Episode 754: How Everything Became War and the Military Became Everything

Guest: Rosa Brooks

WOODS: Well, that's quite a provocative title, isn't it? No doubt that's why you chose it. But I guess when I first heard about this book, I was expecting it to lean a little bit more in the cultural direction. Like for instance, how did we get to a point that people in the military are revered to a degree that's almost a caricature, where everywhere you go there's a military discount or every football game there are military jets flying overhead, and we're standing up on the airplane? I mean, I'm 44 years old, and I remember people being respectful toward folks in the military, but something happened after 9/11, where it's just become absolutely everywhere. Now, even though that's not in your book, let's start off with my asking about something that's not in your book. What do you think about that phenomenon?

BROOKS: Well, it's in the book a little bit, but it's not the main theme of the book. I think you're absolutely right, Tom. I think post-9/11 support for our troops, as we always call them, has become a kind of civil religion in this country, and obviously there's nothing wrong, and it's good to be respectful of the service and the risks and the sacrifice of members of the military, but we put them on a pedestal, and very few people can live up to that. And I think it also sometimes operates to prevent us from asking the hard questions about policies and budgets that we should ask.

WOODS: Let's talk now about the main thrust of your book, though. The idea that I'm gleaning from this book is that traditionally war and peace have been two clearly sealed off categories. Either you're at war or you're at peace, and a lot of things follow from that, because during war certain things are allowed or tolerated that are not allowed or tolerated during peace, and certain restrictions on civil liberties are more expected during war than during peace. But what we've had particularly since 9/11 is a shift from viewing war and peace as two different categories, as thinking instead of the situation as being always war, just along a continuum.

BROOKS: I think that's right. I think that — here's how we lawyers put it. We have a legal framework that applies only in wartime, and that's the law of armed conflict, and we have our fancy Latin word for it. We call it the *lex specialis*, which means "special law" and applies in the special situation of war. The rest of the time, *lex generalis*, the general law applies, and that's ordinary peacetime law with its emphasis on due process, its emphasis on free speech, and so on. But in wartime, the law of armed conflict is a lot more tolerant of the state and state agents using lethal force without any due process obviously against enemy combatants, using secrecy, of sort of

skipping the ordinary democratic checks and balances that we expect in the general law and that we have in the general law.

And traditionally we say, well, that's okay, because we think of war as these temporary aberrations, these short, brief exceptions from the norm, and we're willing to tolerate a degree of infringement of ordinary rights and so on because we think it's necessary and it's only temporary. We return after the war ends to ordinary law. The problem in the post-9/11 world is that it's gotten harder and harder to tell the difference between what counts as a war and what doesn't, and we've started applying that law of armed conflict framework to more and more things, which in turn moves more and more spheres of government activity out of the daylight, if you will, and into the often literally the sort of black covert world.

WOODS: Can you explain exactly how Guantanamo fits into this picture? Because it does seem like a good example of a case of — I wouldn't say legal limbo, because the law has more or less spoken on the question, but nevertheless it's a case where you don't have a full-fledged war against a state actor, and you have these people who are suspected of this or that, of bad intentions, and you throw them in this place, and people argue about the legal status of it all.

BROOKS: Yeah, so after the 9/11 attacks there was this debate about whether the law of the war, the protections given to prisoners of war under the Third Geneva Convention should be provided to people we capture from the Taliban or al-Qaeda suspects, and there was a sort of long, drawn out battle. The Bush administration started out taking the position that they don't get any protections; nothing applies to them; it's just our discretion to be nice to them or not as we see fit. Eventually what happened is the US Supreme Court weighed in on this and said, uh, there is an armed conflict; they are entitled to at least some of the protections of the Geneva framework.

And one of the things that happens if you're in the Geneva framework, you know, the good news is that you get some protections, either as a prisoner of war or a detainee in an armed conflict, depending on what you sort of qualify for. The bad news is that normally the state can't put you in prison unless you are being charged with something, you're tried, you're convicted, and then you serve your sentence; you're done' you're out; you paid your debt. On the other hand, under the law of war, somebody can be detained for the duration of the conflict, which, again, if you figure a war is typically two years, five years, maybe even ten it's one thing. On the other hand, the context of something like a war against terrorism, it's maybe forever.

