpha Company, remarked after sentencing “now I know what they mean when they say war is hell.” The same soldier had reacted strongly in the courtroom’s public gallery to Leahy’s account of an American soldier’s death while on patrol. The soldier died after his Bradley vehicle was hit by an IED explosion, an explosion so powerful that his body could not be recovered or found (Leahy Record of Trial). That

experience alone did not provoke the comment that “war is hell,” but the additional experience of the court-martial did, and that gives an insight into the powerful emotional effect the trial had on the soldiers. The trial of Jeremy Morlock also had a similar effect on the soldiers of his regiment, who remarked that they felt the unit was being punished as well.

As Durkheim states, the court-martial is a way of marking the persons and objects for punishment for a given crime. The panel, the equivalent of a jury, is given evidence and testimony about the places and tools associated with the crime and witnesses are brought in to bear testimony against the accused. In addition, the family of the accused is probably present in the court room. At the Rose Barracks Army Base in Vilseck, Germany, the family of the accused soldier, Michael P. Leahy, Jr., was present for the entire trial. The soldier’s wife, parents, and parents-in-law, were present during the trial, and in fact, gave testimony about SGT Leahy after his conviction in the sentencing phase of the trial. During the trial, the family usually wept, and by the end of the week, the trial had taken its emotional toll. The trial, essentially, was punishment on the family as much as it was on the soldier.

Additionally, some of SGT Leahy’s comrades from his battalion were also present in the courtroom, and the testimony of the events, which recounted the deaths of fellow soldiers in Iraq, was painful for them. These veterans were in effect traumatized anew by the accounts of their friends’ deaths, and nearly were in tears. The soldiers present from Leahy’s regiment interacted with him, even taking photographs with him outside the courthouse. There was not a general feeling of antipathy towards Leahy for

being on trial. He was not treated as a criminal with whom the community needed to create social distance. On the contrary, Leahy was among his friends. The feeling of antipathy and contempt was instead reserved for a staff sergeant, who made a bargain with prosecutors to drop charges for fistfighting in return for his testimony against Leahy and the other soldiers accused of murder and conspiracy in Leahy's company. Unlike Leahy, hardly anybody spoke with the staff sergeant during comfort breaks throughout the trial. The staff sergeant who testified for the prosecutors on the first day of the trial was waiting by himself in the otherwise empty room for defense witnesses even though he was a trial counsel (prosecution) witness. The other trial counsel witnesses would not tolerate his presence among them. The prosecutor's testifying staff sergeant was extremely nervous and his body language gave signs of wanting to escape, as he was nervously pumping his feet up and down from his chair.

Emory Bogardus' (1947) concept of measuring social distance applies in discussing racial and ethnic relations, but also helps explain the discrepancies in justice between officers and enlisted soldiers in the current wars. At Abu Ghraib, Operation Iron Triangle, and at the Baghdad canal killing trials, the first and sometimes only targets for punishment, justice, or responsibility were enlisted soldiers. Despite the fact that reports such as that by Senators Levin and McCain (2008) exonerated the prison guards at Abu Ghraib, or the wide known fact that the commanding officer in Operation Iron Triangle ordered the soldiers not to take prisoners, the only people held responsible were soldiers who followed orders. The report explicitly states and concludes:

The abuse of detainees at Abu Ghraib in late 2003 was not simply the result of a few soldiers acting on their own. Interrogation techniques such as stripping

detainees of their clothes, placing them in stress positions, and using military working dogs to intimidate them appeared in Iraq only after they had been approved for use in Afghanistan and at GTMO. Secretary of Defense Donald Rumsfeld's December 2, 2002 authorization of aggressive interrogation techniques and subsequent interrogation policies and plans approved by senior military and civilian officials conveyed the message that physical pressures and degradation were appropriate treatment for detainees in U.S. military custody. What followed was an erosion in standards dictating that detainees be treated humanely (United States Senate Armed Services Committee 2008:xxix).

The U.S. Army, even though it is technically a voluntary army, can be understood best as incorporating many elements of a hierarchical authoritarian system as described by Stouffer, et. al (1949). In the case of the U.S. Army, officers feel tremendous social distance from enlisted soldiers. The social distance between the two is tremendous, and it is enforced by complicated sets of rules and traditions. Looking at the U.S. Army in this perspective, courts-martial for the trials related to Abu Ghraib and the other incidents characterized as "war crimes" can be seen as rationalized scapegoating of the socially distant by the powerful.

In nearly every court-martial associated with those events characterized as war crimes, the soldiers have all had elements that added to their social distance from the commissioned officers. Lynndie England and Sabrina Harman were victims of regionalism, as they came from West Virginia. Again, Goad (1997) in *The Redneck Manifesto* makes the point that white privilege is not a constant for all whites; in circumstances such as trials and courts-martial, white privilege disappears, and in fact, being poor and white casts a person into a race category apart from white: the poor white. This was also the case with MSG Hatley during his court-martial for the Baghdad Canal Killings, who had the added social distance of originating from a rural area of

Texas. SGT Javal Davis in the Abu Ghraib trials was black. SFC Mayo in the Baghdad canal Killing trials came from Samoa. In nearly all the trials, the accused had elements which added to their social distance by way of 1) region of origin (nearly all were from rural areas or unincorporated, unorganized U.S. territory) and 2) were from less privileged social strata than commissioned officers.

Puritanism does not eliminate the impulse for revenge. Historically, this has been the case: the English Civil Wars are marked with elements of revenge, with opposing sides taking heads, both literally and figuratively, of Cromwell's family and that of Charles I. Contemporarily, the impulse for and structure of revenge has been sanctioned at the highest levels of the American government in the Global War on Terrorism. From the very beginning of the Global War on Terrorism, the impulse for revenge, and in fact, headhunting has been present. A former CIA official and ambassador-at-large for the Bush administration spoke in terms such as "the gloves are coming off" in official testimony before a Senate committee (Danner 2009). In private briefings to President Bush, the CIA official spoke in similar terms of killing Al Qaeda operatives and that "when we're through with them, they will have flies walking across their eyeballs" (Scahill 2007: 269).

Journalist Jeremy Scahill in his book *Blackwater: The Rise of the World's Most Powerful Mercenary Army* writes of the CIA official's vengeful language:

That September, President Bush gave the green light to [the CIA official] and the CIA to begin inserting special operations forces into Afghanistan. Before the core CIA team, Jawbreaker, deployed on September 27, 2001, [the CIA official] gave his men direct and macabre directions. 'Gentlemen, I want to give you your marching orders, and I want to make them very clear. I have discussed this with the President, and he is in full agreement,' [the CIA official] told covert CIA

operative Gary Schroen. ‘I don’t want bin Laden and his thugs captured, I want them dead.... They must be killed. I want to see photos of their heads on pikes. I want bin Laden’s head shipped back in a box filled with dry ice. I want to be able to show bin Laden’s head to the President. I promised him I would do that.’ Schroen said it was the first time in his thirty-year career he had been ordered to assassinate an adversary rather than attempting a capture. [The CIA official] asked if he had made himself clear. ‘Perfectly clear,’ Schroen told him. ‘I don’t know where we’ll find dry ice out there in Afghanistan, but I think we can certainly manufacture pikes in the field.’ [The CIA official] later explained why this would be necessary. ‘You’d need some DNA,’ [the CIA official] said. ‘There’s a good way to do it. Take a machete, and whack off his head, and you’ll get a bucketful of DNA, so you can see it and test it. It beats lugging the whole body back (Scahill 2007:269-70)!’

The official’s sentence directing the CIA is noteworthy because it captures the Puritan aesthetic for revenge succinctly: revenge killing is Puritanically permissible when it is cleansed of its overtly personal, emotional, and bloody qualities with scientific and hygienic concerns. “Whacking off heads” is acceptable to the Puritan when it is done hygienically with an instrument such as a guillotine, or a technique such as hanging. In the case of taking Bin Laden’s head, that is deemed acceptable because the excuse is given that it is not for revenge but to collect DNA.

The idea that anger and emotion must be concealed when exacting revenge is central to the Puritan aesthetic. A recent example is the March 2011 burning of a Koran in Florida by pastor Terry Jones of the Dove World Outreach Center. After a mock trial, which included the superficial trappings of a real trial, including a seated jury, a prosecuting attorney, and a defense attorney Jones wearing a judge’s robe. The Koran was officially charged with “inciting murder, rape and terrorist activities. It is under suspicion of the direct or indirect murder of millions of people around the world” (“Press Release: Dr. Terry Jones: International Judge (then BURN) the Koran Day”). After

considering the destruction of the Koran by burning, drowning, shredding, or firing squad, 69% of people voting online for the punishment chose burning (“Press Release: Dr. Terry Jones: International Judge (then BURN) the Koran Day”). In the Youtube video posted of the actual burning, Jones made the comment before the burning:

Um, I would like to emphasize again that this is not... uh... with any type of... we do not believe... um, wrong intentions or motives. This is, as you could put it, the desire of the people. This is their chosen form of punishment and the Koran was found guilty (Florida Church Burnt Holy Quran (by Pastor Terry Jones)).

Again, this is notable that even in a bizarre act of revenge, Jones has to make a statement that the Koran is being destroyed not out of spontaneous emotion, but because of an obligation and only after a consultation with the community.

“The gloves are coming off” has an unintended meaning. Aficionados of boxing should note that boxing gloves are meant to protect the boxer’s hands from becoming broken and damaged. Without boxing gloves and sufficient tape, a powerful boxer would break his or her hand at the first punch against an opponent. The boxing gloves are meant to protect the boxer throwing the punch and not the opponent taking the punch. Likewise, the “gloves” that “came off” at the beginning of the Global War on Terror were the metaphorical gloves of human rights and international law. Instead of sustaining broken hands, the United States and its military have sustained a broken reputation among the world community. One can think of the torture at Abu Ghraib, extrajudicial battlefield killings in Iraq and Afghanistan, and human rights violations at Guantanamo, Bagram, and other places as the broken bones inside of the metaphorical hands of the United States. Just as a boxer is diminished in his or her capacity to fight

with broken hands, the United States is diminished in its ability to win the war of hearts and minds with a diminished morality.

Puritan revenge, and even failed revenge, follows a pattern. Sometimes literature serves as a pathbreaker for reality. In the wars in Iraq and Afghanistan, Burdick and Lederer's book *The Ugly American* served as a pathbreaker for nonfiction accounts of inadequate public relations and outreach efforts described in books such as Chandrasekaran's *Imperial Life in the Emerald City: Inside Iraq's Green Zone*. Heller's *Catch-22* and even Kafka's *The Trial* capture the absurdities of military courts-martial described in Mestrovic's *The Trials of Abu Ghraib* and *The Good Soldier on Trial*. The template for failed Puritanical revenge is Melville's ([1851] 1981) *Moby Dick*. The parallels are eerie. In literature of the grotesque, characters with injuries or deformities to their legs are characters with tragic flaws. In Spanish literature, the Diablo Cojuelo (the limping devil) is a grotesque figure; in biblical literature, Asmodeus, whose name from the Avestan language literally translates as "demon of wrath," is another (JewishEncyclopedia.com., s.v. "Asmodeus"). In mythology, the classical grotesque figure of Oedipus, whose name means 'swollen foot', has served as an archetype for study in psychology. In Shakespearean literature, Richard III is another grotesque character who is portrayed with a clubfoot and is consumed with revenge. In cinema, director Werner Herzog depicts the titular character in *Aguirre, the Wrath of God* (1972) in a similar way; Aguirre walks with an exaggerated limp, almost like a spider, and is driven by monomaniacal and egotistical passions in the futile attempt to create an empire out of the Amazon jungle. Like Aguirre, *Moby Dick*'s Captain Ahab is a character who

is consumed with monomaniacal obsessions, and is a human version of Asmodeus. His monomaniacal, irrational obsession with vengeance leads to his own destruction and that of others.

In a strange parallel to literature an officer had been wounded in the leg in Iraq and reportedly kept a metal rod from his leg as a souvenir (Twitty 2011). In his sworn statement, another officer stated:

[his] private comment to me prior to our deployment sums it up best when he stated in his office that he was after revenge for being shot in the leg while serving in Iraq [he] kept the metal rod from his leg on his desk in his office and would use it as an illustration) (Twitty 2011).

In *Moby Dick*, too, there is a sense of foreboding and the notion that matters are askew when it is revealed that Captain Ahab, in addition to the regular crew, has brought his own boat crew of ‘mercenaries’ to hunt after the titular whale. Ahab seems to find validation and support from his second mate, Stubb, who unquestioningly agrees to help Ahab avenge himself.

Although Puritanism seeks to suppress spontaneous emotion through systematic action, it fails to suppress the impulse for revenge. Instead of revenge in its more traditional, and therefore authentic state, Puritanical revenge takes a form in which violence still exists but the existence of the emotion driving that violence is hypocritically denied. When it comes to acts of vengeance, Puritanism is postemotional, characterized by the use of dead, abstracted emotions (Mestrovic 1997:26). Puritanical revenge, which is postemotional, is even more anomic than traditional forms of blood revenge: where traditional revenge had a limit on deaths socially imposed by the

community, there is an apparent infinite desire for revenge – and deaths – in the wars waged in Iraq and Afghanistan. In an account consistent with the postemotional character of revenge in the Iraq war, Dahr Jamail writes of the response to four American mercenaries being ambushed, killed, and mutilated in Fallujah (partially in response to several massacres of protestors in the city at the hands of U.S. soldiers):

On the outskirts of Fallujah, we encountered large concrete blocks and coils of concertina wire across the road. Several U.S. soldiers stood behind these, backed by Humvees and Bradley armored fighting vehicles. Fallujah seemed to be surrounded by the U.S. military, with helicopters rumbling low over groves of date palms in the distance. It was the beginning of Operation Vigilant Resolve. (It surfaced later that the order to lay siege on the city had come from deep within the Bush administration, not via any military channel. In fact, the orders were carried out despite one of the military commanders stationed near Fallujah, who had suggested reconstruction and other projects to win the trust of the people. The pattern was similar to that of the invasion, where high-ranking military officials had had to follow orders against their better judgement. (Jamail 2007:110-1).

Because four mercenaries were killed, the U.S. military assaulted the city of Fallujah twice in 2004. As a result, the U.S. assaults on the city reportedly destroyed 36,000 of the city's 50,000 homes, along with 60 schools and 65 mosques and shrines (Marqusee 2005). Even without putting their “heart into it,” this is the level of destruction possible by Puritan armies.

CHAPTER VI

PURITANISM AND MAGIC

In a modern world, it may seem out of place to discuss the idea of magic. However, the point cannot be missed that since its beginnings as a social movement, Puritanism has been on a self-appointed mission of banishing magic and magical practices among the masses. In its Durkheimian sense, magic involves all rituals which are not shared collectively, but performed by individuals and to which individuals assign their own particular meanings. For example, professional writers have their own particular rituals which they perform prior to writing: Don DeLillo, for example, in an interview said that he plays the jazz piece “Haitian Fight Song” by Charles Mingus as a daily ritual (Brookes 2003). Other writers have their own rituals: Stephen King begins his day at his desk at 8 AM after having tea or coffee and his vitamin; Alexandre Dumas would begin every day by eating an apple under the Arc de Triomphe (Venable 2010). The distinction between religion and magic, or individual-specific rituals, can sometimes be blurry. Christians praying to Jesus for guidance in making a decision would be engaging in a religious activity; a single Christian praying to Jesus for help in finding his or her car keys would not be a religious activity but a magical one¹¹.

Magic and religion are two systems which Durkheim describes as akin ([1915] 1995:39). Like religion, magic also is made up of beliefs and rites, its myths and

¹¹ I do not intend the reader to equate the words magic and magical with words such as wonderful, delightful, or fun. People who resort to magical practices (as sociologically defined by Durkheim) are people who are in desperate situations.

dogmas, its ceremonies, sacrifices, purifications, prayers, songs, and dances (Durkheim [1915] 1995:39-40). The line between the two, magic and religion, can be blurry:

Those beings whom the magician invokes and the forces he puts to work are not only of the same nature as the forces addressed by religion but very often are the same forces. In the most primitive societies, the souls of the dead are in essence sacred things and objects of religious rites, but at the same time, they have played a major role in magic (Durkheim [1915] 1995:40).

However, Durkheim explicitly states that though religion and magic comingle, there is an inherent distinction, and even hostility, between the two:

Must we therefore say that magic cannot be rigorously differentiated from religion – that magic is full of religion and religion full of magic and, consequently, that it is impossible to separate them and define the one without the other? What makes this thesis hard to sustain is the marked repugnance of religion for magic and the hostility of magic to religion in return. Magic takes a kind of professional pleasure in profaning holy things, inverting religious ceremonies in its rites. On the other hand, while religion has not always condemned and prohibited magic rites, it has generally regarded them with disfavor. As messieurs Hubert and Mauss point out, there is something inherently antireligious about the maneuvers of the magician. So it is difficult for these two institutions not to oppose one another at some point, whatever the relations between them ([1915] 1995:40).

The particular hostility between Puritanism and magic is an open and heated one.

Weber also observes, as Durkheim observed, that there is an inherent hostility between religion and magic. Weber goes as far to write that the historic process in the development of religions was the elimination of magic from the world ([1905] 1976:105). Weber states that the elimination of magic:

... which had begun with the old Hebrew prophets and, in conjunction with Hellenistic scientific thought, had repudiated all magical means to salvation as superstition and sin, came here [in Puritanism] to its logical conclusion ([1905] 1976:105).

The genuine Puritan, according to Weber, went beyond rejection of magic to rejection

of all signs of religious ceremony:

[The Puritan] buried his nearest and dearest without song or ritual in order that no superstition, no trust in the effects of magical and sacramental forces on salvation, should creep in.

There was not only no magical means of attaining the grace of God for those to whom God had decided to deny it, but no means whatever. Combined with the harsh doctrines of the absolute transcendentality of God and the corruption of everything pertaining to the flesh, this inner isolation of the individual contains, on the one hand, the reason for the entirely negative attitude of Puritanism to all the sensuousness and emotional element in culture and in religion, because they are of no use toward salvation and promote sentimental illusions and idolatrous antagonism to sensuous culture of all kinds ([1905] 1976:105).

This aversion and hostility to magic, as well as to sensuousness and emotion explains the difference in architecture between Catholic churches and churches more closely identified with Puritanism. For example, in general Catholic basilicas or major churches are more sensuous and ornate than protestant churches. This explains why in Texas, multi-purpose prefabricated buildings normally used as warehouses or cheap office buildings are sometimes used as churches, almost always protestant churches. Since the embellishment and sensuousness of the building has no bearing on its religious functions, the prefab protestant building by the side of a rural Texas highway meets the purposes of its parishioners.

Just as Durkheim notes that generally one finds magic in religion and religion in magic, Weber notes the singular and peculiar characteristic in Puritanism of the absence of magic ([1905] 1976:117). While magic might be present in Catholicism, it was eliminated as a means to salvation for the Puritan:

The rationalization of the world, the elimination of magic as a means to salvation, the Catholics had not carried nearly so far as the Puritans (and before them the Jews) had done. To the Catholic the absolution of his church was a

compensation for his own imperfection. The priest was a magician who performed the miracle of transubstantiation, and who held the key to eternal life in his hand. One could turn to him in grief and penitence. He dispensed atonement, hope of grace, certainty of forgiveness, and thereby granted release from that tremendous tension to which the Calvinist was doomed by an inexorable fate, admitting of no mitigation. For him such friendly and human comforts did not exist. He could not hope to atone for hours of weakness or of thoughtfulness by increased good will at other times, as the Catholic or even the Lutheran could. The God of Calvinism demanded of his believers not single good works, but a life of good works combined into a unified system (Weber [1905] 1976:117).

