
**THE IMPORTANCE OF PROFESSIONALISM:
ADDRESSING DISCRIMINATION, EXPORTING MILITARY
VALUES, AND MAINTAINING CIVILIAN ETHICS**

*Lesley Wexler**

ABSTRACT

This essay focuses on two key observations about Rosa Brooks’s new book *How Everything Became War and the Military Became Everything*. First, if Brooks is right that everything has become war, then the humanitarian ethos that undergirds the laws of war must be transported to new battlefields and adopted by its newest warriors. Second, as new actors increasingly enter the domain of warfare with the warrior’s humanitarian ethos, they must also maintain and develop their own ethical practices to guide them as they offer their professional expertise.

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I. INTRODUCTION

Professor Rosa Brooks’s excellent *How Everything Became War and the Military Became Everything*¹ covers an incredible amount of ground on the topic of pervasive militarization. While she opened up significant room for discussion, debate, and deliberation, my analysis will focus on three discrete points. First, Brooks’s comparison of the United States military to Walmart might be used to highlight both institutions’ ability to devote substantial resources to addressing discrimination and other institutional culture problems. Second, if Brooks is correct about everything and everyone becoming involved in war, then it is important that those military values which embody a humanitarian ethos be transported to new battlefields and new warriors. Lastly, just as the military has distinct values to help guide other actors participating in war and warlike activities, other professions must maintain and develop their own ethics as they are called

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* Professor, University of Illinois College of Law.

1. ROSA BROOKS, *HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING: TALES FROM THE PENTAGON* 353 (2016).

upon to provide their own professional expertise within the war arena.

II. EXPLORING THE WALMART METAPHOR

One interesting move that Brooks makes is to conceptualize the U.S. military as a Walmart² Superstore. Brooks suggests that even as Walmart stores satisfy consumer demands for cheap goods and excel at logistics, they also destroy local competition, ultimately leaving consumers with bad choices of subpar goods.³ Similarly, she observes that “overreliance on an expanding military risks destroying not only the civilian competition but the military itself. [Military leaders] worry that the military, under constant pressure to be all things to all people, could eventually find itself able to offer little of enduring value to anyone.”⁴ In particular, she notes the concern that the military will drive out the State Department and other civilian foreign policy agencies, a worry running throughout much of the book as the military may be ill-suited to roles outside its core competencies.⁵ The behavior of President Trump’s administration magnifies this concern as it deprioritizes diplomacy, defunds the State Department, and seeks to dismantle the foreign policy bureaucracy.⁶ I am intrigued by this Walmart metaphor and I think it can be plumbed for additional insights.

To begin, Walmart’s similarities to the military extend far beyond efficiency, size, and competition concerns. Walmart and the military each have a deeply embedded workplace culture that purports to emerge from shared values. Sometimes these distinct workplace cultures have pernicious effects, such as endemic sex discrimination and harassment rampant in both settings.⁷ Both the military and Walmart could overhaul recruitment, promotion, and harassment policies as well as create a more inclusive environment should they want to,⁸ but neither seems particularly eager to tackle these problems (though I think the military has done far better than Walmart). Yet at the same time, Walmart has been surprisingly progressive in its demands to address discrimination and other societal ills when it interacts with outsiders.⁹ Its requirements that outside counsel and

2. See *Our Retail Divisions*, WALMART.COM, https://corporate.walmart.com/_news_/news-archive/2005/01/07/our-retail-divisions (last visited Feb. 2, 2018) (describing Walmart’s various retail operations).

3. BROOKS, *supra* note 1, at 316–17.

4. *Id.* at 317.

5. *Id.* at 90–91, 154–56, 316–327.

6. See generally Robbie Gramer, Dan De Luce & Colum Lynch, *How the Trump Administration Broke the State Department*, FOREIGN POL’Y (July 31, 2017), <http://foreignpolicy.com/2017/07/31/how-the-trump-administration-broke-the-state-department/> (discussing how the structure of the State Department has changed under the Trump administration).