And it's interesting; the Supreme Court did have a little footnote on that — I think it was a Sandra Day O'Connor footnote — in that opinion that I mentioned just a minute ago, in which they sort of said — or actually I think it was an earlier opinion. It was the Hamdi opinion, but not important I suppose for — But essentially what the court said was, you know, we recognize that this framework for detaining during the duration of the conflict assumes that conflicts are sort of traditional conflicts and have an end, and at the moment, at the time the court was writing, there was active ground conflict going on in Afghanistan. They said right now, clearly that is the case. They said, we might have to reevaluate this assumption if this conflict sort of goes on forever, basically.

So there's a little bit of a hint from the court that they recognize that there are potentially some problems if you end up applying that framework indefinitely, but that is frankly where we've gotten to, in terms of Guantanamo. We have people who have been there for 15 years, some of whom we don't even think are dangerous; we just can't figure out what to do with them. And some of them have never been tried in any formal court, but we're holding them essentially because we think they're scary guy.

WOODS: I've heard that early on in the War on Terror, people were basically being told we'll give you a bounty if you haul in some people that you consider to be suspicious or who may be involved in terrorist activity, so some people are just more or less arbitrarily or indiscriminately turning people in for the bounty. So you wind up with some people in Guantanamo who may in fact be terrible people, and other people who are just in the wrong place at the wrong time. Is there anything to that?

BROOKS: That is absolutely true. Right now there are not many people left in Guantanamo. I think the number is well under 100 at this point. But what started happening as the immediate post-9/11 panic died down and as journalists and human rights groups and ultimately courts began to take a closer look at what was going on at Guantanamo, it did become apparent that we have a mix of people there. We had a mix of people who were some really, really bad guys; and some people who were just really, really unlucky guys who had pissed off some cousin or were in the wrong place at the wrong time, and somebody decided to get rid of them by saying he's an al-Qaeda guy even though it wasn't true; or they just got swept up by mistake by US allies and nobody ever bothered to figure out what the real story was. Partly for that reason the military's own analysis ended up determining that quite a lot of the people initially detained should be let go, because they hadn't done anything. They weren't bad guys.

The problem that we've been struggling with ever since then, though, is that people get scared. Americans get scared. Foreign populations get scared, and no matter how many times US military says, no, no, no, we screwed up, this wasn't actually a terrorist, we want to release them to your country, a lot of countries are saying, no, no, no, thank you. So it's been a sort of long struggle to find places that will accept these people. And I should add, it's fair to say that in some cases, although they were not originally enemies of the United States, after being detained wrongly in Guantanamo for ten years, some of them are very pissed off at the United States by now.

WOODS: Yeah, no doubt, no doubt, so it is rather a difficult position. Is it true? I don't know how much I can trust right-wing media half the time, but I've heard it said —

BROOKS: I'm not sure how much you can trust any media half the time.

WOODS: Well, yeah, but on this particular issue I've heard repeatedly that so-and-so was let out of Guantanamo and went on to commit terrorist acts. Are there cases of that?

BROOKS: There are cases of that. Yeah, no question about it. I think, though, that we get more hysterical about this than we should. There are prisoners in the United States who commit robberies or burglaries or rapes, who serve a long sentence and who are

let out of jail and go on and do something else. Most of them don't. Most of them do not commit further crimes, but some of them do, and most Americans probably do not think that that means that we should lock up all criminals forever just in case. It's a risk that as a society we accept, that there are going to be some percentage of people who are going to surprise; there are going to be some percentage of people who we never locked up who are going to surprise us and commit a crime. You know, the alternative, which is locking up a whole lot of people based solely on their hypothetical potential future dangerousness I think is not a direction that we as a society ought to want to go in.

WOODS: Let's talk about — there's another point that fits into the thesis of your book about the way the military became everything. We look to the military to solve all kinds of problems, because as you point out early on in the book, the polling data shows that Americans have fairly low estimates of a lot of public institutions but a fairly high estimate of the military, and what this leads to, consciously or otherwise, is an instinct to turn to the military to solve various kinds of problems that it really does not exist to solve and was not designed to solve. Now, one of these does involve foreign affairs, and that is counterinsurgency. Let's try measures other than outright fighting, outright violence, to try to see what we can do to create peace and create stability around the world. Can you give us an example or two of that and what the results have been?