From a Puritanical perspective, the Catholic act of confession of sins to a priest must seem like a magical act. To a Puritan, the relation between the Catholic priest and the parishioner confessing his or her sins must seem like the relation between a magician and his or her “client” of magic: done in private, away from the inspection and supervision of the group.

The distinction between religion and magic is found in the social relations among its practitioners. According to Durkheim, “religious beliefs are always shared by a definite group that professes them and that practices the corresponding rites” ([1915] 1995:39, 41). Religious beliefs are accepted by all members of a group, but the same religious beliefs also serve to unify the group and are held collectively by the group (Durkheim [1915] 1995: 41). The group forms a church, which is the defining feature of religion:

A society whose members are united because they imagine the sacred world and its relations with the profane world in the same way, and because they translate this common representation into identical practices, is what is called a Church. In history we do not find religion without a Church (Durkheim [1915] 1995: 41).

By contrast, Durkheim states clearly that there is no Church of magic ([1915] 1995: 41).

Magic beliefs may be held by many people, but the crucial distinction is that magical

beliefs do not have the same meaning and action as religious beliefs:

But they do not bind men who believe in them to one another and unite them into the same group, living the same life. There is no Church of magic. Between the magician and the individuals who consult him, there are no durable ties that make them members of a single moral body, comparable to the ties that join the faithful of the same god or the adherents of the same cult. The magician has a clientele, not a Church, and his clients may have no mutual relations, and may even be unknown to one another. Indeed, the relations they have with him are generally accidental and transient, analogous to those of a sick man with his doctor ([1915] 1995:41).

Group membership and identity then is crucial to the distinction between religion and magic.

Durkheim notes that one quality of religious and magical rituals is that of diffusion or contagion ([1915] 1995:327-8). Both religious and magical things contain forces which Durkheim states are external to their tangible beings:

If religious forces are generally conceived of as external to the beings in which they reside, then there is no surprise in the extreme case with which religious forces radiate and diffuse ([1915] 1995:327).

Religious forces are transfigured collective forces (Durkheim [1915] 1995:327).

Durkheim states that religious forces are made of ideas and feelings awoken in individuals by the spectacle of society ([1915] 1995:327). There is nothing intrinsic about particular events, rituals, people, or things that are considered sacred:

[Religious forces] are qualitatively different from the tangible things in which we localize them. From those things they may very well borrow the outward and physical forms in which they are imagined, but they owe none of their power to those things. They are not held by internal bonds to the various supports on which they eventually settle and are not rooted in them. To use a word I have used already and that best characterizes them, they are superadded. Thus no objects, to the exclusion of others, are predisposed to receiving those forces. The most insignificant objects, even the most commonplace ones, can play this role. Chance circumstances decide which are the elect. Let us recall the terms in which Codrington speaks of mana: 'It is a force that is by no means fixed on a

material object, but that can be carried on almost any sort of object (Durkheim [1915] 1995:327).

In other cultures, the words *mojo*, *gris-gris*, *juju*, *karma*, and *taboo* carry this meaning of *mana*. One object may be deemed sacred or cursed, with its sacred or cursed quality having the power to radiate, diffuse, or contaminate people, events, or items in proximity. Durkheim states that since religious forces have no place of their own anywhere, their mobility is easily explicable:

Since nothing binds them [religious forces] to the things in which we localize them, it is not surprising that they escape from those things upon the slightest contact – against their will, so to speak. Their intensity pushes them on toward diffusion which everything facilitates. This is why the soul itself, through holding onto the body with entirely personal bonds, continually threatens to leave it; all the openings and pores of the body are so many channels through which it tends to spread and diffuse to the outside ([1915] 1995:327).

Interestingly, Durkheim states that the contagious quality of sacredness is not a secondary quality but the very process by which sacredness is acquired:

It [sacredness] settles by contagion; we should not be surprised that it is transmitted contagiously. A special emotion gives it the reality that it has; if sacredness becomes attached to an object, that happens because the emotion has encountered the object on its path ([1915] 1995:327).

The sacred quality of objects, rituals, people, and things in general can be transmitted to someone or something else.

Two features are constant in the history of Puritan armies, whether they are the armies of Gustavus Adolphus of Sweden, Oliver Cromwell's New Model Army, or the apotheosis of Puritan armies, the United States Army. The two features are the persistence of magic among the soldiers and a constant hostility towards the use of magic. In the cases of the three armies, religion has always been instituted as a bulwark

against soldiers using magic. Here magic is defined not just as superstitions, but unauthorized pursuits of leisure which assuage the terror of dying on the battlefield. This can be any number of things from outright superstitious beliefs to the use of drugs or alcohol as an escape from the emotional extremes war: endless mind numbing boredom, extreme deprivation, and moments of sheer terror.

The use of magic, or superstition, by soldiers, sailors, airmen, and marines are not particular to the U.S. Army's wars in Iraq and Afghanistan. In fact, the hostility between magic and religion observed by Durkheim and Weber is present from the very start among Puritan armies. Gustavus Adolphus was a seminal figure in establishing armies along Puritan lines and laws:

Gustavus Adolphus' Articles of War of 1621 are considered "a recognizable ancestor of the British Articles of War and the American *Uniform Code of Military Justice*." They provided regular procedures for the maintenance of discipline. Offenses were set out in detail and punishments were specified. Many offenses, of course, were peculiar to the times. For example, "weapon-turners," those who claimed the power to insure invulnerability through magic, were punished under Gustavus' code (Cooper 1981:134).

Adolphus made it illegal, by penalty of death, for soldiers to resort to magic or superstition to avoid injury or death in battle (Cooper 1981:134). In fact, the article of war which outlawed witchcraft was the first article:

Seeing therefore that all our welfare and prosperitie, proceedeth from Almighty God; and that it is all mens duty to feare and ferue him aboue all: Wee freightly hereby charge all manner of Perfons whatfoeuer, that they by no meanes vse any kind of Idolatry, Witch-craft, or Enchanting of Armes, by Devils inchantment any manner of way whatfoeuer. And if any herein be found faulty he shall be proceeded againt according to Gods law and the Swedens: And fo much as the law in that cafe enjoyneth, fhalbe put in execution againt them. And it is further provided, that fuch manner of Malefactors shall by no meanes be suffered to come in Company with any foldiers whatfoeuer (*Article 1 Swedish Articles of War*).

This is a crucial fact that puts many of the Articles of War of 1621 into perspective.

Another innovation particular to Gustavus Adolphus' Articles of War (which was emulated British armies and, later, American armies) was the widespread commissioning of chaplains, as well as appointing them as officers among the army's staff:

The Thirty Years War was a period of savage excess in warfare. It was also a time of religious fervor, and Gustavus personally and publicly supported the latter. In his forces, daily prayer services were held and "Gustavus Adolphus was the first leader to commission chaplains." The preface to the Articles of War and the first sixteen Articles deal specifically with religious requirements and the regulation of chaplains. The first several articles of Gustavus' Code provided death as punishment for dishonor of God by deed or word, with other punishments falling upon soldiers and ministers alike who missed prayer services. The chaplains were held to good conduct under Gustavus' articles, but were not subject to command influence, in that they were appointed and discharged only with the approval of the King's own commission (Cooper 1981:131).⁹

Army chaplains in the Swedish armies under Gustavus Adolphus were not mercifully administering to the spiritual needs of soldiers. They were more like the religious version of political commissars, surveying the ranks not for political dissidents but for religious heretics. Puritans during the English Civil war had self-appointed witchfinders who travelled from town to town. Considering that the army is in many ways like a prison, as an institution belonging to society but in many ways apart from it, army chaplains played the role more of prison guards on the lookout for spiritual crimes and were the institutionalized version of the witchfinder within the military. Contemporary accounts of U.S. Army chaplains by soldiers bear witness that army chaplains are "army first, chaplains second." Many soldiers petitioning for conscientious objector status during the wars in Iraq and Afghanistan have noted that they received very little support from their units' chaplains. On the contrary, stories abound of army chaplains

displaying open hostility to soldiers who attempt the procedure to claim conscientious objector status. According to one news article, an army sergeant had this to say about his experiences with his army chaplain:

[The sergeant] said the officer who took his objector notice dismissed him as a coward. His unit's chaplain offered little encouragement. "You should have had the moral fortitude to deploy with us and see me here in Kuwait to begin your CO application," [The Army Chaplain] said in a recent e-mail to [the sergeant]. "You should be ashamed of the way you have conducted yourself. I certainly am ashamed of you (Cline 2005)."

The sergeant's decision to apply for conscientious objector status came after his first deployment, and particularly an incident in which an Iraqi girl no older than 10 years was denied medical treatment for third degree burns by his unit's officers (Cline 2005).

The army chaplain as a spiritual policeman set the template for other professionals whose jobs involve monitoring the body and soul of the soldier. In many ways, the psychologist is a modern day equivalent of the "doctor of the soul" (literally, as soul is the translation for psyche). A recurring theme in critiques of Army and military psychologists has been their divided loyalties. An example best illustrates this.

In Kelly Flinn's (1997) book describing her experience in the U.S. Air Force, beginning as a student at the U.S. Air Force Academy to her court-martial for adultery, she describes an incident highlighting the divided loyalties among mental health counselors in the military. As a student, Kelly Flinn describes a disturbing event in which a male student entered her dorm room and sexually groped her without her permission (p. 42). After the event began to interfere with her academic performance, Flinn describes a visit to counselor at the Air Force Academy:

I made an appointment that very afternoon. The counselor was a plain woman, fortyish, and dressed in civilian clothes. She seemed nice enough. We made small talk as I told her the basic facts about myself and my family. Then we made another appointment to talk about the reason for my visit. That time, we got down to business right away. I told her all the details of the attack that I could remember. I could not remember, I said, how it ended, or even how it began.

“Well, she said,” let’s trace the evening back.” She was curious about dinner with my parents. She questioned me on every moment, every detail. I was growing frustrated with these questions. When she heard of the toast and the glass of wine, she laid down her pen. She’d heard enough to offer up a diagnosis.

“You are a person who likes to control things,” she said. “And in this situation, you were not in control.”

That was a fact.

“You need,” she said, “to learn that you can be with a man and have control and feel secure, even during a sexual encounter.”

“Now,” she went on, looking at me more closely, “what are we going to do about the underage drinking incident?”

I was speechless.

“It was a glass of wine, with my parents.”

“Are you sure that’s all it was?” she asked. “Are you sure that you remember?”

I felt my face grow hot with anger. She didn’t believe me. Not a word that I had said. To this ‘specialist,’ everything that had happened was about my getting drunk and blacking out while having sex. As if a single glass of wine six hours earlier could have made me fool around with a total stranger in the middle of the night! The counselor had one of the coldest expressions I’d ever seen in my life. It dawned on me that by coming in for help, I had walked into a trap and could end up expelled from school.

“What are you going to do with this information,” I asked.

“Nothing, for now,” she said. “But if there’s another incident of this kind, I’m going to have to report this one, too (Pp. 55-6).”

In that situation, a military health professional plays dual roles, and betrays dual loyalties, of providing counseling to a student claiming a sexual attack while also serving as a policewoman for the Air Force Academy’s drinking policy.

The conflicting role of military doctors in treating Army soldiers while also filling their roles as military officers has been reported to some extent in the media as a

result of the pre-trial detention of PFC Bradley Manning. Manning is suspected and accused of leaking government documents to the website Wikileaks. The group Physicians for Human Rights issued a statement calling into question the role of psychiatrists in monitoring Manning's pre-trial solitary confinement (Pilkington 2011b). Physicians for Human Rights characterized the situation of the military psychiatrists as "trapped in a situation of 'dual loyalty', where their obligations to the military chain of command may conflict with their medical duty to protect their patient" (Pilkington 2011b). A spokesperson for the group issued this statement:

Even if they do not officially approve it, by continuing to examine him and report back to the government on his condition, they are effectively taking part in security operations. Their failure to call it what it is, cruel and inhumane treatment, constitutes a violation of their ethical duties as doctors (Pilkington 2011b).

A doctor, Susan McNamara, for the same group criticized the use of solitary confinement in pretrial, as well as the role of medical military officers in helping to oversee said confinement:

"That is a huge problem, as it is designed to break a person down psychologically. Solitary confinement is a form of sensory deprivation, and if you are depriving a person of the human contact they need that can amount to torture." She added: "In the US, if a patient was treated in a psychiatric hospital in the same way the military is treating Manning, the federal government would stamp all over it ... [it] is disobeying its own rules (Pilkington 2011b)."

McNamara opined that the treatment received by Bradley Manning "appeared to be an extension of the interrogation tactics used against terror suspects in Guantánamo" (Pilkington 2011b).

These observations validate earlier observations of soldiers held in pretrial custody by the U.S. military and the conflicting roles of medical military officers

supervising their health. In his pretrial confinement, PFC Corey Claggett (U.S. Army) was held at a U.S. Navy prison facility in Kuwait (Mestrovic 2009:171). While incarcerated and waiting trial, Claggett was prescribed medicine that had the unfortunate side effect of making him extremely hungry (Mestrovic 2009:177). During this incarceration, Claggett understandably became upset that the Navy guards had neglected to feed him lunch (Mestrovic 2009:175). Claggett cursed at a Navy guard (Mestrovic 2009:175). Unfortunately for Claggett, who as a U.S. Army soldier was not familiar with the U.S. Navy rank system, he picked a Navy guard who outranked him by one rank with whom to argue (Mestrovic 2009:174). Because of this difference in rank, Claggett's verbal outburst was perceived by the guard as "disrespect" – a crime under U.S. military law (Mestrovic 2009:175). A lieutenant commander was the Navy physician for Claggett (Mestrovic 2009:176). At the hearing over a missed lunch and a verbal exchange, the lieutenant commander testified about the episode and had to juggle her obligations to her patient while playing her role as a military officer:

Well, I was in the medical hut at about, I think it was around one o'clock, and I was seeing a patient with my corpsman, and he [Claggett's accuser, the petty officer] came in abruptly and started speaking to me about what kind of schedule Claggett was on and why he is asking for food, and he was very upset. He was huffing, I, and I told him that there should be no problem with the schedule, and it's posted on the board... and I think he wanted to argue with me, and he... [was] huffing like, "Was he on medication when he came here to begin with" [emphasized in a stern voice], and I told him that it was not his business and that it was confidential and, you know, he's on a schedule and the schedule was to go as ordered (Mestrovic 2009:176-7).

The prosecuting officer at the hearing asked the lieutenant commander if she would do anything to cover up a crime if she saw PFC Claggett commit one (Mestrovic 2009:177).

The lieutenant commander stated that she wouldn't (Mestrovic 2009:177). Interesting

to note is how the lieutenant commander's role of acting as Claggett's physician, as well as her explanation for Claggett's behavior was dismissed by the prosecuting attorney as "covering up" a crime. The prosecuting attorney implies or alludes that the lieutenant commander is engaging in a conspiracy after the fact by merely providing an explanation for Claggett's actions. The attorney's last question to the lieutenant commander was, "If you saw PFC Claggett commit a crime, you wouldn't do anything to cover it up, would you?" (Mestrovic 2009:177). This line of questioning betrays a type of thinking by the prosecutor that reflects the morality of the court-martial as a process as applying pressure on the lieutenant commander of being either with the officers and the military or being in league with the accused, or placing the physician in a dilemma. In his account and analysis of this hearing, Mestrovic concludes:

The lieutenant commander seems to have experienced the role strain of trying to fulfill her roles in two distinct reference groups : as a physician, she was obligated to advocate for Claggett as a patient, and as a member of the military, she was expected to side with colleagues who came down hard on Claggett for his "disrespect (2009:177)."

The reference group strain is strong enough to make a physician sympathetic for a patient-soldier's situation to act in a way contrary to her sympathies as a physician and more in accordance with those of a military officer. Even sympathetic physicians, when subjected to the powerful role strain of their military duties, act as unwilling prison guards of the military's surveillance regime.

The contemporary of the seventeenth century "weapon-turner" for soldiers is the drug-pusher among their ranks. The drug pusher is a magician in the sense that his actions are clearly outside the realm of what is publicly accepted and permitted by

society, but also that he has clients who seek him out. American soldiers in Afghanistan use drugs such as hash, marijuana, and heroin for their own reasons, from escaping the fear of death to self-medicating for injuries such as posttraumatic stress disorder and traumatic brain injuries. A study by the RAND Corporation, for example, found that over 300,000 soldiers from the Iraq war suffered from PTSD, and that nearly another 300,000 suffered from mTBI (Mild Traumatic Brain Injury) (“Press Release: One In Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression.”). Much like the seventeenth century Puritan armies employed chaplains as witchfinders, the contemporary Puritan armies within NATO, and especially the United States Army, employ medical personnel as drugfinders. In the AR 15-6 Twitty report it is remarkable that the investigating officer had as much to write on drug use by the soldiers as on alleged murders on illegal escalation of force. The report, too, criticized the leadership for failing to implement the army’s urinalysis program as a deficiency in maintaining discipline and standards:

Leaders failed to use the urinalysis program while deployed. Only a small percentage of the brigade conducted urinalysis testing, and only after it was discovered that Soldiers [sic] in [one of its battalions] were smoking hashish (Exhibit 18, 64) (Twitty 2011).

From a Puritanical perspective, the use of illicit drugs is seen as a form of idolatry or witchcraft. From Durkheim’s perspective, when people in a society want or need something that the society doesn’t provide, the collective consciousness fills the vacuum by creating something. For the soldiers who are burdened by continual deployments, deprivation of sleep, severe injuries (such as traumatic brain injuries), an incompetent and negligent military medical system, and poor leadership, the imperfect substitute

can take shape as the use of drugs.

American soldiers in the wars fought in Iraq and Afghanistan have their own magical rituals and superstitions which are similar to those of American and British soldiers in the Second World War, to just use that war as a reference point. Like rumors, which can be described as irrational feedback or noise produced by rational systems, superstitions foster irrational and magical outcomes (Fussel 1989:48). Fussel, a veteran of the Second World War and later a writer of wartime culture wrote this on the function of wartime military superstitions:

Closely related [to military rumors] by the motive to influence the future mystically are wartime military superstitions. Their mode is a form of instant protective prophecy, and each implies a consoling projected narrative – the New Testament in the breast pocket will charm away bursts of machine-gun fire, the tiny bone elephant carried in the pocket on every bombing mission will deflect the flak. Rigorous attention to such usages will guarantee for the believer a lucky, seamless personal narrative, enabling him to come out of the war as undamaged as he went in (1989:48-9).

Interesting to note is, again, the blurred line between magic and religion; the New Testament carried in the pocket is carried as a magical charm even though it is a religious object.

In both the contemporary American wars and the Second World War, soldiers engage in rituals prior to missions regarded as exceptionally dangerous. These rituals are rarely depicted in war movies, partially because they remind audiences of the deadly nature of war and the military, which can and does call on young people to lay down their lives, but also because of the nature of the rituals. Magical rituals by their nature are offensive to religious sensibilities. During the Second World War, the strategic bombing offensive over mainland Europe was exceptionally violent and dangerous; in

the six years of the Second World War over Europe, over 160,000 allied airmen were killed and over 30,000 allied planes were destroyed (Hatfield 2003:91). Airmen dealt with this in different ways, invoking different rituals and beliefs.