7. Lesley Wexler, *Wal-Mart Matters*, 46 WAKE FOREST L. REV. 95, 110–11 (2011).

8. See *id.* at 103; Lesley Wexler, *Reason in the Time of Trump’s Transgender Tweet: The Military Benefits of Fortifying Pro-Dignity and Anti-Discrimination Norms*, VERDICT (Aug. 8, 2017), <https://verdict.justia.com/2017/08/08/reason-time-trumps-transgender-tweet>.

9. See Wexler, *supra* note 7, at 103.

other professionals with whom it works embody diverse workplaces are quite stringent.¹⁰ Its supply side environmental standard requirements also seem meaningful.¹¹ Relatedly, Walmart is willing to deploy enormous resources to overcome the appearance of discrimination, as it did in the wake of major class action litigation. While moving a bit beyond its core competencies, Walmart partnered with NGOs to launch a multibillion-dollar Global Women's Economic Empowerment Initiative, with the stated goals of:

(1) sourcing \$20 billion from women-owned American businesses [and double] its sourcing from international female suppliers; (2) providing 60,000 women working in factories with training, market access, and career opportunities; (3) helping 200,000 low-income women in America pursue higher education and learn job skills; (4) offering retail training programs to 200,000 women worldwide; and (5) increasing female and minority representation in service firms and suppliers.¹²

Imagine if the military designed a similar initiative to counteract its image as hostile to women and to LGBTQ individuals. Of course, the military has different institutional and cultural constraints, but given the similar underlying ethos in both workplaces and high-level institutional culture, this seems within the realm of the possible.

III. EXPORTING MILITARY VALUES

In addition to changing potentially dysfunctional discriminatory aspects of military culture, the military should also devote resources to exporting the best facets of military culture. As Brooks rightly observes, core humanitarian principles govern the military,¹³ and I suggest that as “everything becomes war,” military values must accompany this expansion. While early Hague and Geneva law might have been rooted in reciprocity concerns, these concerns have been internalized and expanded as fundamentally humanitarian in nature, and these values of the laws of war need to accompany securitization practices. For instance, the foundational idea underpinning the prohibition on unnecessary suffering is a recognition of individuals' shared humanity. Similarly, the duties to protect, respect, and care for injured enemies in the Geneva Convention, and Common Article 3's command to treat the enemy humanely, emphasize the dignity of all individuals and the need for restraint even as state militaries are authorized to use

10. *Wal-Mart Requires Diversity in Its Law Firms: Commitment to Participation Already Making an Impact*, WALMART (Dec. 9, 2005), https://corporate.walmart.com/_news_/news-archive/2005/12/09/wal-mart-requires-diversity-in-its-law-firms; Christopher J. Whelan & Neta Ziv, *Privatizing Professionalism: Client Control of Lawyers' Ethics*, 80 *FORDHAM L. REV.* 2577, 2595–2603 (2012).

11. See generally Larry Catá Backer, *Economic Globalization and the Rise of Efficient Systems of Global Private Lawmaking: Wal-Mart as Global Legislator*, 39 *U. CONN. L. REV.* 1, 6 (2007).

12. Lesley Wexler, *Extralegal Whitewashes*, 62 *DEPAUL L. REV.* 817, 838 (2013).

13. BROOKS, *supra* note 1, at 193–96.

force and to detain.¹⁴ Rather than using a “chalk on the cleats” approach, Brooks suggests the military and lawyers ought to interpret these values and norms broadly,¹⁵ but I would also add that these values and norms need to follow military-like activities even if they are carried out by entities other than the military. In fact, the military may be well suited to help train and inculcate these values in those who are delegated military tasks but are themselves not military personnel.

Seemingly core military tasks have been subcontracted to civilian contractors or handed off to the CIA during the war on terror, such as interrogation, detention, and drone strikes. While choosing an actor other than the military to conduct these tasks could be for many reasons—such as cost, decreased public profile, or an overstretched military—we must be careful that they are not handed off in order to avoid military values. For example, while the Torture Convention covers actors well beyond the military,¹⁶ some suspect that the U.S. federal government deliberately involved the CIA in certain aspects of the war on terror, banking on the absence of institutionally inculcated humanitarian values.¹⁷ The military’s commitment to these humanitarian rules and values was evinced by many within the military opposing enhanced interrogation practices: judge advocates general (JAGs) fought them at the development stage;¹⁸ the convening authority of military commissions declined to prosecute a detainee who faced these practices;¹⁹ a military prosecutor refused to admit confessions induced by torture;²⁰ and, to take a more recent example, current Secretary of Defense James Mattis publicly pushed

14. *See generally*, Geneva Convention for the Protection of Wounded in Field, Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Geneva Convention for the Protection of Wounded at Sea, Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Geneva Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287 [hereinafter Geneva Conventions of 1949].