BROOKS: Well, the results are varied, as you would expect. I think in certain areas of Afghanistan and Iraq, for instance, there were quite successful local level military-led counterinsurgency efforts that focused on protecting the population from being preyed upon by warlords, terrorists, you name it; that focused on restoring responsible local governance, getting the local economy up and running. And there were some that were quite successful, sort of at least in the short run. The trouble is of course even those successful ones, in the context of a fairly incoherent long-term national strategy in Iraq or Afghanistan, ultimately sort of succumb to the broader pressures on them, so I don't know that they're still success stories.

That being said, I think it's not so much the counterinsurgency piece that is driving this expansion of the military's role, because counterinsurgency by definition is in the context of a conflict against an insurgent group. So it's clearly in the context of a more traditional conflict. But what we have also seen has been the expansion of the military's role in what the military now calls stability operations and in what can be called sometimes Phase Zero operations or "shaping the battlespace."

And here's the way the logic works. The logic is, okay, we now live in a world where threats could come from anywhere and take any form. That might be the form of cyber attack; it might be the form of a bioengineered virus; it might be in the form of nuclear materials; it might be in the form of a traditional conflict. We don't know. We don't know where the threat's going to come from. Remember, on September 10th, 2001, nobody's thinking about Afghanistan. In some ways the lesson of that for the military was expect the unexpected; expect threats to pop up where you're not thinking of them.

The problem is if you think the next threat could come from anywhere and be anything, then if you're the military and you're charged with protecting the United

States you think you've got to be everywhere and do everything, and that means including doing things that have to do with preventing or preparing for conflict: building relationships with partner militaries, gathering information, generating goodwill amongst civilian populations, so that hopefully they'll tell you things that are happening and you'll get advanced warning. And as you can imagine, that all makes perfect sense; the problem is that there's no limit to it, so we end up with American military personnel who are vaccinating cattle in Botswana or trying to create soap operas for Iraqi audiences that preach the virtues of accountable governance, trying to stop human trafficking in the Pacific. So there's no limit to it, is the problem. And as you suggest, I think the other problem is that this is not by and large what military personnel are good at.

WOODS: The second part of your book you talk about how in the past people have tried to tame war, to try to put limits on it, to try to subject it to rules that are recognized by everybody, and this is in contrast to what seems to be going on now, where it's so unclear as to exactly the status of things. And of course George W. Bush famously spoke of the "war on terror," which seems to be completely open-ended, and this seems to run counter to what we had seen at least up to the 20th century in Western civilization to try to be extremely precise when it comes to war and precise about what the rights and wrongs of it are. So can you give us a — obviously a huge, huge amount of material about this, but what kinds of things had been done in the past to try to keep war bottled up and contained?

BROOKS: Yeah, it's kind of fascinating, and this for me was one of my favorite parts researching the book, was sort of delving into the history and anthropology of how human societies have tried to draw lines between war and peace and warriors and civilians. So I'll give you a few examples. Essentially every human society throughout history has tried really hard to do that, precisely because the things we accept and consider appropriate in wartime are often things that we think of being immoral if not illegal in peacetime: you know, willful killing of other human beings. So just to give you a few examples, amongst the Old Norse, the Berserkers who gave us our modern term "berserk," were warriors who would don the pelts of wolves and bears before they went into battle, in the belief that this would help them shape shift and take on the savage attributes of these predatory animals.

The Navajo in the American Southwest literally had a different language they spoke when they set out on raids, so the male warriors would leave their home territory, head towards whatever the enemy territory was, speak a dialect with a different vocabulary, different verb forms. And then when they came back from the raid, they would draw a line in the desert sand; they would face enemy territory, then they'd turn around facing their home territory; they'd step over that line, and they'd resume the ordinary language. A lot of Native American groups actually had war chiefs and piece chiefs, so in ordinary times the peace chief was in charge, and then during times of war the tribes would be led by a completely different person, a war chief. When the war ended, leadership would go back to the peace chief. So a huge amount was at stake, even forms of governance, who's in charge depending on whether you're in a war or not in a war.

And I think for us Americans today, we still culturally like to imagine that war is this separate sphere; it's a temporary exception. Normal life is peace; war is the

aberration, and we have our own modern rituals that we use to distinguish warriors from the rest of us. We send — our recruits go off to boot camp, and their hair is cut, and their civilian clothes are taken away from them; they wear special little colored ribbons and symbols on their chests; they name their weapons systems after predators just like the Old Norse. We have the Reaper and the Blackhawk and the Falcon and the Predator drone itself, of course. So we too do all these things to try to symbolically distinguish the worlds of war and warriors from the world of peace and civilians.