Typical examples can be drawn from British bomber crews during the Second World War dealing with the near certainty of death:

Among the British, Bomber Command was the branch of service most in need of the consolations of superstition, for there the odds of surviving were the worst: out of 100 men, only twenty-four, on an average, could expect to live. When thirty missions constituted a tour, releasing an airman from further obligations, the average number of missions completed was fourteen... No wonder bomber crews chose to believe that empty beer bottles dropped from their planes had the power to blank out German searchlights. 'It was unwise to laugh at this practice,' reports Hector Bolitho, 'so widely and deeply was it believed.' Another way for bomber crews to secure their survival was to urinate communally on their plane's tail wheel before taking off on a mission, or sometimes to do the same – as a ritual of thanksgiving – upon returning (Fussel1989:49-50).

During SGT Michael Leahy's court-martial, many of the witnesses testified as to the exceptionally dangerous circumstances of the soldiers from his regiment in southwestern Baghdad. A witness, an intelligence officer, answered questions from defense counsel to the degree of violence with which Leahy's company was exposed:

Q. Now, I want to talk about from January to May timeframe of 2007. How big was Alpha Company's sector?

A. It was a very sizeable chunk of Baghdad. They had four Hagues [phonetic] which is like an entire neighborhood or below. They neighborhoods of Farat, Amel, Bayaa and Jihad which, approximately--close to a million people.

Q. Okay. Is this normally a size of a sector that a company handles?

A. No. I mean, this--our battalion, when we initially went in we were given all of southwest Baghdad, everything south--anybody that's been there, everything south of Irish and west of Jackson and all the way out into the farmland. I mean, it was a incredibly large sector for one battalion [about 800 soldiers] to have.

Q. Okay. Now, I want to talk a little bit more about the combat environment. And you mentioned, when I talked to you yesterday, about the

amount of bodies that were being found each day in the sector. Could you discuss that?

A. We found--this timeframe, January--actually, November all the way through, if you know that a small marsh bombing happened, it's about all the sectarian violence. The area that they were in was kind of the focal point for sectarian violence within Baghdad. It was one of the big three where Jayish-Almadi [phonetic] and the Shia insurgents were trying to ethnically cleanse those neighborhoods of all the Sunni. They were affluent Sunni neighborhoods, mostly doctors, lawyers, etcetera because they were on the path from the airport to the palace complex over in the green zone. So, we were finding anywhere from 100 to 150 bodies every day, and that's just what our unit was finding. The IP [Iraqi Police] and the INP [Iraqi National Police] were finding even more; and it was a daily occurrence (Leahy Record of Trial).

In addition to being in a heavily violent environment around them, the soldiers of

Leahy's company were also targets. The intelligence officer testified:

A. They were in probably one of the worst sectors in Iraq at that time, which, if you know, it's--that was about the peak of the violence in Iraq.

Q. Okay. And----

A. And it was one of the most kinetic in terms of Iraqi on Iraqi violence, and it was where the Iraqis were--the Shia Iraqis were trying to ethnically cleanse the Sunnis out of there, and then it was also an operational zone for Jaish-Amadi against U.S. forces.

Q. And what type of threats were in that area as far as weaponry or--

A. A little bit of everything.

Q. If you could, please explain that to the panel?

A. It had one of the highest rates of EFP attacks; it was actually an experimental area for Jaish-Amadi, for special groups, Alisab-Bahak, Lebanese Hezbollah, Iraqi Hezbollah, all of them operated in that area. They had--we had the first instances of almost every type of EFP. If they wanted to test it out the first place was usually Sadr City, the next place was Alpha Company sector.

Q. And, if you'd briefly explain, what is an EFP?

A. An EFP is an explosively formed projectile.

Q. And what is the significance of an EFP for an armored unit?

A. It's the most lethal threat to them while they're mounted.

Q. And why is that?

A. Because it has the capability of defeating frag five armor; it'll go right through an 1151 [armored hmwv vehicle]; it will destroy a Bradley [armored personnel carrier]; it'll even penetrate through the skirt of an M-1 [tank] (Leahy Record of Trial).

The intelligence officer testified that every day of their deployment, Leahy's company

received small arms fire attacks, IEDs, and that every patrol was attacked by the enemy in one form or another (Leahy Record of Trial). The word “kinetic” used by the intelligence officer in his testimony is a technical word used in the military which relates to the movement of objects – missiles, bombs, shrapnel, bullets – that can kill an individual. For the outsider, non-specialist, kinetic is another word for “violent.”

The soldiers in Leahy’s company coped with the violence and danger of their mission by turning to MSG Hatley, who was the senior noncommissioned officer and a charismatic leader. Hatley and his soldiers were faced with a set of circumstances that put them in great danger: 1) they were in a violent part of Baghdad comparable in “kinetics” (violence) to the second battle of Fallujah, one of the more destructive battles of the Iraq War and 2) when they captured insurgents, the insurgents were usually returned to the streets quickly. The rules, too, for processing insurgents changed a total of four times during their deployment, according to the intelligence officer’s testimony:

Q. So, is it safe to say with each brigade you fell under that the policies and procedures changed?

A. Oh, absolutely. Every brigade had different standards, different methods, different entrance requirements to the DHA [Detainee Holding Area]. Some of them wanted a battalion to screen all the detainees prior to getting them to the DHA; other brigades were fine with us just taking them straight to the DHA. It was quite the mess, especially changing under four different brigades.

Q. And what effect, to your knowledge, did that have down at the unit level?

A. They experienced some massive amounts of frustration, and I--because I had to debrief everybody that came back off of patrol, I got to experience that firsthand. Quite often it was directed my way ‘cause as the guy at the battalion level who’ve managed detainees, quite often they’d think it was my responsibility and, partially, it was to try and make sure that the packets were straight.

Q. Okay.

A. And then, to have to, you know, go pick up the same guys that they brought in 72 hours later to release them and give them their money that created a huge amount of frustration.

Q. Well, was there any procedures that the Iraqis had or the DHA had, rather, that pertained to witness statements, the number of witness statements you had to have, or were they to be from a Muslim, or anything like--were there any issues such as that?

A. Quite often, especially in 4/1 ID, they wanted actual Iraqi witness statements. They didn't like going off of intelligence alone, you know, anonymous source statements. They wanted Iraqi witnesses, specifically, anybody that had directly witnessed the action, whatever it happened to be.

Q. So, if you didn't have those witness statements from Iraqis, what happened?

A. Quite often the detainees would get turned away. They didn't like accepting--according to the detainee requirements, you could also use U.S. service member witness statements but 4/1 ID in particular really took issue with those. If they weren't filled out perfectly, accurately, they would reject the detainee without even looking at the actual evidence packet.

Q. Okay. Is there any example that you had of when individuals were released as a result of that?

A. Like the one I gave earlier, it was a constant thing, and it happened at least two, three times a week we would roll guys up and then have them released. You had--aside from the example I gave, we also had guys that we'd get engaged with, they would engage one of our patrols, we'd detain them, we'd provide witness statements but because we didn't have a proper 4-diagram or 4 diagrams of weapons in a different room from where the detainees were captured that was deemed insufficient and they'd get released (Leahy Record of Trial).

The Intelligence officer and other soldiers in Leahy's company referred to the revolving-door nature of detainee operations as the U.S. Army's "catch-and-release" program.

Under these circumstances, in which Iraqi insurgents who posed a danger could not be processed as detainees, there was tremendous confusion and frustration among the soldiers in the face of constant danger. Since the soldiers could not look up to the formal chain of command for safety and guidance, they turned to their charismatic First Sergeant.

Weber writes of the world of the Puritan as a world which makes two simultaneous efforts: to rid the world of charismatic authority towards rational-legal authority and to rid the world of magic towards all-encompassing religion. Both efforts

involve a process of disenchantment. In their book on Weber, Gerth and Mills write about disenchantment:

The principle of rationalization is the most general element in Weber's philosophy of history. For the rise and fall of institutional structures, the ups and downs of classes parties, and rulers implement the general drift of secular rationalization. In thinking of the change of human attitudes and mentalities that this process occasions, Weber liked to quote Friedrich Schiller's phrase, 'the disenchantment of the world.' The extent and direction of 'rationalization' is thus measured negatively in terms of the degree to which magical elements of thought are displaced, or positively by the extent to which ideas gain in systematic coherence and naturalistic consistency (1958:51).

If the Puritan views charisma and magic as enemies of secular rationalism, it provides a clue how the two concepts are confounded. In terms of contagion, though the two concepts might be seen as separate entities, by virtue of their inimical qualities to Puritan goals, there is contagion of one idea on the other.

Military courts-martial and appeal hearings have been described as degradation ceremonies (Mestrovic 2009:207). From the Puritan perspective, the courts-martial of these trials are also an attempt at disenchantment from the elements of charisma and magic that became too public, and therefore, too troublesome. Because First Sergeant Hatley's charisma had helped his men survive, but only at the cost of breaking with the rational-legal authority of the U.S. Army (i.e. by executing instead of "catching and releasing" the sniper team that shot at his soldiers), the Army's court-martial of Hatley and his followers can be seen as a rational-legal process of disenchantment.

Fussel describes the common items carried by soldiers in the Second World War as amulets or magical items for luck:

The talismans treasured by the troops [in the Second World War] resemble those popular in the Great War [the First World War]: special coins (Eisenhower had a

lucky set of seven, which he rubbed before crucial operations); St. Christopher medals; key and watch-chain fobs and medallions (1989:49).

Lucky, or magical, coins and other items, as well as the rituals that accompany these items, are also a feature of the wars in Iraq and Afghanistan.

In the contemporary wars, soldiers receive food rations called MREs. Food and its rituals are part of culture, and military food has its own particular culture as well. MREs, which stand for Meals Ready to Eat, are given their own sobriquets by the soldiers: Mr. E (Mystery), Meals-Rejected-by-Everyone, and even cruder names (Sixty-six.org 2005; Severson 2003). All the meals come with a piece of candy, including chocolate covered coffee beans, Twizzlers, and chocolate toffee candies. A particularly hated piece of candy that was included in MREs was the Charms candies, which were fruit flavored hard candies. The ritual, though not universally observed, was for the soldier or marine to discard the Charms candies when they turned up in food rations (Wright 2004:83). The folklore surrounding these candies was that consuming them would bring bad luck, which ranged from making it rain to making someone die. Servicemen and veterans posting on forums and on sites such as Youtube recount the veracity of their claims to the candies' bad luck:

Not sure if you older guys got the Charms candies in your MRE's but they are in them today and they are legendary for bringing bad fortune if you eat them, here's a few of the phenomenon's I have witnessed.

1. On a deployment to Yuma for workup's to OIF [Operation Iraqi Freedom] my Gunny [gunnery sergeant] dared fate claiming "he never had bad luck with charms" and made all of us eat them. The network we had spent all week setting up went down for two days.

2. In MCT [marine combat training] a few PFC's [privates first class]thought they were above the curse of the Charms candies and ate them right before a 6

mile hump[field march] ...It went from sunny to all out rain, the entire hump (“Curse of the Charms Candies”).

If eating the candies was believed to bring bad luck, then the act of discarding the candies can be seen as a ritual negating bad luck.

An article on the first official U.S. Marine mortuary unit gives a glimpse of other items that soldiers and marines carry with them at the moment of death. According to one marine serving in that unit :

We would get everything that the body had on it when the Marine died. Everyone had a copy of The Rules of Engagement in their left breast pocket. You found notes that people had written to each other. You found lists. Lists were common, the things they wanted to do when they got home or food they wanted to eat. The most difficult was pictures. Everyone had a picture of their wife or their kids or their family. And then you had the younger kids who might be 18 years old and they had prom pictures or pictures next to what I imagine were their first cars. Everyone had a spoon in their flak jacket. There were pens and trash and wrappers and MRE food. All of it would get sent back [to the Marines’ next of kin] (Hedges 2011b).

Obviously, personal items such as lists of food to eat upon returning to the United States, or family photos are carried for personal reasons and fit within the definition of magic as meaningful rituals or items that give luck or hope to the individuals.

The items that these marines had in their possession did not differ greatly from what other Americans have carried with them in war. In his novel of the American War in Vietnam, *The Things They Carried*, author Tim O’Brien writes from his experience of the different items that the soldiers had with them:

Until he was shot, Ted Lavender carried 6 or 7 ounces of premium dope, which for him was a necessity. Mitchell Sanders, the RTO [Radio Telephone Operator] carried condoms. Norman Bowker carried a diary. Rat Kiley carried comic books. Kiowa, a devout Baptist, carried an illustrated New Testament that had been presented to him by his father, who taught Sunday school in Oklahoma City, Oklahoma. As a hedge against bad times, however, Kiowa also carried his

grandmother's distrust of the white man, his grandfather's old hunting hatchet ([1990] 1998:3).

In another passage, O'Brien describes the white pebble that the platoon's lieutenant carries, mailed to him from his sweetheart in New Jersey ([1990] 1998:8). Items such as these serve no formal purpose to the soldier, but they do provide some feeling of comfort, luck, or hope.

In the Second World War, an ironic lucky or magical item was the bullet that had come close to hitting or nearly killing its intended target (Fussel 1989:49). Instead of the bullet being the bad luck item one throws away, the bullet which was intended to do harm becomes a good luck object. The same can be said of the other objects which are potentially lethal, including shrapnel. Regarding lucky or magical bullets, from which the owner draws feelings of invulnerability:

Another lucky thing to carry was a bullet that had missed one earlier, a usage apparently related to the believe that no two shells or bombs land in the same place and thus that a shell crater or a bombed site is a good place to hide. Julian Maclaren-Ross war working in the butts on a firing range when a wayward bullet glanced off his helmet. 'For years,' he says, 'I carried this bullet about as the One with My Name On It, possession of which, according to army superstition, guaranteed immortality, at least for the duration.' He was seriously upset when he finally lost it down a London street drain (Fussel 1989:49).

Army rituals and ceremonies, including court-martial proceedings, have already been described as an extension of American Civil Religion (Mestrovic 2009:185). The sociological concept of a civil religion comes from Robert Bellah, though the term "civil religion", as indicated by Bellah originates in Rousseau's *The Social Contract* (Bellah 1967). The term civil religion sparked much debate when it was written, and in explaining himself and the term he had coined, Bellah stated:

I defend myself against the accusation of supporting an idolatrous worship of the American nation. I think it should be clear from the text that I conceive of the central tradition of the American civil religion not as a form of national self-worship but as the subordination of the nation to ethical principles that transcend it in terms of which it should be judged. I am convinced that every nation and every people come to some form or religious self-understanding whether the critics like it or not. Rather than simply denounce what seems in any case inevitable, it seems more responsible to seek within the civil religious tradition for those critical principles which undercut the everpresent danger of national self-idolization (Bellah 1967).

Durkheim defined any religion as a system which made a distinction between what was considered sacred and what was considered profane. According to Durkheim, profane and sacred things could be anything, so long as prohibitions and practices were in place separating one from the other:

Sacred things are things protected and isolated by prohibitions; profane things are those things to which the prohibitions are applied and that must keep at a distance from what is sacred ([1915] 1995:38).

In American civil religion, certain things, people, and events are considered “sacred” in uniquely American way: the American flag, George Washington, and singing the national anthem are examples. There are prohibitions applied to these things: one must not desecrate the American flag, people such as George Washington and Abraham Lincoln are only to be revered (any mistakes or shortcomings as individuals are not taught to children), and purposely failing to stand or remove one’s hat for the national anthem, if captured on camera and widely circulated, has the potential for causing nation-wide hysteria. American cinema has made many films on many subjects, but there is a notable absence of films about George Washington, Abraham Lincoln, or other national “saints” (Benjamin Franklin, Thomas Jefferson, etc.).

An observation to American Civil religion is that if it exists as a religion, then

American Civil religion exists as a postemotional one. In essence as a copy of religion, with ritual, rites, designations of “the sacred” versus “the profane”, but without the meaning and emotion imbued in genuine religious experience:

Civil religion is neither bona fide religion nor ordinary patriotism, but a new alloy formed by blending religion with nationalism. If civil religions were bona fide religions then one would expect to find a soft side to them, teaching love of neighbor and upholding peace and compassion. But this is not the case (Mestrovic 1993:130).

This observation is not alone or isolated. American currency carries the phrase “in God we trust,” but some comedians have noted that “survival of the fittest” is more in line with American values and sentiments. In other words, there is a noticeable absence of “the softer side” of American civil religion. Mostly it seems about “bombs bursting in air” to take the phrase from the national anthem.

The journalist and war correspondent Chris Hedges has posited that to many Americans, war has become a sacred act (2011a). In American civil religion, the idea has become that war is sacred, and that the soldiers have become the priests that enact the sacred act of war (Hedges 2011a). In American civil religion, the American president, speaking to the nation on the need for military actions, has become like a prophet in the literal meaning of the word: as a chosen spokesman delivering God’s own words. Hedges further states that the belief among Americans is that “because we have the capacity to wage war, we have the right to wage war” (2011a). When war is perceived as a sacred act, questioning war becomes a heretical act. Durkheim states:

Just as society consecrates men, so it also consecrates things, including ideas. When a belief is shared unanimously by a people, to touch it – that is, to deny or question it – is forbidden, for the reasons already stated. The prohibition against

critique is a prohibition like any other and proves that one is face to face with a sacred thing ([1915] 1995:215).

The belief becomes an attitude of entitlement that the United States has an inherent right and even duty to wage war when and how it sees fit because of its own perceived righteousness. Waging war, and carrying out other quasi-religious functions, such as having color guards at American sporting events, military airplane flyovers over football stadiums, are ways in which the American military performs rituals that are in communion with the larger American civil religion.

Bellah (1967) doesn't raise the possibility that American civil religion exists in particular ways within different American institutions. An extension of treating the American flag as a national-sacred object in the U.S. Army as an institution, would be to treat objects in accordance to their own particular rites and rituals; thus military banners, uniforms, medals are handled according to their own protections and prohibitions. A soldier being out of uniform or failing to observe military courtesy (e.g. saluting or failing to say "sir" or "ma'am" to a higher ranking officer) is a soldier breaking protections and prohibitions actually codified according to the military.

Thus, it is in accordance to U.S. Army civil religious practices to award medals to individual soldiers, to award citations or commendations to entire army units, and for every army unit, in addition to the national flag, to have its own unit flag with streamers awarded for different campaigns. Streamers are attached to flags and serve as manifestation of battle honors for the unit's service. Sometimes streamers are awards given to a unit, such as the Presidential Unit Citation.

Military bases, in a way, are temples of U.S. military civil-religion. Military

bases in the United States are named after sacred figures of American civil religion or American military religion, which often overlap. Thus American military bases carry names of national or military heroes or civic “saints”, such as Ft. Carson (named after Kit Carson), Joint Base Lewis-McChord (named after the explorer Meriwether Lewis and U.S. Air Corps COL William Caldwell McChord), and Ft. Leavenworth (named after Colonel Henry Leavenworth, who established the American presence near the French Fort de Cavagnal after the French ceded Louisiana). Weber described how, in fact, there was a relationship between military discipline and models for religious life:

Under warrior communism [or communal living, e.g. in barracks] the existence of the warrior is the perfect counterpart to the existence of the monk, whose garrisoned and communist life in the monastery also serves the purpose of disciplining him in the service of his master in the hereafter (and possibly also resulting in service to a this-worldly master). The dissociation from the family and from all private economic interest also occurs outside the celibate knight orders, which were created in direct analogy to the monk orders (Weber in Gerth and Mills 1958:258).