15. BROOKS, *supra* note 1, at 202–03, 346–47, 351–57, 363–64.

16. *See generally* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (applying its terms to any “offender,” regardless of military status).

17. Matthew Waxman, *Going Clear*, FOREIGN POLICY (Mar. 20, 2013), http://foreignpolicy.com/articles/2013/03/20/going_clear; Philip Alston, *The CIA and Targeted Killings beyond Borders*, 2 HARV. NAT’L SECURITY J. 283 (2011).

18. Josh White, *Military Lawyers Fought Policy on Interrogations*, WASH. POST (July 14, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/14/AR2005071402187.html>.

19. Bob Woodward, *Guantanamo Detainee Was Tortured, Says Official Overseeing Military Trials*, WASH. POST (Jan. 14, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>.

20. Felicite Fallon, FSView & Florida Flambeau, *Former Military Prosecutor Speaks on Torture from Guantanamo Bay Perspective*, CBS NEWS (Aug. 4, 2008, 7:18 PM), <https://www.cbsnews.com/news/former-military-prosecutor-speaks-on-torture-from-guantanamo-bay-perspective/>.

back on President Trump's pro-torture campaign rhetoric.²¹ Similarly, if conventional wisdom is to be believed, the military follows much stricter targeting protocols to uphold the discrimination principle than its counterparts in the CIA. If the federal government is going to shift institutional responsibilities or allow subcontracting to civilians, then it must be accompanied by providing oversight as well as training in relevant international law and laws of war.

IV. RETAINING CIVILIAN PROFESSIONAL VALUES

This last section will explore the preceding argument's mirror opposite: just as military humanitarian values must accompany the shifting of military tasks, other professions' institutional values must be respected and play a strong role in any cooperative effort with the military. Much as the Walmart Superstore analogy embodies a fear of uniformly shoddy market goods, Brooks also rightly worries about the corrosive effect of the militarization of police forces.²² Will securitization and militarization destroy the distinctive elements of policing that are best suited to its unique role and replace them with the force escalating aspects of the military? Brooks notes the rise of SWAT teams, the use of military style uniforms and training, and the use of military weapons by police forces.²³ Most recently, President Trump has fully restored the 1033 Program, allowing police forces to receive military surplus equipment without charge.²⁴

While many have noted the militarization of the police, we ought to pay attention to the other actors who are becoming militarized or securitized in the war on terror. Many other professions have decried the pernicious effect of securitization on their members and their profession. For the psychologists, anthropologists, doctors, nurses, social scientists, and other professionals enlisted to assist the military (or other government actors) in the war on terror, numerous high-profile examples exist where security concerns seem to trump their preexisting professional norms and ethics. For example, many anthropologists, sociologists, and political scientists faced steep criticism for their participation in the Human Terrain System (HTS).²⁵ The HTS deployed more than 1,000 personnel to help "provide information on the cultures, customs, and practices of local communities," something that would seem to humanize the military rather than

21. Sheri Fink & Helene Cooper, *Inside Trump Defense Secretary Pick's Efforts to Halt Torture*, N.Y. TIMES (Jan. 2, 2017), <https://www.nytimes.com/2017/01/02/us/politics/james-mattis-defense-secretary-trump.html> (referencing a November 2016 conversation between Trump and Mattis, in which Mattis advocated against the use of torture).

22. BROOKS, *supra* note 1, at 298.

23. *Id.* at 298–299.

24. Adam Goldman, *Trump Reverses Restrictions on Military Hardware for Police*, N.Y. TIMES (Aug. 28, 2017), <https://www.nytimes.com/2017/08/28/us/politics/trump-police-military-surplus-equipment.html>.