WOODS: I've had somebody on the show named Laurie Calhoun, who's done some work on just war theory, and I used to hold the conventional view of just war theory, that this is Western civilization at its best, looking at an issue of great moral importance and trying to subject it to standards of justice that will hold in all circumstances. But what she argues is that, really, just war theory does not in practice really prevent any war, because there's no warmaker who's going to stop and say, well, you know, it really isn't a last resort after all, so I guess I won't do it. It's not a restraint, but to the contrary, if anything, the warmakers exploit just war theory. Anybody can twist his line of argument to satisfy those requirements, so actually, if anything, it validates rather than prevents war. And that shocked me that somebody would argue that. How does that strike you?

BROOKS: You know, I've seen that argument. I don't entirely agree. I do think that both just war theory, but to put it more simply, common sense ideas of right and wrong do act as a restraint on policymakers. Not always and not as much as we'd like them to, but policymakers are responsible, especially in democracies obviously, to their constituencies. And it's hard to do something that will be perceived as wrong. That doesn't mean that we don't have examples, the run up to the Iraq War being one of them, where facts and arguments were distorted to justify a conflict that didn't probably make a whole lot of sense in terms of national security.

But what I think has happened more recently, which I think is interesting and to me is really quite disturbing, is that at a moment when it's harder and harder to say in any principled way or consistent way would should count as war and what doesn't count as war and who should count as a combatant and what doesn't count as a combatant. Is the War on Terror a war? Well, the United States says it is. Does that mean it extends to everywhere there is a terror risk? Well, the United States government is basically saying that the answer to that is yes. But what happens is if you start defining war in a way that is so broad that the war could be anywhere and that anybody, including people who to most of us look like civilians, who aren't carrying weapons but the US government says we think they're planning some sort of unknown and unknowable future terrorist bad thing, what ends up happening is that the set of legal rules governing war take over, and those rules, as I said a few minutes ago, are a lot more permissive in terms of the state's use of lethal force, secrecy, coercion, etc.

And just to make it more concrete, here's why it matters. If we say that — take a very controversial issue, US drone strikes. If we say that there is an armed conflict, and it extends to wherever enemy combatants are, and some of those enemy combatants are suspected terrorist operatives in Yemen or Libya or Pakistan or wherever, well, then a US drone strike is a lawful wartime targeting of enemy combatants, and it is morally and legally no different at all from an American soldier on the beaches at Normandy on D-Day shooting at a German rushing towards him with a machine gun. It's exactly

the same thing. On the other hand, if that law of war framework does not apply those drone strikes are just murders. The US government is murdering people around the world in sovereign countries. And we really want to know the difference, right? We want to be on the right side of that.

But I do think that we have certainly seen in the last 15 years, in two administrations, one Republican and one Democratic, a certain amount of let's call this an armed conflict because we, the US government, have a degree of freedom of action to do things that would be illegal if we don't call it an armed conflict. So in that sense, I think the availability of that legal framework certainly does create incentives for the executive branch to decide — if you're trying to decide if something is a war or not, why shouldn't you always err on the side of calling it a war?

WOODS: Well, on that point, at one point in your book you admit to some optimism following the election of Barack Obama with regard to foreign policy, and you even said I think in 2009 that Obama has — I don't know exactly how you put it, so forgive me, but something like he's put an end to the War on Terror, or at least we're going to have clarity going forward.

BROOKS: (laughing) I was wrong.

WOODS: Yeah, look, we've all been wrong about — boy, when I look back at things I used to — wars I supported and propaganda I believed. So I say that not to cause you embarrassment or anything, but rather to ask you what do you think happened in the case of Barack Obama. Do you think this is a man who sincerely wanted to make a change, and then he was so up against entrenched interests that he couldn't make that change? And if that's what it is, then what does that tell us about the system?