Parallels to the idea of military base-as-temple exist in other institutions in American society, mirroring particular institutional civil religions: prisons in Texas are named after law officers killed in the line of duty, ex-governors, and retired prison wardens (and prison wardens also killed in the line of duty); business schools are often named after the schools’ benefactors and so on.

Military bases are treated as sacred within the American military religion with accompanying protections and prohibitions. There are prohibitions and restrictions against the sale of tobacco, alcohol, and pornographic material at on base commissaries and postal exchanges codified into law under U.S. Code Title 10, Chapter 147 – *Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities*.

The Honor and Decency Act of 1996 amended Title 10, Chapter 147 to end on-base rental and sale of pornographic movies and magazines (H.R.5821 *Military Honor and Decency Act*). Military bases, under federal law (U.S. Code Title 10 Chapter 55) severely restrict abortion procedures:

§ 1093. Performance of abortions: restrictions

(a) Restriction on Use of Funds.— Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(b) Restriction on Use of Facilities.— No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest (*Performance of Abortions: Restrictions*. U.S. Code, Title 10 Chapter 55 § 1093).

On American military bases, all internet access is strictly controlled, with all access points to the Internet running through military web servers. These web servers restrict access to a variety of websites, including pornographic websites.

At times events such as official ceremonies marking a unit's departure for a war zone, take on the trappings of religious ceremonies. Past, successful wars are considered sacred, and the presence of the past is made evident at military ceremonies through various means, such as the streamers attached to flags commemorating past campaigns. Sometimes the past is brought into the present through other symbolic ways, such as having soldiers dressed in period uniforms of previous wars. In such way is there a transfer of the past sacred war to present military campaigns, as the past wars are fought symbolically (Morris and Spagnuolo 2006). An example of this is how soldiers deploying from Ft. Carson in October 7, 2003, in which Secretary of Defense Donald Rumsfeld addressed deploying soldiers of the 3rd Armored Cavalry Regiment (Dunway

2003). A spokesman for the American Indian Movement, Glenn Morris, made these remarks about the event and the photo:

To us, that represents this continuing ideology, this hegemony that Chomsky talks about. And it is confirmation that Rumsfeld and Cheney and the Rumsfeld-Cheney doctrine around the world is an expression that began—an expression of policy that began with Columbus, continued through the entire Indian war period of the United States and continues today. If you look at this picture, you'll see that Rumsfeld is giving a speech, sending off U.S. soldiers from Fort Carson, which is itself, a semiotic—you know, this symbolism of colonialism. Kit Carson was not a hero to native people. Kit Carson was an Indian killer. He caused the relocation of Diné people to Bosque Redondo. He engaged in the Sacramento River Massacre in the 1840s. So Kit Carson was not a heroic figure either....

Fort Carson is named after Kit Carson. So Rumsfeld is giving this speech at Fort Carson, about to send off these soldiers immediately behind him to Iraq, but behind those soldiers is the color guard for Fort Carson. And you'll notice that they're in different uniforms. They're in the uniforms of the Indian wars, of the 1870s, '80s and '90s. And those soldiers represent the continuity, the soldiers immediately behind Rumsfeld represent the continuity of the Indian wars. That is expressed by the color guard, still dressed in the uniform of Custer, of Sheridan, of Crook, of the other Indian killers of the nineteenth century.

And if you look at the picture, you'll see that those soldiers have yellow kerchiefs around their neck. So all of these people that have the support the troops magnets on their car that are yellow ribbons? That's the genesis of that, that they even made—I believe it was 1949—John Wayne made a movie with John Ford called *She Wore a Yellow Ribbon*, and the tradition of those yellow ribbons is that the cavalry that would go out to kill Indians, before they left, they would take that yellow kerchief off, tie it in their wife or their girlfriend's hair, and say, "You wear this until I come back safely from killing Indians." So the Indian wars continue even in these little icons. That's hegemony. It's so impervious—I mean, it's so pervasive in this society that we don't even recognize it (Morris and Spagnuolo 2006).

British observers, in particular, have noted the peculiarity of the U.S. Army's obsession with Native American iconography and symbolism. The names that armies give to their weapons betray the wars that those armies are still fighting symbolically. The American military goes to war wielding Tomahawk missiles, Apache helicopters, and deploying from bases named after figures such as Kit Carson. The British military in Northern

Ireland used Saracen and Saladin armored vehicles in patrolling Catholic neighborhoods, symbolically fighting a Middle East crusade on the Emerald Isle.

As indicated already, magic exists alongside religion. Alongside U.S. Army civil religion, there exists magic, most of it having to do with the practices of individuals or small groups of soldiers. What happens when magic is practiced by larger groups, or is unofficially sanctioned when a high ranking officer who carries out magical practices in front of large groups of soldiers?

Just as religions have sacred texts, the U.S. Army too has its sacred texts on the various facets of its activities known as field manuals. Field manuals range from every conceivable subject pertaining to the military from how to operate individual weapons (FM 3-22.27 *MK 19, 40-mm Grenade Machine Gun, MOD 3*) to manuals related to military health (FM 6-22.5 *Combat Stress*) to how to conduct interrogation of prisoners of war (FM 2-22.3 *Human Intelligence Collector Operations*). The reader should not be surprised that the first armies to systematically print and distribute manuals for its operations were Puritan armies: this was a technology that Cromwell's New Model Army exploited to a degree even beyond that of Gustavus' Swedish army. One can see how several technologies and cultural practices would have facilitated and even make this possible for Protestants over Catholics: the widespread cultural norm for individuals being literate and reading the Holy Bible along with an existing system for publishing and distributing books would have made the printing and distribution of military books, manuals, and pamphlets a logical next step.

Confusion arises when seemingly "heretical" doctrines and manuals are followed

against the orthodox army manuals and doctrines. The distinction seems to be one between 1) an other-directed military and foreign policy mindset of “winning hearts and minds” in order to drive a wedge between a paramilitary force and the population which provides it with support and the alternative 2) inner-directed or even tradition directed mindset of “kick their asses; their hearts and minds will follow.” While the U.S. military has its own detailed field manual for counterinsurgency operations (FM 90-8 *Counterinsurgency Operations*, which is 256 pages long and is no longer an actively used manual) it was supposed to have been replaced by FM 3-24 Counterinsurgency. However, the ideas of FM 90-8 still linger among some officers.

Military units display guidons (a type of flag) and military streamers (long ribbons attached to guidons) at formal ceremonies along with the national and unit flags. All these items carry their own meaning and value. Flags, guidons, and streamers are imbued with a sacred quality in American military religion, and accompanied with their own protections and prohibitions. When units gather in official formation, the commanding officers and the guidons are always in front of the formation. Any disrespect towards guidons and streamers is seen as a dishonor to the unit in general, and a standard bearer who drops a guidon is punished.

Words in religions have their own particular meaning and sacredness. Words, too, can carry magical properties. During the Second World War, soldiers believed that words were magical:

And some words, if said at the right moment, possessed magical properties. Among British troops saying *rabbis* first thing upon waking on the first day of each month was held to be efficacious, and some thought *white rabbits* worked even better. Omitting this ritual could be disturbing. Thus Captain M.J. Brown,

in North Africa, notes in his diary of the first of March, 1943, “I forgot to say ‘rabbits’ this morning – I always do in the first of the month, with unfailing regularity (Fussel 1989:50).”

Names are a type of word that can carry sacred or magical meaning. In certain religions, there are prohibitions against saying or writing the name of God, and there exists too the belief that a person’s name has a sacred meaning revealing the quality of a person’s soul. To take an example from Children’s literature, the Harry Potter books, the characters avoid saying the name of the antagonist, Voldemort, because it is taboo and cursed. Christians, too, believe that using the name of God in vain is sinful. A similar magical practice seems to be in profaning names and adopting nicknames. In some military units, officers’ names themselves became taboo words, venerated by those close to those officers and considered unspeakable by everyone else. In such cases soldiers resorted to the use of radio callsigns replacing the names of their officers.

An item that historically has carried sacred value in American military religion is the army medal. Soldiers who merit recognition historically have been awarded medals. Medals can be understood as the collective effervescence that commemorates an individual soldier’s experiences which uphold the values of the U.S. Army’s collective consciousness, i.e. the Army’s institutionally shared values and memories. The U.S. Army’s action of awarding a medal such as the Purple Heart, given to American soldiers who suffer an injury or death in battle, can be interpreted in terms of an American military religion. The wounded or fallen soldier is recognized collectively as someone who has suffered for the sake of the group, in effect someone who has been martyred. In religion, a martyr is someone who suffers for the sake of the group, whether or not he or

she dies. The military has historically rewarded its service men and women for actions which uphold its values, thus soldiers historically have been decorated with medals for good conduct, gallantry, saving someone's life, meritorious service, suffering by being a prisoner of war, or for serving in various campaigns or theaters of operation (Operation Desert Storm, serving in South Korea, serving in Kosovo, etc.).

Historically, there are no medals awarded to individual American soldiers solely for killing the most enemy soldiers. War is not like video games in this sense. The idea that an American soldier is expected to kill wantonly is not a shared value in the collective consciousness of the U.S. Army. However, in both Iraq and Afghanistan, there were high ranking officers who individually departed from this shared value among their peers. Some officers could resort to established U.S. Army rituals or medals in order to transmit their own personal and deviant values and priorities to their soldiers, so they resorted to idiosyncratic and unsanctioned methods. Again, rituals without a widespread, shared meaning fall under the rubric of magic.

Even the enchantment of weapons with religious, Christian language is seen as suspect and taboo. ABC News broke the story in 2010 that a Michigan based maker of rifle scopes for the U.S. Marines and U.S. Army was secretly inscribing unsolicited Bible codes on their products:

One of the citations on the gun sights, 2COR4:6, is an apparent reference to Second Corinthians 4:6 of the New Testament, which reads: "For God, who commanded the light to shine out of darkness, hath shined in our hearts, to give the light of the knowledge of the glory of God in the face of Jesus Christ." Other references include citations from the books of Revelation, Matthew and John dealing with Jesus as "the light of the world." John 8:12, referred to on the gun sights as JN8:12, reads, "Whoever follows me will never walk in darkness, but will have the light of life (Rhee et al. 2010)."

A critic of coerced proselytizing in the armed forces, very aptly described his objection to the rifles with the offending rifle scopes:

Weinstein, an attorney and former Air Force officer, said many members of his group who currently serve in the military have complained about the markings on the sights. He also claims they've told him that commanders have referred to weapons with the sights as "spiritually transformed firearm[s] of Jesus Christ (Rhee et al. 2010)."

Weinsten, has dubbed rifles with these scopes as "Jesus rifles" being used to wage a crusade (Rhee et al. 2010).

Some noncommissioned officers practiced their own magic in the way of collecting and trading war trophies, namely body parts. In SPC Adam Winfield's statement to Army CID (Criminal Investigation Command) he answers questions pertaining to "war trophies" taken by other soldiers from his platoon:

Q: Does SPC WAGNON have any war trophies?

A: About Jan 10/Feb 10... SPC WAGNON had a clear ziplock bag with a piece of a skull inside it...

Q: Where did he show you the finger?

A: Outside the tents where we use to live.

Q: When did you last see the finger?

A: About Jan 10 or Feb 10.

Q: Do you know where the finger is now?

A: No.

Q: Can you describe the bag?

A: It was a clear and white medical zip lock like the ones we receive medications in.

Q: Can you describe the finger?

A: The finger appeared to be an index finger and looked like it was cut utilizing a surgical blade or surgical shears.

Q: Did PFC HOLMES say why he had the finger?

A: PFC HOLMES stated he wanted to keep the finger forever and wanted to dry it out and that's why he had it in a zip lock bag, and he carried it around with him everywhere. He was proud of his finger.

Q: Did PFC Holmes say where he got the finger from?

A: PFC HOLMES or SPC CHRISTY cut it off the body during the autopsy at the aid station.

Q: Why did PFC HOLMES keep the finger on him at all times?

A: He was proud about it and because he knew that when we all get searched no one ever looks on the actual person they search through the gear. Everyone in the platoon knows your actual person never gets searched (Twitty 2011).

In SPC Winfield's sworn statement, he observes that the finger kept by PFC Holmes as a war trophy served no purpose but as a war trophy, and that the war trophy was of a special, personal significance to PFC Holmes. Other soldiers also kept different body parts with them, and as SPC Winfield would inform Army CID, human body parts as trophies held emotional meaning and value among the soldiers; body parts were traded or gifted among them the way children might trade rare marbles or baseball cards in an inner-directed era, or Pokémon cards in our other-directed era:

Q: Have you seen or heard about SSG GIBBS with war trophies?

A: Yes he had fingers...

Q: Can you describe the fingers?

A: I don't know which fingers and I think there were two fingers, wrapped in a blue cloth.

Q: Where did SSG GIBBS show you the fingers?

A: SSG GIBBS showed me the fingers in someone's room but I can't remember.

Q: Does SSG GIBBS have any other war trophies?

A: He use to have two leg bones but he gave them to SPC KELLY.

Q: Where did SSG GIBBS get the two leg bones?

A: SSG GIBBS was walking around doing his checks on the squad and while he was out on the checks he found a shallow grave and took two leg bones out of the grave and brought them back to the hill and showed 1st squad and the gun team. He pulled the bones out and put them together and moved them like a knee joint.

Q: Can you describe the bones?

A: They were white with dirt covering them, about 12 inches long, it looked like a femur and tibia bone from when SSG GIBBS put them together like a leg in motion, and appeared to be in the ground for a long time, no muscle or tissue left on the bone.

Q: Where are the bones now?

A: SSG GIBBS gave them to SPC KELLY when we returned to [the FOB].

Q: When did you last see the bones?

A: I saw the bones about Apr 10, inside SPC KELLY's room. I was in there with SPC Corey MOORE and SPC KELLY came up to SPC Corey MOORE and hit him with the bones.

Q: Do you know where the bones are now?

A: No (Twitty 2011).

The taking of human body parts as war trophies has a long history in warfare generally, and in the history of the U.S. Army specifically.

In the Pacific theater of the Second World War, the taking of body parts was common for both sides. Japanese soldiers on Peleliu, for example, would decapitate and dismember captured U.S. marines, sometimes rearranging body parts grotesquely for their comrades to discover (Lewis and Steele 2001:148). On the allied side, some soldiers, including Gurkas, Naga tribesmen, and Nigerians fighting in the British Commonwealth forces, took body parts as in accordance with their own particular tribal traditions (Lewis and Steele 2001:148). American servicemen in large number took human body parts as trophies:

The treatment of Japanese corpses as if they were animal became so flagrant as early as September, 1942, that the Commander in Chief of the Pacific Fleet ordered that ‘No part of the enemy’s body may be used as a souvenir. Unit commanders will take stern disciplinary action...’ (Fussel 1989:117).

A trade in photographs of servicemen “cooking and scraping” Japanese heads into souvenir skulls boomed; many of these photos ended as trophies or souvenirs for war wounded in U.S. Navy hospitals in San Diego and Oakland (Weingartner 1992:57). The taking of body parts, despite direct orders from the highest ranking military officers, was ineffective in stopping the practice:

General George C. Marshall, U.S. Army Chief of Staff, was sufficiently disturbed by these accounts to radio General Douglas MacArthur in October 1943 about his ‘concern over current reports of atrocities committed by American soldiers.’ This was followed in January 1944 by a directive from the Joint Chiefs of Staff to all theater commanders calling upon them to adopt measures to prevent the preparation of skulls and ‘similar items’ as war trophies,

and to prevent members of the armed forces and others from removing from the theater skulls and other objects which might be represented as Japanese body parts. Marshall and the Joint Chiefs' effort to terminate the practice of collecting grisly mementos from Japanese war dead proved, however, to be ineffective (Weingartner 1992:57).

In the contemporary war in Afghanistan, allied soldiers too have enacted the practice of taking body parts. Before some soldiers in Afghanistan were brought to court-martial in 2011 for taking body parts, German soldiers as early as 2003 had circulated photos posing with skulls and other human bones ("Skull Images Shock Germany").

In the Second World War, American soldiers took body parts, too, not just as a means of punishing the dead or enacting revenge, but for more complex reasons:

But while some men collected teeth, skulls, and other body parts for reasons of triumphalism, boastfulness or simple hatred, others did so for more complex motives. Sy Kahn served in the US Army's transportation corps. He spent much of his time unloading ships, but the job was far from safe. Enemy action, disease, breakdowns and accidents took approximately half the men in his company out of the war (Lewis and Steele 2001:148).

Kahn was one of many American soldiers, marines, and sailors who took body parts during the war. Kahn described why he took a human skull found on New Guinea:

I wince a little because I kept a skull... It wasn't done with the motive of desecration, it was done with, I think, a kind of curiosity. I've thought a lot about this incident... it was a way of taking the horror out of death and becoming familiar with it, of making it more ordinary... It was a way of looking at that skull and truly saying, 'There but for the grace of God go I, that's what I'll look like, it's not so horrible to become a skull. If that's the end game, if that's part of the end game so be it, it doesn't horrify me, it's sort of interesting... To understand it you have to see it in a spectrum of ghoulishness. By that time we had seen so many ghoulish things, we had seen badly wounded people, mutilated people, scarred people, crazy people, you know, the whole fog of war, that having a skull did not seem as outlandish in that context as it would have in other contexts. It was almost an emblem of who we were, because so many of us were committed to death (Lewis and Steele 2001:148-9).

Kahn's insight is that the skull serves as a magical object that had the power of "taking

the horror of death and becoming familiar with it, of making it more ordinary. (Lewis and Steele 2001:149).” For soldiers such as PFC Holmes who kept a human finger, in the contemporary war in Afghanistan, the taking of body parts might have had a similar effect of making the soldiers familiar with death and removing some of its horror. The photos were likely vicarious forms of revenge for sailors wounded and maimed by their Japanese counterparts.

Why does there seem to be a proliferation of magical practices in a modern institution such as the U.S. military? Although it is established that magical practices in wartime have persisted through the ages, there seems to be a marked increase of the practice among American troops, and even among their leaders, in Iraq and Afghanistan. According to Weber, the rationalization of the world meant the elimination of magic as a means to salvation ([1905] 1976:117). However, with the increased rationalization of military life, especially in wartime, magic has not withered away but instead has made a resurgence.

The Puritans’ weapon against magic was supposed to be their religious practices. Religion, including religion of an apparently nonreligious nature such as civil religion is directed towards the elimination of magic in the world. In relation to salvation of one’s soul, the Puritan made an attempt to eliminate all magic:

The genuine Puritan even rejected all signs of religious ceremony at the grave and buried his nearest and dearest without song or ritual in order that no superstition, no trust in the effects of magical and sacramental forces on salvation should creep in (Weber [1905] 1976:105).

The current practices for handling the military dead follow Puritanical lines of eliminating song or ritual. Once, military civil religion had its strictly adhered rituals for

handling the war dead: ceremonial guards accompanied the casket whenever it was in transit, and every respect was accorded to the dead. Military funerals traditionally have included its own elements apart from civilian rituals including rifle parties that fire volley salutes for the dead, a military chaplain being present for the family members, and a playing of taps on bugle while a ceremonial guard present a final salute. These were the soft elements of compassion and grief that once accompanied military civil religion.