25. See generally NETWORK OF CONCERNED ANTHROPOLOGISTS, THE COUNTER-COUNTERINSURGENCY MANUAL: OR, NOTES ON DEMILITARIZING AMERICAN SOCIETY (Matthew Engelke ed., 2009).

militarize the anthropologists.²⁶ Yet the American Anthropological Association concluded that the program had “incompatibility . . . with disciplinary ethics and practice” because of the “significant likelihood that HTS data will in some way be used as part of military intelligence, advertently or inadvertently.”²⁷ Or take the role of psychologists in developing the CIA’s interrogation program, which has also caused great professional consternation, and for which two civilian psychologists recently settled a civil case accusing them of using torture and other coercive methods on detainees who froze to death while in CIA custody.²⁸ To make matters even worse, Human Rights Watch has also accused civilian psychologists of engaging in unethical experimentation on CIA detainees, which is prohibited by the international Nuremberg Code.²⁹ Similarly, the role of health workers’ participation in a sham vaccination program in Pakistan to help ensnare Bin Laden has proven deeply problematic.³⁰ After obtaining a DNA swab that CIA handlers needed for intelligence purposes,³¹ the vaccination protocol was allowed to lapse, endangering some of the poorest in Abbottabad.³² Moreover, the involvement of health workers in the Bin Laden plot has endangered polio vaccinators as the Taliban has placed a bounty on their heads,³³ as well as delegitimized vaccination programs more generally, placing as many as 100,000 extra people at risk for polio.³⁴ A final example includes the military doctors and military nurses who were involved in the force-feeding of hunger striking prisoners at detention centers like Guantanamo Bay.³⁵ While these actors are not civilians,

26. Christopher Sims, *Academics in Foxholes: The Life and Death of the Human Terrain System*, FOREIGN AFF. (Feb. 4, 2016, 12:00 AM), <https://www.foreignaffairs.com/print/1116592>.

27. AAA COMM’N ON THE ENGAGEMENT OF ANTHROPOLOGY WITH THE US SECURITY AND INTELLIGENCE CMTYS. (CEAUSSIC): FINAL REPORT ON THE ARMY’S HUMAN TERRAIN SYSTEM PROOF OF CONCEPT PROGRAM 3 (Oct. 14, 2009).

28. See generally *On Eve of Trial, Psychologists Agree to Historic Settlement in ACLU Case on Behalf of Three Torture Victims*, ACLU (Aug. 17, 2017), <https://www.aclu.org/news/cia-torture-psychologists-settle-lawsuit> (“In a first for a case involving CIA torture, the American Civil Liberties Union announced a settlement today in the lawsuit against the two psychologists who designed and implemented the agency’s brutal program.”); Sheri Fink & James Risen, *Psychologists Open a Window on Brutal CIA Interrogations*, N.Y. TIMES (June 21, 2017), <https://www.nytimes.com/interactive/2017/06/20/us/cia-torture.html>.

29. See Fink & Risen, *supra* note 20 (“However, the advocacy group Physicians for Human Rights, in a report being released this week, contends that the men and the C.I.A. engaged in unethical experimentation on detainees, which is banned by the Nuremberg Code for health professionals developed after World War II.”).

30. See generally Tim McGirk, *How the Bin Laden Raid Put Vaccinators Under the Gun in Pakistan*, NAT’L GEOGRAPHIC (Feb. 25, 2015), <https://news.nationalgeographic.com/2015/02/150225-polio-pakistan-vaccination-virus-health/>.

31. The Pakistani doctor hired to coordinate the door-to-door vaccination program maintains that he never knew he was working with the CIA, though others dispute his account. *Id.*

32. *Id.*

33. *Id.*

34. *How the CIA’s Fake Vaccination Campaign Endangers Us All*, SCI. AM., <https://www.scientificamerican.com/article/how-cia-fake-vaccination-campaign-endangers-us-all> (last visited Feb. 18, 2018).