BROOKS: I think that's part of it. I think that in the years between the 9/11 attacks and when President Obama took office in January of 2009, a huge segment of the US government's foreign policy apparatus kind of retooled itself for the War on Terrorism, and bureaucracies ultimately end up acting to sustain themselves. And it does become very, very hard to shift the momentum of a large bureaucracy that is geared up to do one thing. And part of it I do think is that President Obama discovered that bringing an end to the War on Terror was a whole lot easier said than done. That I think, though, is probably letting him off the hook a little too much —

WOODS: Right.

BROOKS: — because I also think it turned out that, you know, it just wasn't that important to him. I think he cared; he didn't care that much. He didn't care enough to put the political capital — take things like closing Guantanamo. I don't think that there's any constitutional bar to President Obama closing Guantanamo tomorrow, whether he decides to let everybody go and just airdrop them into Yemen and say "Good luck to you; see ya," or whether he wants to say I'm moving you all to supermax prison inside the United States. I do not actually think constitutionally, if we accept the whole argument that it's wartime, I don't think Congress really has a leg to stand on to prohibit him from doing that. But obviously he's chosen not to do it, because it would be a huge political fight, and inevitably it would be like poor old Michael Dukakis' Willie Horton moment. Inevitably one of those guys would get out and do

something nasty, and it would be a political disaster. So this is about political will more than anything else. There's not a legal bar; there's not some other practical bar to making the changes that he originally said he wanted to change. I think ultimately he just decided it wasn't worth his time.

WOODS: And unfortunately, I think that political calculation may be correct. I think a lot of times we move in circles where, why, it's just obvious that Guantanamo is terrible and so we just can't imagine that we're in an overwhelming minority when it comes to things like that. Or most people are not worried about drone warfare. They're just not.

BROOKS: That's right. It doesn't affect them —

WOODS: Yeah.

BROOKS: At least, though, I would say they think it doesn't affect them. I think that it will come back to bite us in all kinds of ways in the future, but at least in the short term we have this happy illusion that this is something happening far, far away to bad people and we don't need to think about it.

WOODS: Let's wrap up with your conclusion. I was a little surprised at where you took this in the end, where we should go and what kind of, I don't want to say compromises, but let's say coming to terms with the reality we live in we might need to do here.

BROOKS: Yeah, I've sat in so many rooms full of so many smart lawyers over the last 15 years, and sat there as these smart lawyers from the US government and from allied governments, from human rights groups, from academic settings, just go around in circles on issues like Guantanamo and detention, on issues like drone strikes and targeted killings. And they go around in circles, because they're essentially arguing about what category things go in, and the US government keeps saying this goes in the war category and those rules apply, and the NGO people say no, it doesn't, and there's no way out of that argument, because I don't think the legal framework gives you an answer. The one thing the law of war never does is define what counts as a war. So it's a political decision to make, not fundamentally a legal decision.

It seems to me that we have kind of inherited this binary legal framework. We have war, or we have not war. There are only two choices. And one is too permissive in terms of how much power it gives the state; the other is probably too restrictive in terms of the scale of the threats that are real threats that are out there. Terrorism is a real threat and is different from ordinary crime. My own take is let's acknowledge that we're operating likely for the next few decades to be in this world, where a lot of the threats we face are in this space between what we traditionally think of as war and traditionally think of as peace, and let's come up with a set of rules and institutions that are designed for that space between, instead of always trying to shoehorn things into categories that they don't fit into. Let's do that in a way that's consistent with our values but that also acknowledges the nature of the threat, and I think that's actually very doable. That sounds abstract, but — we may not have time right now to talk about specifics, but I think when you drill down to specifics it's actually not as hard as you would think; it just requires us to start by acknowledging,

hey, this doesn't fit that well into existing legal frameworks; we might need to create a new one. And humans have done that in the past. We've done it ourselves in the recent past; we can do it again.

WOODS: The book is *How Everything Became War and the Military Became Everything: Tales from the Pentagon*, by our guest, Rosa Brooks. I'm linking to it at TomWoods.com/754, this being Episode 754. Well, best of luck with this book, and I appreciate your time very much. Very interesting. And of course we're only scratching the surface. This is a big book covering a vast array of topics and covering them quite skillfully and non-polemically, and I don't think I could have pulled that off. On topics like this, I can't help myself but going off into polemic, and you're upset in here at times, but not so that you lose your cool and lose your audience, and that's a difficult thing to do, and I think you pulled it off very well. Thanks again for your time.

BROOKS: Thank you so much, Tom.