In an other-directed era, which has been noticeable at least since the American war in Vietnam, the “song and ritual” of handling the military dead have become even more Puritanical and have fallen by the wayside. During the Vietnam War, baggage handlers noted that the military sent many military caskets as freight on commercial airliners. A baggage handler’s retrospective was that at a minimum, the Vietnam era caskets were accompanied by a symbolic, solitary officer on board the Flight (Civil Aviation Forum 2005). The solitary officer, representing an atrophied ceremonial guard, would be present outside the aircraft whenever the casket was loaded or unloaded (Civil Aviation Forum 2005). In the present wars, the military has dispensed even with the Vietnam era’s symbolic officer accompanying and supervising the casket (Civil Aviation Forum 2005).

However, even here the Puritanical practice of silencing magic and doing away with ritual have opened the door to magical practices. Commercial baggage handlers in their way introduce their own rituals when handling military caskets. Some adopt the practice of separating the casket from luggage by moving it either last or first (Civil

Aviation Forum 2005). Other handlers use a different cart for transporting military caskets, and even decorating it with American flags and the emblems of the different military services (Rosenblum 2009). Baggage handlers on their own adopt their own practices, such as never allowing the casket to remain exposed to the rain or keeping silent when working around the casket (Civil Aviation Forum 2005). Some practices offend, because they are not standardized and because they are idiosyncratically adapted to fit the circumstances: to keep flags from becoming separated from their caskets, some handlers use duct tape to keep the flags in place, which is interpreted by others as disrespectful both towards the deceased and to the flag (Civil Aviation Forum 2005).

The military rituals which were respected and practiced in an inner-directed era seem to exist as attenuated versions of themselves in an other-directed era. Where military remains were transported with dignity and ritual, caskets are now loaded onto planes along with passengers' luggage or commercial packages. Even military funerals in an other-directed era carry surreal elements of attenuated ceremony. Since military buglers are in short supply, the military has resorted to supplying electronic, digital bugles which are held by an ersatz bugler (McDonough 2004). According to a newspaper account:

Instead of a bugler playing the 24 notes, a computerized chip implanted in the horn renders the heart-stirring song.

A push of a button starts the horn. It sounds a tune that not enough people in uniform can play given the pace of dying veterans and casualties from the Iraq war.

Some traditionalists object, but other people say it's an improvement upon the more widely used substitute — someone bending over and pressing a button on a boom box to play a recording of taps.

"It's the closest and next best thing to the real thing," said Mark Maynard, director of the Riverside National Cemetery in California, where a few of the

Iraq casualties have been buried. "A bone of contention with veterans' organizations and families was just the sound and tackiness of the military carrying boom boxes to play taps (McDonough 2004)."

The inner-directed reaction to a virtual bugle is to consider it less than dignifying when compared to a real bugle. The expected inner-directed reaction to the virtual bugle is expressed in the same article:

Hugh Springston Jr. of Patel, Miss., wouldn't have it any other way. He recently buried his mother, a veteran, at a ceremony featuring a genuine playing of taps, and said his father will deserve the same.

A digital rendition "would make the honor seem phony," he said. "When my father goes, he'll get a gun salute. I wouldn't feel right about them having seven mannequins going out in the field shooting fake guns (McDonough 2004)."

The inner-directed reaction is closer to what Durkheim writes about rituals: unorthodox rituals, i.e. rituals not observing the established prohibitions and practices, are not sacred. Unorthodox rituals are by their very nature phony rituals.

Rituals promote social integration and solidarity, but only if the rituals are sincere, spontaneous, and charged with emotional meaning connecting the rituals to collective beliefs (Mestrovic 2009:185-6). These rituals include those associated with American civil religion and with particular institutional civil religions, such as the particular civil religious rites within the American military. Already, observers have noted that courts-martial are empty rituals that "come across as empty and devoid of emotion (Mestrovic 2009:186)." The emptiness of rituals and other supposedly sacred things in American civil religion is not limited to courts-martial. Even the obligations that the military owes to soldiers, to the war dead, to military families, and to veterans, which are held as sacred obligations, seem to be treated with the same phoniness as electronic, digital bugles: military families rely on food stamps at twice the

national rate, the foreclosure on the homes of military families is four times higher than the national average, and Veterans Administration hospitals are plagued with administrative problems as well as with actual vermin (Douglas 2007; Howley 2008, Mitchell 2009).

The U.S. military's contemporary and other-directed civil religion has retained the outward appearance of its inner-directed past. What has been transformed within the U.S. Army's civil religion is the emotional meaning of its rituals as well as the emotional connection to collective beliefs. This transformation can be described as being postemotional: military burials and other ceremonial rituals are devoid of their original emotional meanings and functions. The U.S. Army's responsibility and commitment to provide its troops with proper leadership, supplies, sleep, and medical care are superficially observed. Many times they are not supplied at all. Societies begin to die when their religious rituals are abandoned. In the case of the U.S. Army specifically, there has been a weakening in the meaning and practice of its institutional civil religion. When religion is weak, including civil religion, societies and its institutions begin to experience deficiencies in social integration. When religion is weak and cannot provide for the emotional needs of its followers, social integration will also be weak, and people will turn to magical practices.

CHAPTER VII

PURITANISM AND NARCISSISM

The American military justice system at times has pathologically narcissistic characteristics, and its Puritan roots give it these narcissistic features. Narcissism in its pathological form finds its expression in the individual as narcissistic personality disorder, a common psychological disorder (Veblen in Mestrovic 2003:4). Outside of the purview of psychology, Narcissism has been treated as a subject within sociology. Christopher Lasch in *The Culture of Narcissism* ([1979] 1991) described narcissism as not only a psychological trait found in individuals but also as a cultural trait, defining it as a social phenomenon. Veblen many years before Lasch made similar arguments on the prevalence of narcissistic-like traits (such as envy, predatory behavior, callousness) in many areas of American society including the conduct of warfare, sports, advertising, fashion, higher learning, and business (Veblen in Mestrovic 2003:4).

The American Psychiatric Association's *Diagnostic and Statistical Manual* in various editions describe narcissistic personality disorder as "a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts as indicated by five or more of the following":

1. Has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)
2. Is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love

3. Believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)
4. Requires excessive admiration
5. Has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations
6. Is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends
7. Lacks empathy: is unwilling to recognize or identify with the feelings and needs of others
8. Is often envious of others or believes others are envious of him or her
9. Shows arrogant, haughty behaviors or attitudes (American Psychiatric Association 1995)

These guidelines are intended for diagnosing individual narcissists, but are also useful in identifying narcissistic behavior within a culture or aspects of a culture. Lasch focused on the cultural production of upwardly mobile narcissists in American society (Mestrovic in Veblen 2003:5). Veblen focused on barbaric attitudes, habits, and behaviors exhibited throughout American social life that can be interpreted as narcissistic traits. Veblen described cultural narcissism from a Durkheimian mode, identifying narcissism as a product of collective consciousness (Mestrovic in Veblen 2003:5). Unlike Lasch who describes the culture of narcissism as one made by narcissistic individuals, Veblen presented a more elaborate and insidious form of cultural narcissism. For Veblen, the culture of narcissism was a structure of social habits by which even otherwise normal and healthy individuals reflect the narcissistic values and norms of their culture:

[Veblen] was exposing narcissistic aspects of some ordinary activities on the part of ordinary persons. In this sense, he was offering a genuinely sociological and cultural explanation that is often disturbing. For example, many readers are offended by his peculiar verbal attack on the ownership of dogs (found in *The Theory of the Leisure Class*) as representing predatory and barbaric values because dogs are allegedly "useless" and therefore, in Veblen's view, are kept primarily as a sign of status... The more important point is that perceiving dogs

as useful is a common rationalization, whereas Veblen continues to offend many people because he exposed the narcissistic element in one of the most common cultural habits of the West, ownership of dogs. He is not saying that dog-owners are narcissistic, but that a culture of narcissism impels ordinary persons toward status-seeking in arenas which one would not ordinarily notice status-seeking (Veblen in Mestrovic 2003:5).

Veblen described many aspects of American culture as narcissistic in which ordinary, healthy individuals accept and partake, including patriotism, conspicuous consumption, and other conspicuous acts now transmitted via Internet including conspicuous marriage proposals and conspicuous family reunions. Other-directed individuals regard acts normally reserved for personal and intimate occasions, such as marriage proposals, to be impersonal and public; the more people view such as acts, e.g. the reunion of children with a parent returning from military service in Iraq or Afghanistan or a marriage proposal before tens of thousands of people in a sports stadium, the more prestige and authenticity is attributed to the act (Mestrovic in Veblen 2003:5). The news usually carries stories of fathers returning from Iraq surprising their sons at school or at little league games, and they are presented as human interest stories (Phan 2011; Kimball 2011; Allen 2011). To question the public nature of the acts, along with virtual worldwide coverage through modern media, violates older social norms or borders on the inappropriate, is taboo. In these cases, the individuals, though other-directed in social character, might be otherwise healthy and normal individuals, but their conspicuous acts reflect a much larger cultural narcissism.

Lipset in *Continental Divide* writes about the difference in character between Canada and the United States. Lipset attributes the differences in character between the two nations to their religious roots:

From the beginning, America was heir to a Calvinistic Puritanism that was stronger in many of the colonies than in the mother country, and it was congenial to modernity in a sense that the Anglican Church in English Canada and the Gallican Church in Quebec were not. The two denominations, Methodist and Baptist, that became dominant in America stressed religious doctrines that supported 'anti-aristocratic tendencies.' During and after the Revolution, the Calvinist doctrine of innate predestination was gradually supplanted by Arminian belief, which emphasized the personal attainment of grace embodied in 'doctrines of free will, free grace, and unlimited hope for the conversion of all men.' Even more than Calvinism, it served as a religious counterpart to the democratic goals of equality and achievement (1990:13).

An argument can be made that a religious belief in predestination fell by the wayside in American biblical religion, but the belief in predestination in American civil religion has never disappeared. An interpretation of a religious passage such as Psalms 2:8 ("Ask of me, and I shall give thee, the heathen for thine inheritance, and the uttermost parts of the earth for thy possession") survives in a transformed state in the American civil religion dogma of manifest destiny. Even if religious Calvinistic Puritanism was overtaken by religious Arminian Puritanism, American civil religion (Bellah 1967) is a civil form of Calvinist Puritanism.

Although Lasch in writing about the culture of narcissism does not mention American exceptionalism, and Lipset writing about American exceptionalism does not mention cultural narcissism, there appears to be a strong relationship between the two phenomena. Many of the attitudes and actions taken by the United States as a nation can be described as being simultaneous expressions of cultural narcissism and expressions of American exceptionalism, both of which have their cultural roots in Puritanism. This is seen throughout society. In its governmental and private institutions, American narcissism and American exceptionalism are evident in policies concerning other nations

and individuals. A full discussion of the complex relationship among the three phenomena, American cultural narcissism, American exceptionalism, and American Puritanism is beyond the scope of the present study, but a few examples should illustrate their relationships with each other.

Lipset and others have argued that American exceptionalism as an ideology determines American behavior, both domestically and in relation with other countries (Lipset 1996:267). While it is true that American exceptionalism is an ideology, no ideology would be supported without it resonating with underlying emotions and sentiments. An analogy can be drawn from the Freudian understanding of being: a mere fraction of being is conscious being made up of thought with an even larger part of being composed of unconscious emotions and thoughts. American exceptionalism is the conscious expression of an unconscious and fundamental American Puritanism. Tocqueville noted that the American religious ethic served as the foundation for both the bourgeois economy as well as liberal polity of the United States (Lipset 1996:60). Tocqueville wrote that “Puritanism was not only a religious doctrine; it linked itself in several respects to the most prominent democratic and republican theories” ([1835] 2003:43). According to Lipset, the congregational aspect of the Protestant sects have promoted ideas central to American exceptionalism such as egalitarian, individualistic, and populist values (Lipset 1990:61). The political and religious ethea in America reinforce each other (Lipset 1990:61).

The conscious portion of American being has exhibited and continues to exhibit pathological narcissistic traits. Vaknin (2007), a recognized authority on Narcissism,

describes in his book *Malignant Self-Love: Narcissism Revisited*, how various Narcissistic habits and actions manifest themselves in various social interactions between a narcissist and others or in dimensions of a narcissist's life, such as the narcissist's inability to handle the reality of aging, abusing language in order to hurt people, or exempting oneself from the rules that everyone else has agreed to follow. Vaknin writes about the pathologically narcissistic person, yet his insights have relevance and parallels to pathological narcissistic behavior by nation-states, including the United States. For example, Vaknin writes of the relationship between narcissistic parents and their children:

At the risk of over-simplification: narcissism tends to breed narcissism – but only a minority of the children of narcissistic parents become narcissists. This may be due to a genetic predisposition or to different life circumstances (like being the firstborn). Still, MOST narcissists have one or more narcissistic parents or caregivers (p. 493).

Tocqueville, again, remarks that the social character of a nation is like that of an individual, found already formed at an early age and not in a process of formation in early adulthood:

Step back in time; look closely at the child in the very arms of his mother; see the external world reflected for the first time in the yet unclear mirror of his understanding; study the first words which arouse within him the slumbering power of thought; watch the first struggles which he has to undergo; only then will you comprehend the source of the prejudices, the habits, and the passions which are to rule his life. The entire man, so to speak, comes fully formed in the wrappings of his cradle. Something similar happens in the case of nations; they always carry the marks of their beginnings. The circumstances which accompanied their birth and contributed to their development affect the remainder of their existence ([1835] 2003:37).

American exceptionalism and narcissism finds their origins in British exceptionalism and narcissism. America's narcissistic "mother" was imperial and narcissistic Britain.

To the present day, the parallels in this social pathology remain between the two nations. Both American and British nativism – or opposition to immigration – for example, will resort to the same uses of language to denounce a perceived “flood” of immigrants. Studies of American news articles on immigration show a repeated use of “dangerous waters” metaphors (floods, flows, waves, etc.) to denounce Hispanic immigration, a use of language that mirrors that used in Britain to denounce immigration from the Caribbean and South Asia (Santa Ana 2002:77). The infamous British example of the “dangerous waters metaphor” is Enoch Powell’s “Rivers of Blood” speech, in which the Conservative Party member of Parliament used inflammatory language to decry immigration into the United Kingdom; the song “Get Back” by the Beatles in fact satirized Powell’s infamous speech in its lyrics (Sulpy and Schweighardt. [1994] 1997:153). Excerpts from Powell’s speech in 1968 seem strangely familiar when compared side by side to American anti-immigration language in the early twenty first century:

But while, to the immigrant, entry to this country was admission to privileges and opportunities eagerly sought, the impact upon the existing population was very different. For reasons which they could not comprehend, and in pursuance of a decision by default, on which they were never consulted, they found themselves made strangers in their own country. They found their wives unable to obtain hospital beds in childbirth, their children unable to obtain school places, their homes and neighbourhoods changed beyond recognition, their plans and prospects for the future defeated; at work they found that employers hesitated to apply to the immigrant worker the standards of discipline and competence required of the native-born worker; they began to hear, as time went by, more and more voices which told them that they were now the unwanted (Powell 1968).

Support for anti-immigration legislation in different states similar to Arizona’s SB 1070 echo the same sentiments in an American setting:

Georgia officials who supported the law said the federal government's inaction on immigration forced it to take the matter into its own hands. They said that undocumented immigrants were a *drain* on the state's resources -- including schools and hospitals -- and were taking jobs away from legal residents [emphasis added] (Elizabeth 2011).

Anti-immigration hysteria has even made itself at home in academia, no longer confining itself to state legislatures and talk radio. Samuel Huntington's (2004) ode to the uniqueness and supremacy of Anglo-centric, English-speaking America is the book *Who Are We?: The Challenges to America's National Identity*, which reads very much like Enoch Powell's "Rivers of Blood" speech, only with an American, academic audience in mind.

The imaginary self with extraordinary achievements and abilities is one part of the Narcissist's identity. Ultimately, the narcissist must reconcile the imagined self with reality, and rather than resolve the difference in an honest way the narcissist resorts to pathological alternatives. Vaknin states that narcissists have grandiose fantasies that inevitably clash at some point with reality (2007:70). Sometimes the gap between reality and fantasy is so wide that the narcissist recognizes it, yet the knowledge of this insight does not alter the narcissist's beliefs or behavior:

Still, this insight into his real situation fails to alter his behavior. The narcissist knows that his grandiose fantasies are incommensurate with his accomplishments, knowledge, qualifications, skills, status, actual wealth (or lack thereof), physical constitution, or sex appeal – yet, he keeps behaving as though this were not the case (Vaknin 2007:70).

When a narcissist has a period of relative success in his past, this problem intensifies itself:

Has-been and also-ran narcissists suffer from a Grandiosity Hangover. They may have once been rich, famous, powerful, brilliant, or sexually irresistible, but

they no longer are. Still, they continue as though little has changed (Vaknin 2007:70).

American popular culture has an entire systemic, cultural genre dedicated to the Grandiosity Hangover: reality television shows specializing on has-been and also-ran celebrities. The success of a music video in the 1980s practically insures that a has-been celebrity will have a reality television show centered around nothing special in particular, from Ozzie Osbourne buying a can opener at the shopping mall to Vanilla Ice building plant stands for a house he would like sell¹².

On the level of nations, the United States is experiencing its own Grandiosity Hangover in which the ruling class in the country has its own McDonaldized fantasies of national grandeur on a world stage despite the realities of economic and social collapse. In fact, the Grandiosity Hangover has its own name patterned after the titles of reality television shows such as “The Osbournes” and “The Vanilla Ice Project,” shows which are centered on those celebrities’ Grandiosity Hangovers. That name of America’s Grandiosity Hangover centered show is The Project for the New American Century or PNAC. PNAC is an already-packaged, ready-made Grandiosity Hangover. In fact, PNAC had been sitting under a heating-lamp, as it were, for years before the September 11, 2001 terrorist attacks. Like the McDonald’s Happy Meal, PNAC already came packaged and prepared and even included special gifts inside for America’s ruling class: increased surveillance powers over society and billions of dollars in dubious “reconstruction” projects in Iraq and Afghanistan. Extreme critiques of the Project for

¹² The idea of a reality television show, or a show where “nothing special happens” has been attributed to Andy Warhol in his book, *The Philosophy of Andy Warhol: (From A to B and Back Again)*. Warhol’s title for his own show was *The Nothing Special Show*.

the New American century are represented by the voice over to the film “What Barry [McNamara] Says” (2004), a three minute short directed and written by British actor Simon Robson in response and protest to the invasion of Iraq by the United States in 2003:

The United States of America is the most powerful nation on Earth. In itself this goes a long way towards explaining the things it does around the globe. At present it's conducting a War on Terror or, more accurately, a campaign against opposition to U.S. domination. Others prefer to call it the beginnings of the Third World War. The United States has an insatiable appetite for conflict, and since going into Korea in the 1950's, it has been at war with someone or the other, in some corner of the globe, non-stop right up to the present day. This drive is now lead by the weapons manufacturers themselves. It is a highly dangerous precedent. I call it war corporatism. It is the door of a new fascism being pushed opened, but don't be fooled. Not all fascism looks like Adolf Hitler. The reality as we see from the Iraqi invasion is that the presidency has been captured by the most powerful elements of this corporatism. This ghastly molecule aims to turn the world into its very own enslaved global market, and the plan is well underway. The attack by Al Qaeda on the World Trade Center is just one response to it. Is this a conspiracy?... quite the opposite... it is a high profile project known as the “Project for the New American Century.” People like Dick Cheney, Donald Rumsfeld, Richard Perle are the major players among politicians, right wing thinkers, militarists and industrialists in the creation of the project. The project is a neo conservative manifesto, which includes in its tool box, the unbridled use of war in clearing a path for U.S. interests. The will to attack Iraq came entirely from this visible yet sinister group of people. 9/11 was merely the pretext. Bush is merely the figurehead (Robson 2006).