35. See generally *The Ethics of Force-Feeding Inmates*, N.Y. TIMES (May 1, 2013),

they do belong to the medical profession, which largely denounced the orders to force-feed.³⁶

As the military “becomes everything,” these professional ethics and norms must be bolstered and clarified before securitization co-opts them. Take, for example the World Medical Association, which had previously condemned force-feeding when a prisoner is “capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment.”³⁷ This position was endorsed by the American Medical Association and the American Nurses Association,³⁸ and reiterated when forced feeding began.³⁹ It strikes me as at least plausible that one or more Navy medical officers refused to carry out forced enteral feedings based on these professional norms, or at the very least drew on these norms to justify their position.⁴⁰ Of course, such individuals are placed in a difficult position because they are not supposed to refuse lawful orders. But it is noteworthy that the military, in one recent case, declined to have a disobedient nurse face a personnel board, and within one year returned him to regular duties.⁴¹ More relevant, for those who are civilians and thus not legally obliged to follow orders, professional norms—if sufficiently clear and developed—might be well-positioned to help ensure better decision making.

In addition to before-the-fact professional norms and values, professions can and should respond to events on the ground as they happen in real time. Much as the laws of war often need to catch up to the specific atrocities and violations of a conflict, many professions will simply not have conceived of certain problems before they arise. In such instances, they need to formally push back by developing, articulating, and educating members on their positions and how they are rooted in the profession’s core values. For instance, in the wake of such deeply problematic practices as sensory and sleep deprivation, frog crouching, and waterboarding, the American Psychological Association passed a policy prohibiting psychologists from working in settings where people are being held in violation of international law or the Constitution; and further elucidated that psychologists shall not “knowingly engage in, assist, tolerate, direct, support,

<https://www.nytimes.com/roomfordebate/2013/05/01/the-ethics-of-force-feeding-inmates>.

36. *Id.*

37. WORLD MED. ASSOC., WMA DECLARATION OF TOKYO — GUIDELINES FOR PHYSICIANS CONCERNING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN RELATION TO DETENTION AND IMPRISONMENT ¶ 8 (as amended Oct. 2016).

38. Position Statement, Am. Nurses Assoc., *The Nurse’s Role in Ethics and Human Rights: Protecting and Promoting Individual Worth, Dignity, and Human Rights in Practice Settings* (2016) (on file with author).

39. Letter from Jeremy A. Lazarus, President, Am. Nurses Assoc., to Chuck Hagel, Sec’y of Def. (Apr. 25, 2013) (available at <https://www.documentcloud.org/documents/694196-hunger-strikers-letter-04-25-13.html>).

40. *See, e.g.,* Carol Rosenberg, *Navy Nurse Who Refused to Force-Feed at Guantánamo Keeps His Job*, MIAMI HERALD (May 13, 2015, 3:18 PM), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article20817624.html>.

41. *Id.*

advise, facilitate, plan, design, or offer training in torture or other cruel, inhuman, or degrading treatment”⁴² And yet, even as psychiatrists and psychologists embraced these norms, the U.S. government was still able to incorporate these professionals into its High-Value Detainee Interrogation Group (HIG) in order to “deploy the nation’s best available interrogation resources against terrorism detainees identified as having access to information with the greatest potential to prevent terrorist attacks,” and to “serve as the locus for interrogation best practices, lessons learned, and research for the federal government.”⁴³ However, early accounts suggest the HIG has not had the same corrosive effects on legal compliance as the CIA’s enhanced interrogation efforts.⁴⁴

V. CONCLUSION

In conclusion, if everything is war and the military is becoming everything, then the military needs to think hard about how to both instill military values and ethics in all activities, and yet allow space for civilian professional norms to guide the uneasy hybrid nature of ever-expanding future activities.

42. Approved Minutes, APA Council of Representatives 2 (Aug. 2013) (on file with author).

43. HIGH-VALUE DETAINEE INTERROGATION GROUP, INTERROGATION BEST PRACTICES 1 (2016).

44. See Ali Watkins, *Elite Terrorist Interrogation Team Withers Under Trump*, POLITICO (Dec. 5, 2017, 5:04 AM), <https://www.politico.com/story/2017/12/05/elite-terrorist-interrogation-trump-279930> (“In the last week alone, two members of the group’s critical research arm announced their departure, and warned colleagues the organization was in danger.”).