PNAC's own declaration of principles states:

American foreign and defense policy is adrift. Conservatives have criticized the incoherent policies of the Clinton Administration. They have also resisted isolationist impulses from within their own ranks. But conservatives have not confidently advanced a strategic vision of America's role in the world. They have not set forth guiding principles for American foreign policy. They have allowed differences over tactics to obscure potential agreement on strategic objectives. And they have not fought for a defense budget that would maintain American security and advance American interests in the new century. We aim to change this. We aim to make the case and rally support for American global leadership. As the 20th century draws to a close, the United States stands as the world's preeminent power. Having led the West to victory in the Cold War, America

faces an opportunity and a challenge: Does the United States have the vision to build upon the achievements of past decades? Does the United States have the resolve to shape a new century favorable to American principles and interests?... Our aim is to remind Americans of these lessons and to draw their consequences for today. Here are four consequences:

- we need to increase defense spending significantly if we are to carry out our global responsibilities today and modernize our armed forces for the future;
- we need to strengthen our ties to democratic allies and to challenge regimes hostile to our interests and values;
- we need to promote the cause of political and economic freedom abroad;
- we need to accept responsibility for America's unique role in preserving and extending an international order friendly to our security, our prosperity, and our principles.

Such a Reaganite policy of military strength and moral clarity may not be fashionable today. But it is necessary if the United States is to build on the successes of this past century and to ensure our security and our greatness in the next (Abrams, et al. 1997).

Lost in the narcissistically grandiose language of the declaration of principles is the reality that the new century will be one likely marking China's arrival as the preeminent global superpower rather than the new century being a continuation of the previous, "American", twentieth century. The Project for the New American Century (or PNAC) ceased to exist officially in 2006, renaming and rebranding itself as the Foreign Policy Initiative (Lobe 2010; Reynolds 2006). The real continuity is in the adoption of PNAC's aims and principles as the new consensus in American foreign policy, and observers have noted how the foreign policy of the Obama administration is a continuation of the Bush administration with trivial differences on marginal issues.

In pursuit of this distorted view of itself through a pathological foreign policy, the United States as a narcissistic nation has reacted in predictable ways. An irony of narcissism is that every single narcissist views himself (or, more rarely, herself) as unique and special, but as Vaknin indicates, narcissists are entirely predictable in their

disordered behavior and thoughts. Thus, all narcissists, for example, create narcissistic spaces for themselves:

The process of obtaining, preserving, accumulating and recalling Narcissistic Supply take place in the Pathological Narcissistic Space (PN Space). This is an imaginary environment, a comfort zone, demarcated by the narcissist. The PN Space has clear geographical and physical boundaries: a home, a neighborhood, a workplace, a club, a city, a country.

The narcissist strives to maximize the amount of Narcissistic Supply that he derives from people within the PN Space. There, he seeks admiration, adoration, applause, or, as a minimum: attention. If not fame – then notoriety. If not real achievements – then contrived or imagined ones. If not real distinction – then concocted and forced “uniqueness.”...

The narcissist ages disgracefully, ungraciously. He is not a becoming sight as his defences crumble and harsh reality intrudes: the reality of his self-imposed mediocrity and wasted life. These flickers of sanity, these reminders of his downhill path get more ubiquitous with every day of confabulated existence (Vaknin 2007:160).

Many American examples abound of Pathological Narcissistic Space, both from fiction and from reality. In cinema, an example of PN Space comes from the movie *Sunset Boulevard* (directed by Billy Wilder, Paramount Pictures, [1950] 2002). The movie mostly takes place in the decaying mansion of former silent-movie star Norma Desmond (played by Gloria Swanson), an aging screen star past her prime, whose celebrity status has been suspended by the public, and who has faded into obscurity. Norma refuses to believe that she has faded away, famously declaring, “I am big, it's the pictures that got small!” In the movie, Norma’s mansion is a trap, like a spider’s web, for an aspiring actor who is seduced into her financial dependence. The character Joe Gillis (played by William Holden) endures repeated viewings of Norma’s silent films and other pathological activities, including dressing up in formal wear for a New Year’s Eve party where no one else has been invited. When Joe realizes he would respect himself more

by leaving and becoming a struggling, independent man rather than by staying as a kept toy, Norma, sensing the final loss this would mean for herself as a film star, shoots Joe with a gun. When the police and news cameras finally arrive at the closing of the movie, Norma is totally lost inside her fantasy believing herself to be on a film set. She utters her other famous line from the movie, “All right, Mr. DeMille, I'm ready for my close-up.” In both fact and fiction other examples of Pathological Narcissistic Space would include the Xanadu estate from *Citizen Kane* (directed by Orson Welles, Warner Brothers, [1941] 2001) and the entire country of Romania under Nicolae Ceaușescu.

On the level of a narcissistic nation, the United States has its own Pathological Narcissistic Spaces. Currently, the United States has hundreds of military bases throughout the world, a number that is unknown:

The answer to the seemingly simple question, “How many military bases does America have outside of our own country?” is not at all simple. In a recent article in *Asia Times*, investigative reporter Nick Turse calls the answer to that question, “. . .the one number no American knows. Not the president. Not the Pentagon. Not the experts. No one.” You can't get a consistent answer from news stories, that's for sure. Recent articles, media reports and op-eds peg the number variously at 460, 507, 560, 662 and more than 1,000 (Bilchik 2011).

In some ways, United States military bases, embassies, and other properties or territories that the U.S. Government occupies have elements of narcissism. Certainly fast food outlets such as McDonald's, Starbucks, and Dunkin' Donuts can be seen as bases or outposts of American culture overseas and as American Pathological Narcissistic Spaces. These Pathological Narcissistic Spaces do not adapt themselves more than superficially for local cultures. Burger King, as an example, keeps the name “Whopper” on its menus in Latin America even though Spanish scarcely has any words beginning

with “W,” a letter that is nearly impossible for native Spanish-speakers to pronounce without adding a “V” or hard “G” before it. Travel books for Americans indicate that there is almost always a McDonald’s near famous European landmarks such as the Eiffel Tower in Paris or the Spanish Steps in Rome. Thanks to travel guides and McDonald’s, Americans are liberated from the burden of having to eat French or Italian food if they must travel to Europe.

In fiction, the book *The Ugly American* describes U.S. embassies and the cocktail parties for their staffs as being golden ghettos where Americans fraternize nearly exclusively with other Americans and where they are nearly and entirely insulated from the local culture. William Lederer and Eugene Burdick (1958), the authors of *The Ugly American*, write about Americans in foreign countries sharing dinner at embassy events which include not one dish or food from the national cuisine outside the embassy gates, and scarcely if any foreign nationals in attendance other than cooks, wait staff, drivers, and the like. Lederer and Eugene referred to this American lifestyle in foreign lands as S.I.G.G. or “Social Incest in the Golden Ghetto” (p. 234). In the war in Iraq, the non-fiction book that reads like a modern-day update to *The Ugly American* is the book *Imperial Life in the Emerald City: Inside Iraq’s Green Zone* by Rajiv Chandrasekaran (2006). *Imperial Life in the Emerald City* describes life in America’s so-called Green Zone, or the area in Baghdad used during the war in Iraq for central organization. The military and civilian headquarters for the American occupation were located there. There was a grand disconnect between life inside the Green Zone and life just outside the gate. Inside the Green Zone American and allied (meaning British) military and

government personnel, as well as military contractors could enjoy such amenities as swimming pools, buffets with pork on the menu, discos, and the only bars in Iraq to serve alcohol. As a stark example of social distance trumping physical proximity, Chandrasekaran writes about Walid Khalid, an Iraqi who returned from Italy to his homeland following the 2003 invasion (p. 100). Khalid, hoping to introduce pizza to Iraq, placed a pizza shop outside of the Green Zone in a hope to attract American customers (p. 100). Chandrasekaran reported that Khalid had not one American customer in the time he was in Iraq (p. 100).

In an inner-directed era such as World War II, a military compound within an occupied country would appear as if it were truly a military compound providing the bare essentials and few luxuries. During World War II, for example, the United States military adapted to the necessities of war by housing their personnel in Quonset huts, the metallic buildings that resemble giant cylinder halves laid on their sides with windows and doors, designed not for comfort but for transportability and easy assembly. Quonset huts were designed, built, and used in a frugal manner. In a marked contrast to an inner-directed military compound, the Green Zone seemed to be more like a theme park, perhaps better named America-land, which was modeled after and resembling the other-directed, narcissistic American culture from back home. If the Second World War model of fast moving warfare by the Germans was known as the Blitzkrieg, the opulent mode of sedentary warfare in Baghdad's Green Zone by the United States might come to be known as the Ritzkrieg.

Though not as lavish as Baghdad's Green Zone, even the U.S. Army base of

Rose Barracks near Vilseck, Germany, had its own movie theater, Dr. Pepper vending machines, Harley Davidson motorcycle dealership, Baskin Robbins (closed for the winter), Burger King, and Subway Sandwiches. While far from being pure luxury, the American base gave off the atmosphere of being a small American town such as Navasota, Texas. Even during SGT Leahy's trial, his attorney, Mr. Frank Spinner accidentally referred to "this country" when referring to the United States while trying a court case on German soil when he said, "... we've brought in two leading experts in this country to help you understand..." Nobody seemed to be greatly bothered by the mistake, and the statement was not corrected by the judge. The illusion that one was not in an American town was broken when one noticed that the workers refilling the vending machines or fixing one's Subway sandwich were speaking German to each other.

Relevant to legal matters, the wars in Iraq and Afghanistan have ushered in various Pathological Narcissistic Spaces. The more infamous of these PN Spaces is Abu Ghraib Prison. Like its counterparts in Guantanamo Bay, Cuba and Bagram Air Base in Afghanistan, Abu Ghraib was a place where certain national directives suspended both high concepts of international law and ordinary concepts of common sense. In Abu Ghraib and other military areas, some with colorful names such as NAMA – for Nasty Ass Military Area – both prison staff and prisoners were subjected to narcissistic and anomic environments where the operating procedures and orders from the United States military and government were not aligned with international laws but more with American popular culture. The American prison guards at Abu Ghraib, for example, referred to their prisoners not with the prisoners' actual Arabic names, but with names

drawn from primarily childhood television shows, movies, and books. During the court proceedings, the judge, attorneys, and witnesses further propagated the Pathological Narcissistic Space of Abu Ghraib into the court room in Ft. Hood, Texas by referring to prisoners as “Big Bird,” “Taxi Driver,” “Gilligan,” and “The Claw.” Manipulation of someone’s name with a nickname is a tactic that narcissists use in order to manage the perception of a person within the narcissist’s Pathological Narcissistic Space (Murphy 2005). Guards at various military prisons in Guantanamo, Iraq, and Afghanistan have been documented as playing loud music in order to interrogate – Amnesty International calls it torture – prisoners (“Sesame Street breaks Iraqi POWs”). Such loud music reportedly includes the theme song to Sesame Street, the song “I Love You” from the children’s television show Barney and Friends, “Born in the USA” by Bruce Springsteen (for the chorus, as the lyrics upon closer inspection are actually critical of the Vietnam War), heavy metal, Nancy Sinatra’s “These Boots Are Made for Walking,” and any song by Barry Manilow (Gallagher 2009; “Sesame Street breaks Iraqi POWs”). Prisoners at Abu Ghraib were nearly always nude as a matter of accepted practice (Mestrovic 2007:34). The photos circulated in the press show the nude prisoners as play things for the guards, with the guards posing the prisoners into actions and positions taken from American pornography. In their sum, the uses of American popular culture as a source for torture reveals much about American life: childhood is painful, popular music is the soundtrack to suffering and lust, and Americans unconsciously recognize that pornography documents fragments of tortured lives, not just at Abu Ghraib but in other places, including Southern California and Las Vegas where the American pornography

industry is concentrated (Leung 2007).

The United States in waging its wars in Iraq, Afghanistan, and elsewhere have utilized Pathological Narcissistic Spaces for confining and interrogating – some would say torturing – prisoners or “detainees” as they are euphemistically called. Both the Bush and Obama administrations have used secret prisons where people are held completely cut off from all social support or legal representation. These “black prisons” or “black sites” included prisons in Eastern Europe during the years of the Bush administration. When such prisons became political liabilities, the U.S. government adapted in a dishonest way; under the Obama administration prisoner-detainees have been kept on U.S. Navy warships (Pilkington 2011a). In one case, a Somali prisoner-detainee in 2011 was kept on a U.S. Navy ship for two months entirely cut off from communication with his family or legal representation. Despite the Obama administration pledges to the public and orders to the CIA to close secret, overseas prisons, Jeremy Scahill for *The Nation* revealed that the CIA had two secret prisons in Somalia concealed openly next to Mogadishu’s Aden Adde International Airport and behind the presidential palace in the Somali National Security Agency headquarters (“Obama orders CIA prisons, Guantanamo shut”). Such use of space which effectively suspends constitutional rights for prisoner-detainees and constitutional responsibilities by U.S. government agents is pathological in a democratic-republic that ostensibly operates under the rule of law.

What distinguishes American military prisons in Abu Ghraib, Guantanamo Bay, Afghanistan, and elsewhere as both Puritanical and Narcissistic is that they operated

under the banner of rational-legal authority. Under rational-legal authority there should have been a distinction between lawful interrogation techniques on one hand and illegal abuse or torture on the other. However, at Abu Ghraib, it was documented that there was a blurring of the boundary between the concepts (Mestrovic 2007:34). The rational-legal bases for techniques used at Abu Ghraib, Guantanamo Bay, Bagram Airbase, and other places presumably were FM 34-52, the U.S. Army Field Manual on Interrogation and the Geneva Conventions (Mestrovic 2007:34). In fact, FM 34-52 states very specifically that the principles and techniques of interrogation are supposed to be used within the constraints of wider, accepted legal standards, namely the *Uniform Code of Military Justice*, the *Geneva Convention for the Amelioration of the Wounded and Sick in the Armed Forces in the Field of August 12, 1949*, the *Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949*, and the *Geneva Convention Relative to the Treatment of Civilian Persons in Time of War of August 12, 1949* (Headquarters, Department of the Army 1992). However, it was documented in several of the Army's reports, including the Taguba Report and the Fay Report, that the abuse at Abu Ghraib violated military law and the Geneva Conventions (Mestrovic 2007:54-5). The practice of keeping manuals in order to uphold the rational-legal basis for authority in Puritan armies has a long history.

Puritanism can be described not just as narcissistic but also as obsessive-compulsive: everything must be written down somewhere. What characterized Cromwell's New Model Army as a new military model was its penchant for printed manuals. Again, Cromwell and the English Puritans were not innovators but they

extended and amplified earlier practices, making the practices rational and systematic, and thereby as a consequence producing a greater social impact. In the case of the New Model Army, English war manuals were based on manuals printed by continental

Puritans in the Dutch army:

Several armies produced training manuals, either manuscript or in print, prior to the army reforms of Prince Maurice of Nassau [a Protestant prince of the Netherlands], and the English would have used training models based on Spanish practice as they made preparations to resist the Spanish Armada. However, Maurice's reforms had far more uniform requirements for his battle formations, and uniformity required much more detailed training manuals. The Dutch army was multinational and included English, Scottish, French, and German national regiments as well as Dutch soldiers, so its operational manuals had to be produced in a variety of languages. One effect of this was to make the adoption of Maurice's military reforms outside the Low Countries much easier, as the key texts already existed in other languages. The earliest version in England were circulated as manuscript copies of the Dutch, and at least one of the most influential was known by name of its author but never printed. Printed versions of the Dutch practice followed both as a commercial venture and in 1623 in the form of the government manual *Instructions for Musters and Armes and the Use Thereof*, and these were fairly straightforward (Roberts 2005:92-3).

Cromwell's army, in addition to printed manuals for its military law and discipline also published and circulated manuals detailing the army's daily life include requirements for food and drink, including alcohol:

The amount of a [New Model Army] soldier's rations in Scotland was described in General George Monk's order book on 15 January 1657, where he referred to the rations 'for 9 companies, accompting 80 men (officers and soldiers) to each companie, allowing each man 2 pounds of bread and a quarter of a pound of cheese per diem'. In addition to this they should receive a daily ration of beer, although they often had to make do with water when on campaign [original seventeenth century English spelling is preserved] (Roberts 2005:103).

Beer as a daily ration stands in contrast with the attitude of the policy followed by the U.S. Army in Iraq: American soldiers are apportioned two cans of beer per year carefully logged and tracked for their consumption only during the Super Bowl: U.S.

Army soldiers must go through a process of standing in line and present proof of identity.

The Army's bureaucratic rigmarole is far removed from the informal and spontaneous ritual of sitting in a living room and opening beer at one's leisure. What is striking is that the Puritan spirit against spontaneous enjoyment and even planned enjoyments (insofar as beer is a ration) has in fact intensified and has mutated from the inner-directed Puritanism of Cromwell's New Model Army to the present-day, other-directed Puritanism of the American military. The mutation of the Puritan spirit from inner-directed, goal oriented character to its other-directed, peer-oriented manifestation has resulted in other, anomic consequences. The Puritan action of printing and disseminating army books in the seventeenth century under Dutch and English Puritan armies has been taken to an extreme by the modern U.S. Army – only with an irrational twist: the books exist but they are not always read or followed. Currently there are over 400 U.S. Army field manuals in use covering, seemingly every conceivable military subject including *Special Forces Use of Pack Animals* (FM 3-05.213), *Mortuary Affairs Operations* (FM 4-20.64), and *Tactics, Techniques, and Procedures for Garrison Food Preparation* (FM 10-23-2) with a glaring exception of field manuals explaining how the Geneva Conventions on the treatment of prisoners are codified into U.S. military policies, standards, and technique (Headquarters, Department of the Army 2012). Other publications including technical manuals and handbooks for Army Tactics, Techniques, and Procedures exist encompassing a wide variety of subjects from *Geospatial Engineering* (ATTP 3-34.80) to *Cold Regions Operations* (ATTP 3-97.11). Inner-

directed Puritans of the seventeenth century were goal-oriented, and manuals reflected utilitarian ends towards those goals.

That is in stark contrast to the other-directed Puritanism within the U.S. Army which is not goal-oriented but peer-oriented. Yes, the U.S. Army issues and prints manuals, rules of engagement, escalation of force protocols, and countless other directives. However, they are not read and followed as the ultimate authority. This end of authority in U.S. Army field manuals is postmodern, as described by critics of postmodernism such as Rosenau: U.S. Army field manuals are not considered texts which are to be read with specific messages, but texts that are vague, open to interpretation, devoid of representational content or philosophical truths. (p. 35). Here lies one particular form of irrationality in the other-directed Puritan's heart.

Marshall McLuhan was a follower of David Riesman, extending and amplifying Riesman's observations in *The Lonely Crowd* towards a general theory of media. What Riesman described as the age of inner-directed social character coincides with McLuhan's description of the age of the printed word and of typographic man and woman, of the type of person who is part of book culture, including its implicit biases such as linearity, literacy, continuity, self-expression and individuality. Other-directed social character coincides with the electronic age and with graphic man and woman, along with implicit biases associated with the postmodern or postemotional condition: hypertextuality, aliteracy (or the ability to read but the disinterest in doing so), discontinuity, group-therapy, and peer-orientation (Lapham in McLuhan [1964] 1996:xii-xiii). Inner-directed, typographic social types regarded the book as the central

metaphor for reality; this no longer holds true for other-directed types. Books, manuals, and literacy have given way to other-directed modes of communication. McLuhan's observations made in the 1960s hold true for what is observable in the wars in Iraq and Afghanistan. What is in a general sense factual (that the book is no longer central in society) finds its parallel in the U.S. Army: manuals are no longer central in determining action. This is seen at the highest levels of the military structure down to the "teeth" of the army, the soldier on the frontlines. Rather than being directed by manuals, both officers and enlisted soldiers as distinct reference groups are peer-oriented. Army field manuals, escalation of force orders, rules of engagement and other military directives are not read in a literate way where continuity exists between directive and action. Rather, soldiers and officers seem to be behaving in the same manner as college students who do not read their textbooks, and where discontinuity exists between the meaning of the text and the meaning read into the text by the peer-directed reader. The meaning of the text is decentered and deconstructed even though it may be guided not by a goal, but by the direction of one's peers. Several observations serve as illustrations on this point.


In a general sense, electronic media in the U.S. Army now trump the printed word on the physical page. In an article titled "We Have Met the Enemy and He Is PowerPoint," *the New York Times* documented that Microsoft's Powerpoint as an electronic medium for communication within the military has taken an obsessive quality:

Like an insurgency, PowerPoint has crept into the daily lives of military commanders and reached the level of near obsession. The amount of time expended on PowerPoint, the Microsoft presentation program of computer-generated charts, graphs and bullet points, has made it a running joke in the Pentagon and in Iraq and Afghanistan... Commanders say that behind all the PowerPoint jokes are serious concerns that the program stifles discussion, critical

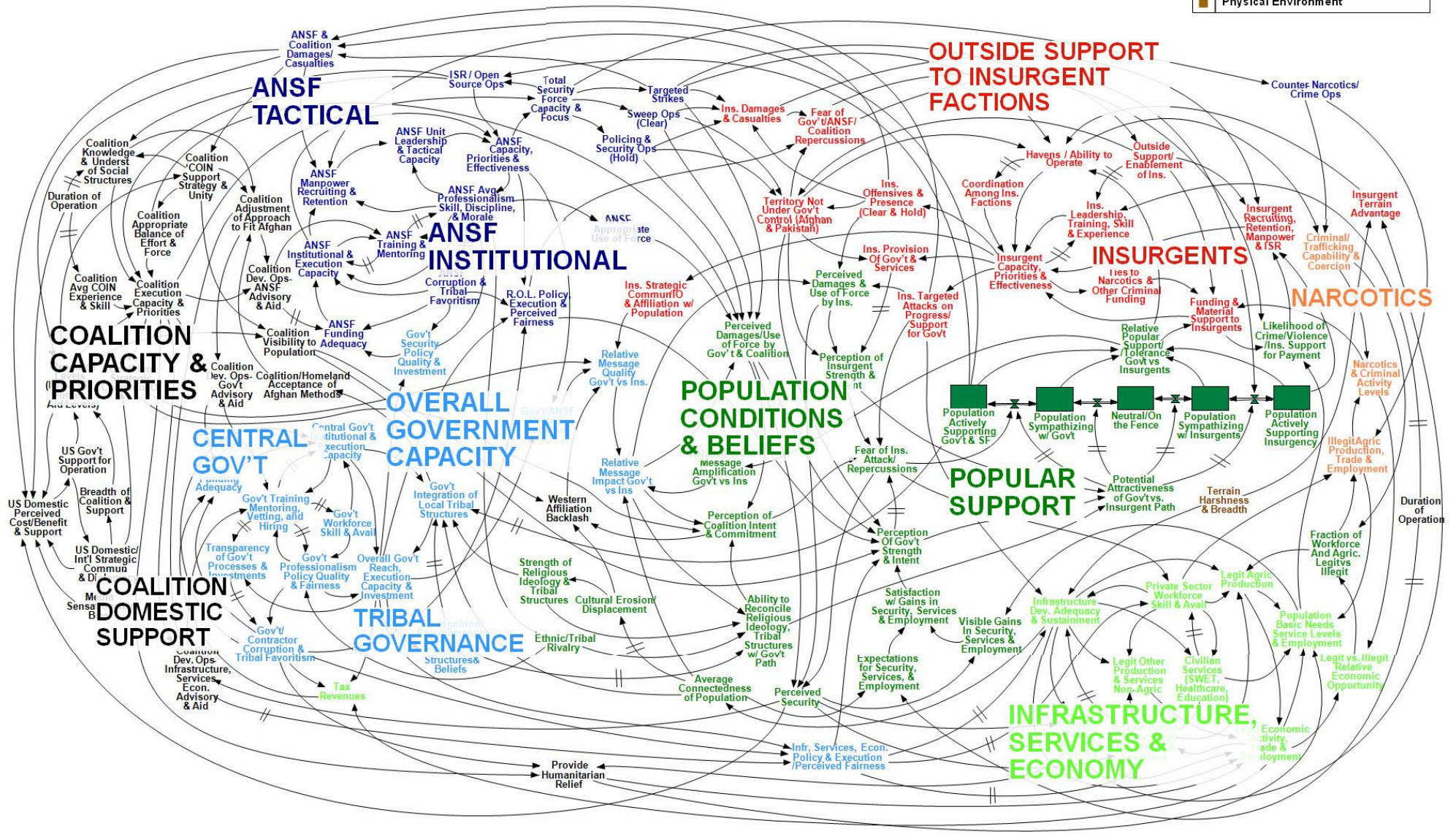
thinking and thoughtful decision-making. Not least, it ties up junior officers — referred to as PowerPoint Rangers — in the daily preparation of slides, be it for a Joint Staff meeting in Washington or for a platoon leader's pre-mission combat briefing in a remote pocket of Afghanistan (Bumiller 2010).

To underscore the absurdity of PowerPoint, a widely berated PowerPoint slide depicting American war strategy in Afghanistan was widely circulated in the print media around April 2010. The PowerPoint slide (see Figure 1) – which is an actual slide published by PA Consulting and is not a parody – may not have poignantly conveyed information but at a minimum ensured employment for late night television comedians:

Afghanistan Stability / COIN Dynamics

Significant Delay 

- Population/Popular Support
- Infrastructure, Economy, & Services
- Government
- Afghanistan Security Forces
- Insurgents
- Crime and Narcotics
- Coalition Forces & Actions
- Physical Environment



WORKING DRAFT - V3

Figure 1: PowerPoint Slide "Afghanistan Stability/COIN Dynamics"

As indicated at the bottom right corner, the slide is actually the new, improved version of its two predecessors. The slide was widely panned, and many Internet news sites and newspapers, including *The Guardian*, *The New York Times*, Common Dreams, and The Business Watch Network, republished it in critical articles. In fact, *the New York Times* published the slide on its front page above the fold line. General Stanley McChrystal, the NATO and U.S. force commander, remarked at the slide – characterized by the media as a sprawling spaghetti diagram – by stating, “When we understand that slide, we’ll have won the war” (Mail Foreign Service 2010). The incomprehensible and confusing slide is virtually a graphical representation for the anomie of the American war in Afghanistan.

Strange parallels exist between academia and the military (and in fact, the barracks and commons era at Rose Barracks near Vilseck, Germany also had an atmosphere of the dorms and commons area on a small college campus). PowerPoint slides, though electronic in medium, are Puritanical in the sense that they impose a hierarchical ordering on material that is complex and rich (Bumiller 2010). PowerPoint slides also dovetail with McLuhan’s observations of graphical men and women who are alliterate (i.e. being able but preferring not to read), preferring visual and graphic presentations over written reports; a critique of PowerPoint made by officers within the military reflected this same observation:

Commanders say that the slides impart less information than a five-page paper can hold, and that they relieve the briefer of the need to polish writing to convey an analytic, persuasive point. Imagine lawyers presenting arguments before the Supreme Court in slides instead of legal briefs. Captain Burke’s essay in the *Small Wars Journal* also cited a widely read attack on PowerPoint in *Armed Forces Journal* last summer by Thomas X. Hammes, a retired Marine colonel,

whose title, “Dumb-Dumb Bullets,” underscored criticism of fuzzy bullet points; “accelerate the introduction of new weapons,” for instance, does not actually say who should do so (Bumiller 2010).

Yet the importance of using PowerPoint is nearly dogmatic in academia and business.

Junior officers are expected to become “PowerPoint Rangers” in order to earn promotions, an eerie parallel to the pervasiveness of PowerPoint presentations in business school: MBA students essentially train to become “PowerPoint Rangers,” and the culture of business school is such that lectures by professors and presentations by students rely on PowerPoint as seemingly indispensable. In other academic areas, professors and instructors are encouraged and even expected to use PowerPoint in lectures, as well as provide handouts to their students of the PowerPoint presentation. American society, brought up supposedly to hate 1984’s Big Brother and his telescreen, ironically has embraced PowerPoint. This is one of many trends plaguing academia, with Bill Gates, whose company Microsoft makes PowerPoint, advocating eliminating teachers throughout American school systems and replacing them with one Master Teacher – not Big Brother but Big Teacher – broadcasting from a television studio and lecturing to millions of students (Brady 2011).

A second example concerns a statement made in open court during the court-martial of Michael Leahy. Leahy and his fellow soldiers were investigated by a special agent of the U.S. Army’s Criminal Investigation Command or CID (it stills retains its older acronym standing for Criminal Investigation Division). Like many other American law enforcement agencies, CID utilizes an interrogation practice known as the Reid Technique. Despite the criticism that the Reid Technique elicits false confessions

from innocent people, it is the method employed by CID and interrogation techniques similar to the Reid technique are outlined in one of their Field Manuals FM 3-19.13

Law Enforcement Investigations. During SGT Leahy's trial, defense counsel asked the special agent questions on FM 3-19.13:

Q. Now, are you familiar with FM 3-19.3, *Law Enforcement Investigations*; have you ever heard of that?

A. Yes, sir.

Q. Now, this is the Army field manual that talks about how to conduct interrogations for criminal suspects; is that right?

A. I would have to look at it, sir.

Q. Okay. Well, if I told you that that was the Army field manual that talks about or instructs how to conduct interrogations for CID, would you have any reason to dispute that?

A. No, sir.

Q. Okay. And for the field manual CID follows the concepts contained therein---

A. I'm sorry, sir.

Q. CID follows the concepts contained therein to conduct interrogations?

A. Yes, sir. That's not a bible as far as interrogations or interviews go. That's not--that doesn't encompass everything; that's a guideline. There are several other sources of information that we use (Leahy Record of Trial).

Interestingly, the special agent said "that's not a bible" instead of "that's not the Bible." The word bible is typically used to refer to the Christian holy scriptures, but the secondary and tertiary meanings of the word bible in the Oxford English Dictionary also refer to a textbook or any large book or treatise as a bible. Technically, field manuals are bibles for the army. The special agent also dismissed FM 3-19.13 as a "guideline." There is something of a casual attitude towards the field manual that the special agent exhibits that is not solely particular to him. Defense counsel asked the CID special agent a series of questions on the use of the Reid Technique.

Q. Now, I want to talk about “The Reid Technique” that you studied at this Reid course. Now, “The Reid Technique” is an interrogation technique; is that right?

A. It’s an interview on [sic, or] interrogation course, sir. That’s the title. It’s not solely an interrogation course; no (Leahy Record of Trial).

The special agent’s answer is technically correct. However, it should be noted that the Reid-like techniques are employed outside of law enforcement settings as a way of interviewing workers or job candidates in certain industries. Essentially, Reid-like techniques are McDonaldized interrogation protocols that are applied outside of law enforcement settings. Job interviews as they were understood in an inner-directed era have given way to the job interrogation in the other-directed era, and Reid-like techniques, despite their infamy and flaws, have made the McDonaldized interrogation process pervasive. One example of where the mass, industrialized use of Reid-like interrogation techniques is employed is in the pharmaceutical industry. The textbook *Essentials of the Reid Technique: Criminal Interrogation and Confessions* by Inbau, Reid, Buckley, and Jayne (2004) is sold in bookstores for medical schools and advertised on medically oriented websites such as WebMD as a medical textbook. A quick search through the curriculum vitae of pharmacists on the Internet will reveal that many list their training in the Reid Technique. Foucault ([1975] 1995) has noted the direction of medical or clinical techniques consciously applied to penal settings. The use of Reid-like techniques in pharmacy is an example of the reversed direction of knowledge from penal application to medical settings. Present day pharmacy settings are like the science-fiction movie *Minority Report* (directed by Steven Spielberg, 20th Century Fox, [2002] 2003) come to life, where pharmaceutical technicians, the frontline

workers, are treated essentially as pre-criminals while the pharmacists, their supervisors, are given police training and authority in detecting crime and “pre-crime.” The introduction of Reid-like techniques into the pharmacy has essentially transformed that social space into something that is simultaneously clinical, penal, and industrial.

Durkheim described anomie as a collective, modern sickness similar to narcissism (Veblen in Mestrovic 2003:10). Anomie present in one part of a society is an indicator that it exists in other places within a society. The dysfunction within the military justice system, as well as a wider dysfunction among the military units which have resulted in the trials examined, would indicate that narcissism and anomie exist elsewhere in American society. Anomie and narcissism do not occur in isolation. If anything, the soldiers in all these cases were good apples from a poisoned orchard, or good soldiers trying to operate in anomic military and wartime environments.

Narcissistic societies like the United States are dysfunctional: tests and certificates are meaningless, presentations create confusion more than clarity, books are written and widely available but simply ignored, armies and diplomats are sent throughout the world but seldom or superficially participate in the local culture literally just over the walls of their fortifications, etc. The patterns of American narcissism, which are shaped and directed by American Puritanism, take similar forms throughout society. What seems narcissistic and anomic in a military setting will have similarities with other narcissistic and anomic practices in areas such as business or academia.

CHAPTER VIII

CONCLUSION AND DISCUSSION

Conclusion

In these chapters I have demonstrated that Puritanical cultural habits persist in the twenty first century. There is continuity in the Puritanical habits at the time of the English adoption of the Swedish Articles of War in early part of the seventeenth century and of the Puritanical habits revealed in courts-martial for American war crimes in the Global War on Terror in the early part of the twenty first century. My study examined courts-martial related to four sets of war crimes by the U.S. Army.

In studying war crime and deviance in the Global War on Terrorism, I used a theoretical perspective that reinterprets the theoretical perspective on an earlier work on Puritanism and Deviance, *Wayward Puritans: A Study in the Sociology of Deviance* by Kai Erikson ([1966] 2005). Though Erikson used Durkheim to build his theoretical frame for studying deviance in colonial Massachusetts, Durkheim's (1893, 1895) original sociological interpretations of crime and deviance are not always identical with the structural-functionalist interpretation of the law. My study was informed by a new reading of Max Weber's *The Protestant Ethic and the Spirit of Capitalism* (1905) and its central argument that religion as a social force colors the characteristics of a culture in a multitude of ways. Ritzer ([1993] 2004) recharacterizes Weber's argument concerning the inexorable force of the Iron Cage in *The McDonaldization of Society*. However, Ritzer has not yet applied his McDonaldization thesis to issues in the justice system

generally, or in the military justice system particularly. Building from this cultural reading of Weber's argument, I described how the United States, a society with Calvinist and Puritan cultural foundations, conducts war and its military legal system in a Puritan way.

The trial as Puritan ritual by which the community coerces forgiveness from the accused, as Erikson described of the Massachusetts Puritans, is still present in American culture. In these chapters I have linked Puritanical cultural habits to writings on vengeance, justice, punishment, and responsibility by Durkheim and his student, Paul Fauconnet. My study reconciles and merges Durkheim's observations of American society centering itself on Old Testament values and normative structure characteristic of societies held together by mechanical solidarity with Weber's claim that Calvinists relied prominently upon the Old Testament in establishing the new habits that became Calvinism. This study addressed the concepts of Puritanism and courts-martial and their relationship to each other by extending and combining Durkheim's framework for understanding deviant behavior with Weber's perspective on Puritanism.

American military law stands out as an exemplar of Weber's Iron Cage. The Puritan trial as a ritual devoid of visible passion, and seemingly moving by "relentless certainty" and "cold righteousness" was as true in the seventeenth century as it is in the twenty first century. Overtly dedicated to discipline over justice, American military law seems to operate like a conviction-producing factory: soldiers are placed on a track that moves with the Ritzerian elements of McDonaldization: efficiency, calculability, predictability, and control. The military justice system in every case had on standby a

pre-fabricated, McDonaldized narrative of “spontaneous war crimes” committed by “rotten apples” for journalists to consume and disseminate. These narratives uncritically made their way to publications that are viewed as left-wing. Those same publications, even established as counter-cultural institutions, are McDonaldized organs of news reporting. They are themselves factories with metaphorical conveyer belts that carry the prepackaged “rotten apples” narrative from U.S. Army issued press releases to front page stories with superficial and shallow alterations (Herman and Chomsky 2011).

In the Baghdad canal killings specifically, but in the various war crimes of the Global War on Terrorism, the soldiers involved were thrashed about by social forces outside of their personal control. In these cases, soldiers operated in a moral and legal fog created by poisoned command climates. The daily and human facts of the soldiers’ lives were lost when placed on the legal and journalistic conveyer belts: Soldiers suffered from personal wounds – both physical and psychological in nature – which impaired their judgment. Soldiers were underequipped, poorly fed and housed, overworked, deprived of sleep, and often suffering from brain injuries and post traumatic stress disorder. A study by the Rand Corporation estimated that out of 1.64 million service members deployed to the wars in Iraq or Afghanistan through October 2007, an estimated 320,000 had suffered a traumatic brain injury, and 300,000 were suffering from PTSD (Nef 2011; Rand Corporation 2008). The soldiers belonged to groups which were shuffled, or to use the military euphemism “cross-leveled,” back and forth between brigades and regiments that left them without a sense of social integration, or to state plainly without a common understanding for the behavior expected of them. The social

and structural conditions under which the soldiers committed actions labeled as “war crimes” were not conditions that the soldiers created for themselves.

Societies characterized by organic solidarity are characterized with movement away from collective responsibility toward individual responsibility (Fauconnet 1928 [1978]). The present study has demonstrated that collective responsibility has not disappeared from modern institutions such the U.S. Army but has instead been transformed. Ironically, soldiers who are perceived as individually and solely responsible for war crimes are collectively punished while civilian and military leaders who established the social conditions which made those acts possible are not punished. In addition, the world community attributes collective responsibility to all of the United States for the war crimes committed at Abu Ghraib prison and elsewhere. A failure in attributing collective responsibility in the courts-martial means that disproportionate responsibility falls on the scapegoats.

The United States continues to pay a high price for refusing to take on the collective responsibility of these war crimes. These courts-martial, for example, mean that the United States military is wasting good soldiers by sending them to prison, rather than keeping them in the Army where they can continue to perform their duties. Another price the United States is paying is that it is becoming a pariah state for failing to acknowledge its mistakes. When a country fails to assume proper, final collective responsibility for its crimes, other countries will stigmatize it. In popular culture already, the Colombian painter Fernando Botero has devoted a series of paintings to the crimes at Abu Ghraib, and the same prison was featured prominently in the movie *Valley*

of the Wolves: Iraq (*Kurtlar Vadisi: Irak* in Turkish, directed by Serdar Akar, Pana Film, 2006). That movie was made in Turkey, a NATO ally of the United States, which depicted the American military in a negative light.

A continuity between Puritanism in the seventeenth century and institutional Puritanism in the twenty first century American military is its inimical nature to charisma and magic. Here magic was defined not just as superstition, but unauthorized pursuits of leisure which assuage the terror of dying on the battlefield. This included any number of things from outright superstitious beliefs to the use of drugs or alcohol as an escape from the emotional extremes war: endless mind numbing boredom, extreme deprivation, punctuated by moments of sheer terror.

My study demonstrates that civil religion exists not just at a national level but also at an institutional level. Courts-martial can be viewed as a religious ceremony that attacks elements of magic and charisma. In other ways, U.S. Army bases act as forms of civil-temples within military civil-religion: they are named after the secular saints of Army civil-religion. However, military civil-religion has become postemotional. In other words the military goes through the motions of its rituals without being spontaneously sincere, passionate commitment to the beliefs which the rituals represent. In the case of the U.S. Army there has been a weakening in the meaning and practice of its institutional civil religion. When religion is weak, including civil religion, societies and its institutions begin to experience deficiencies in social integration. When religion is weak and cannot provide for the emotional needs of its followers, social integration will also be weak, and people will turn to magical practices and charisma.

Puritan cultural habits shape but do not extinguish the “instinct for revenge.” In the American military justice, and the American military in general, the “instinct for revenge”, and the element of collective punishment remains present. What other cultures express spontaneously in uncontrollable, genuine emotion is transformed into sublimated emotion hidden behind systems and techniques in Puritanical societies. The court-martial system, then, is not the product of an exalted state of being that exists in a purely rational, civilized, or modern mindset. Underneath the mechanical and relentless character of the military justice system, one finds a ritual of degradation and revenge that has been adapted to fit the Puritan esthetic of action: revenge and retribution can happen, but only in certain rational-legal ways. The Puritan esthetic even dictates and creates an entire structure for revenge that at a large scale comprise the wars in Iraq, Afghanistan, and elsewhere to, on a finer scale comprise the drama of war from the acts of soldiers on the ground to the courts-martial that deal with war crimes.

I conclude with the observation that the present-day, other-directed Puritanism in the American military can be described as narcissistic. The mutation of the Puritan spirit from inner-directed, goal oriented character to its other-directed, peer-oriented manifestation has resulted in other, anomic consequences. The Puritan action of printing and disseminating army books in the seventeenth century under Dutch and English Puritan armies has been taken to an extreme by the modern U.S. Army – only with an irrational twist: books and manuals exist but they are not always read or followed. There is irrationality in the Puritan heart.

Narcissistic societies like the United States are dysfunctional: tests and

certificates are meaningless, presentations create more confusion than clarity, books are written and widely available but simply ignored, armies and diplomats are sent throughout the world but seldom or superficially participate in the local culture literally just over the walls of their fortifications, etc. Durkheim described anomie as a collective, modern sickness similar to narcissism. The dysfunction within the military justice system, as well as a wider dysfunction among the military units which have resulted in the trials examined, would indicate that narcissism and anomie exist elsewhere in American society. Anomie and narcissism do not occur in isolation; bad apples do not spontaneously come out of good barrels. If anything, in all these cases the soldiers were good apples from a poisoned orchard, or good soldiers trying to operate in anomic military and wartime environments. This anomie and narcissism is shaped by Puritan cultural habits.

Recommendations for Changes to the Military Justice System

The *Uniform Code of Military Justice* has not faced substantive reform since its creation in 1950. In 1984, Congress passed the Military Justice Act of 1983 granting prisoners in the military justice system limited access to the Supreme Court (Elsa 2006). Currently, prisoners in the military justice system have very limited access to the Supreme Court for review. The isolation of the military justice system from Supreme Court review has created a condition where some critics contend that the *Uniform Code of Military Justice* acts like a second American constitution, one that grants reduced rights to American military personnel who find themselves in court.

Although I recommend intermediate changes to the margins of the military

justice system, I advocate for more a more widespread reform as advocated by William Winthrop following the Civil War. Any fundamental reform of the military legal system from one focused on discipline to one focused on justice, from a system dedicated to objective responsibility to one dedicated to subjective responsibility, would take a heroic effort. Such an effort would have to manifest itself in amendments that radically alter the U.S. constitution. In fact, such fundamental effort would be one that opposes the institutional momentum and legacy of figures held near and dear to the Puritan heart: Oliver Cromwell, George Washington, William Tecumseh Sherman, and others. From a Weberian perspective, American discipline is based on American military discipline, and it is at the core of society:

The discipline of the army gives birth to all discipline. The large-scale economic organization is the second great agency which trains men for discipline. No direct historical and transitional organizations link the Pharaonic workshops and construction work (however little detail about their organization is known) with the Carthaginian Roman plantation, the mines of the late Middle Ages, the slave plantation of colonial economies, and finally the modern factory. However, all of these have in common the one element of discipline (Weber in Gerth and Mills 1958:261)

War discipline, according to Weber, affects society generally:

War discipline may go hand in hand with totally different economic conditions, as these examples show. However, discipline has always affected the structure of the state, the economy, and possibly the family (Weber in Gerth and Mills 1958:257)

Changing the military legal system, and by extension the meaning of American military discipline, would have fundamental effects on American society.

In the absence of widespread, fundamental change, the alternative is to propose changes at the margins. An initial recommendation for reform in the military justice

system is to make it more visible and transparent. Currently, records of trial are not readily available. There should be a central repository for records of trial and accompanying records such as charge sheets, sworn statements, transcripts of Article 32 trials available to the public and researchers.

The more important reforms concern the rights of soldiers and other members of the military. *Dynes v. Hoover* (61 U.S. 65 1857), the Supreme Court Case heard in 1857, stands as the major obstacle in allowing the Supreme Court from reviewing military courts-martial and securing the rights of military personnel. In a way, *Dynes v. Hoover* is to the rights of military personnel in the military justice system what *Plessy v. Ferguson* (163 U.S. 537 1896) was to segregation before the decision was made in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), to overturn it. Overturning *Dynes v. Hoover* would be difficult, though perhaps it could be done with either a constitutional amendment or through novel or obscure legal procedures. Constitutional amendments also are controversial in nature; basically a constitutional amendment would cede some authority from Congress according to Article I section 8 to the judiciary branch, as military courts-martial are inferior tribunals under the authority of Congress.

In Spain, Germany, and even Sweden, the military court system has either been entirely or partially decommissioned. Spain has partially decommissioned its military court system so that military personnel who are accused of committing civilian crimes (e.g. shoplifting from a store) are tried in civilian courts and courts-martial are reserved for crimes of a purely military nature (e.g. insubordination or mutiny):

In this respect it should be pointed out that the Code of Military Justice does not contain common crimes such as theft, injuries or violation, which are only to be found in the ordinary Penal Code, but, on the other hand, it does contain strictly military crimes which can only be committed by military personnel, together with other crimes that may also be committed by civilians, such as insults to or assaults of sentries or armed guards, destruction of military documents, spying, etc. (No Louis 1963:142).

It should be noted, that civilians in Spain committing certain crimes of a military nature can be tried in a military court (No Louis 1963:142). Germany has followed a path similar to Spain:

Finally [after the 1954 entry of West Germany into NATO], the decision was made against the existence of a separate system of military justice and against the installation of military courts. This political decision was confirmed in an amendment to the new German Basic Law. Only two steps in the development of a new legal system seemed to be necessary: the drafting of a new Military Penal Code and a legal basis for the disciplinary power of the commanding officers. But, it was estimated, that the disciplinary power of the commanding officer should not be extended to any responsibility and influence over questions of civil crimes committed by soldiers (Krueger-Sprengel 1972:18).

Even Swedish military law, which is the metaphorical grandfather of American military law has changed radically. Essentially, contemporary Swedish military law is no longer separate from civilian law:

Since January 1, 1949, there has existed no special penal code for the Swedish armed forces and they are subject to the General Code of Criminal Law. When the special penal law of 1914 for the armed forces was abrogated through the new legislation, two chapters with special application to the armed forces were added to the General Code of Criminal Law, Le., Chapter 26, dealing, with criminal acts committed by members of the armed forces, and Chapter 27 containing special provisions relating to war, state of emergency, etc. At the same time, separate laws were added, providing disciplinary action against members of the armed forces and capital punishment in certain cases when the nation is at war (Lindeblai 1963:123).

Swedish military courts have been abolished during peacetime; the civilian courts of the closest town to the garrison serve to try military cases:

Military legal procedure is also new since January 1, 1949. Previously, regiments and other units had their own military courts, presided over by a military judge, with officers of different ranks as assistants and a military attorney as prosecutor. When the special penal code for the armed forces was abrogated the special courts were abolished as well, and military jurisdiction was transferred to civilian law-courts, as a rule the court (city court or district court) situated in the garrison town. The military cases brought before civilian courts are, generally speaking, handled in accordance with the same rules of procedure as other cases. In a court of first instance the president is a judge appointed by the Government, assisted by a number of laymen, who are appointed by the municipality for a period of six years. These assistants participate in the procedure not only by weighing the evidence to determine guilt but also by consulting with the judge in order to determine the sentence. There are nine assistants in cases of serious offenses and three in other cases. The assistants may overrule the judge and determine the sentence if seven of them, in the former case, and all three, in the latter, so agree (Lindeblai 1963:125).

Courts-martial still exist within the law during times of declared war, but are ultimately under the review of appellate civilian courts:

In a state of war or emergency, a court-martial shall take the place of a civilian court of first instance in cases pertaining to the armed forces. Such a court-martial is presided over by a judge aided by three assistants, two civilians and one military person, with a military attorney as prosecutor. A sentence passed by a court-martial is appealable in the normal way to the Court of Appeal and the Supreme Court (Lindeblai 1963:126).

The trend in Europe has been towards decommissioning military courts and incorporating military law into civilian law. Even in Sweden which gave birth to the particular Swedish discipline of Gustavus Adolphus Articles of War has decommissioned its military courts. The United States' military legal system continues on a path set in Sweden in 1621 rather than the path set in Sweden in 1949. This possibility of even a partial decommissioning of the American military court system stands in opposition to the general trend of incorporating civilian crimes into the *Uniform Code of Military Justice*. Article 134 reads:

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court (*General Article 10 U.S.C. § 934 article 134 (1950)*).

Article 134 of the UCMJ brings into the military justice system the application of every conceivable civilian law to military personnel under military jurisdiction. The idea, also, that the United States would decommission the military court system, either partially or entirely, while its military is engaged in combat is beyond conventional thought.

In recent years, beginning in 2005, various members of congress have submitted legislation that would grant service personnel access to the Supreme Court. In 2005, Rep. Susan Davis introduced *H.R. 1364: Equal Justice for Our Military Act*, which died in committee (U.S. House of Representatives 2005, H.R. 1364.). The bill was reintroduced as the *H.R. 3174: Equal Justice for Our Military Act of 2007* (U.S. House of Representatives 2007, H.R. 3174). A version of the bill introduced in the Senate was titled *S. 2052: Equal Justice for United States Military Personnel Act of 2007* (U.S. Senate 2007, S. 2052). Although the bill passed in the House and passed in the Senate's Judiciary Committee, the bill died in the Senate without a floor vote. In 2009, the bill was reintroduced as *Equal Justice for Our Military Act of 2009, H.R. 569* and *Equal Justice for United States Military Personnel Act of 2009, S. 357* (National Institute of Military Justice Blog – CAAFLOG; “Press Release: Senator Feinstein Introduces Legislation to Give Armed Forces Personnel the Same Due-Process Appeal Rights as Civilians”). Congress has yet to pass the legislation, though both H.R. 569 and S. 357

are still pending. The variations of the original bill, the *Equal Justice for Our Military Act*, aim at giving military servicemen and women access to the Supreme Court. The various bills seem to be mired in the Weberian, Puritan narrative that is the object of my study. In other words, the military justice system of the American military, derived as it was from Oliver Cromwell's military justice system, has never given military personnel access to the Supreme Court. The achievement of such access will no doubt require the extraordinary and seismic shifts in culture which are the object of Weber's study on the Puritans.

Barring any of the above, possible changes in the foreseeable future within the military justice system would have to be made at the margins. The important feature in these changes would be to make the military justice system less McDonaldized and more spontaneous, to make it less mechanistic in its cold righteousness and to temper its relentless certainty. One area for reform would be to eliminate mandatory minimum sentencing and allow greater discretion to the military panel (the jurors) in deciding the punishment for a soldier convicted of a crime. An indelible moment of the court-martial of SGT Michael Leahy came after he was sentenced. The panel that convicted Leahy was kept unaware that there was a mandatory minimum sentence for the charge of premeditated murder. When the judge sentenced Leahy to the mandatory minimum life imprisonment without parole, two of the jurors wept and several other jurors looked troubled by the sentence. In fact, every member of Leahy's military panel wrote letters on his behalf to the appellate court in hopes that his sentence would be reduced.

Another important change that could be made at the margins of military law

would be to add new categories of crimes committed within war zones. In the Baghdad canal killing cases, for example, soldiers were convicted of the premeditated murder of four Iraqi individuals who were an insurgent sniper team. The charge of premeditated murder equates the soldiers' unlawful killing of legal combatants to acts of premeditated murder that might occur in peacetime. The social context in all the war crimes cases complicates simple or simplistic definitions of the soldiers' actions as the usual prepackaged, McDonaldized charges on standby which are usually conspiracy and premeditated murder.

A third recommendation would be to restrict the use of the Reid interrogation technique and techniques similar to it. The Reid Technique is banned with regard to interrogating children in several European countries because of its history in eliciting false confessions (“Widely used police interrogation technique can result in false confession: Disclosure”). Judges and lawyers in Canada, which was a late adopter of the Reid Techniques, have described it as “brain washing” and “repugnant to society's sense of decency” (“Widely used police interrogation technique can result in false confession: Disclosure”). In the United Kingdom, elements of the techniques are forbidden by the courts (“Widely used police interrogation technique can result in false confession: Disclosure”). The fact that many soldiers suffer from PTSD or mild traumatic brain injuries (mTBI) should be a consideration in the application of the Reid technique within the military justice system. How PTSD or mTBI makes an individual susceptible to false confessions is an area that should be investigated in psychology, and a consideration by the military justice system in determining if Reid-like techniques are

humane, legal, or ethical to apply to anyone with diminished mental competency.

A fourth reform in the military justice system would be to remove the “trial penalty” from trial counsel, or the prosecution. The problem of the “trial penalty” is not isolated to the military justice system. A *New York Times* article recently reported:

After decades of new laws to toughen sentencing for criminals, prosecutors have gained greater leverage to extract guilty pleas from defendants and reduce the number of cases that go to trial, often by using the threat of more serious charges with mandatory sentences or other harsher penalties. Some experts say the process has become coercive in many state and federal jurisdictions, forcing defendants to weigh their options based on the relative risks of facing a judge and jury rather than simple matters of guilt or innocence. In effect, prosecutors are giving defendants more reasons to avoid having their day in court (Oppel 2011).

When soldiers accept plea bargains, they must also make an admission of guilt. In fact, accused soldiers are reminded that if they plead guilty they do so not solely to receive a lighter sentence but because they are genuinely guilty. In the court-martial of Jeremy Sivits, the instruction by the military judge is typical of all cases where the accused has decided to plead guilty:

MJ: Specialist Sivits, are you pleading guilty not only because you hope to receive a lighter sentence, but because you are convinced that you are, in fact, guilty (Sivits Record of Trial)?

The idea that all accused plead guilty because they are genuinely guilty is a gross fiction that flies in the face of reality in the American justice system, be it civilian or military. Financial considerations and the possibility of facing the coercive process of a “trial penalty” are possibilities that may make otherwise innocent people plead guilty. The “trial penalty” feature in American law has become so commonplace that the possibility of banishing it in the military justice system might be too fanciful.

Further Research

There is little sociological research in the subject of military courts-martial or of Puritanism within the American military and its legal system. Erikson's study of Puritanical management of deviance in colonial Massachusetts could have opened similar studies. The English Civil Wars of the seventeenth century are examined by mostly British historians. From a sociological perspective, the English Civil Wars seem relevant to this study in that the Puritan cultural patterns long established by the twenty first century were in their nascent forms within Cromwell's protectorate and the New Model Army. The way that Puritan soldiers handled deviance and crime in their New Model Army, in particular the Leveller mutinies at Corkbush, Bishopsgate, and Banbury seem particularly relevant to the present study. Unlike the trials that Erikson examined in *Wayward Puritans*, the trials for the Leveller mutineers were courts-martial within a Puritan army.

Future research can also be done to compare American courts-martial for war crimes with other courts-martial in the Global War on Terrorism. A current and ongoing scandal in the United Kingdom after an inquiry lead by Sir William Gage uncovered an "appalling episode of serious gratuitous violence" by British soldiers in Iraq (Bowcott 2011). Soldiers within the 1st Battalion the Queen's Lancashire Regiment are reported as killing an Iraqi by the name of Baha Mousa and of abusing nine other Iraqis (Bowcott 2011). One soldier, CPL Donald Payne, has already plead guilty to charges of assault and may face further possible charges of manslaughter or murder (Bowcott 2011). Comparing how the United Kingdom investigates and assigns responsibility for its own

war crimes in the Global War on Terrorism to the manner in which the United States investigates and assigns responsibility would be instructive.

Historically, comparing the way in which the British Army assigns responsibility for historical war crimes and similar events would be beneficial to contemporary settings. For example, on January 30, 1972, British soldiers from the First Battalion of the Parachute Regiment (known as First Para) opened fire on demonstrators in Derry, resulting in 14 deaths and 17 injuries. Immediately after the massacre, a controversial British government report prepared by Baron John Widgery excused the British army and its soldiers (“On This Day: April 19”). A more recent report published on June 15, 2010 known as the Saville Inquiry (named after the chairman, Saville of Newdigate, who prepared it) opens the possibility that British soldiers may face charges nearly 39 years after the fact (Chossudovsky 2011). The presentation of Bloody Sunday by the British government as the action of “rotten apples” committing a “spontaneous atrocity” shares many similarities with similar, prepackaged McDonaldized narratives presented by the American government for similar crimes at Abu Ghraib, Operation Iron Triangle, and other killings. If the Widgery report was labeled a whitewash, the Saville report could be labeled a greywash that seeks to remove collective responsibility from civilian and military leaders in the upper echelons of British society and place it entirely on frontline soldiers.

Additionally, similar theoretical perspectives to that used in this work can be applied to other war crimes committed by the American military. Doing so will document events that may be forgotten or overlooked in history. Such historical-

comparative studies coupled with sound social theory as applied to the different war crimes will also add detail, nuance, and depth to the argument presented in this study.

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