A Decade After Abu Ghraib: Lessons In "Softening Up" The Enemy and Sex-Based Humiliation

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Introduction

In April 2004, many in the United States and around the world watched with horror as the now-infamous photographs of torture and abuse at Abu Ghraib Prison emerged. The photos depicted images of U.S. soldiers engaged in torture and cruel, inhuman, and degrading treatment.[1] Among other things, the photos documented the sexual abuse and humiliation of Iraqi detainees in the prison.[2] The photographs depict naked detainees, some of whom were forced to engage in sex acts or simulated sex acts.[3] Sworn statements of the detainees at Abu Ghraib reveal a pattern of abuse and degradation, including "details of how they were sexually humiliated and assaulted, threatened with rape,

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1. Joshua L. Dratel, *The Legal Narrative*, *in* THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB xxi (Karen J. Greenberg & Joshua L. Dratel eds., 2005) [hereinafter THE TORTURE PAPERS].

> The policies that resulted in rampant abuse of detainees first in Afghanistan, then at Guantánamo Bay, and later in Iraq, were the product of three pernicious purposes designed to facilitate the unilateral and unfettered detention, interrogation, abuse, judgment, and punishment of prisoners: (1) the desire to place the detainees beyond the reach of any court or law; (2) the desire to abrogate the Geneva Convention with respect to the treatment of persons seized in the context of armed hostilities; and (3) the desire to absolve those implementing the policies of any liability for war crimes under U.S. and international law.

Id.

2. Craig R. Whitney, *Introduction* to THE ABU GHRAIB INVESTIGATIONS: THE OFFICIAL REPORTS OF THE INDEPENDENT PANEL AND THE PENTAGON ON THE SHOCKING PRISONER ABUSE IN IRAQ xiii (Steven Strasser ed., 2004) [hereinafter ABU GHRAIB INVESTIGATIONS]. Describing the findings of an inquiry conducted by Maj. Gen. Antonio Taguba, Craig Whitney observes:

> General Taguba found instances of illegal and intentional abuse of detainees by the military police, including keeping prisoners naked for days at a time; forcing them to masturbate while being photographed and videotaped; placing a dog chain around a prisoner's neck and photographing him next to a female guard; and using dogs without muzzles to intimidate and frighten prisoners . . . .

Id.

3. *Id.*

and forced to masturbate in front of female soldiers."[4] Now, a decade after the abuses occurred, it is time to take stock of the lessons learned and assess the commitment of the United States to ensure that this type of custodial abuse does not occur again. Preventing this type of torture and cruel, inhuman, and degrading treatment in the future requires a full understanding of the ways in which racism, sexism, and homophobia within the U.S. military facilitated the abuse at Abu Ghraib.

In early January 2004, Major General Antonio Taguba was appointed to investigate the allegations of abuse at Abu Ghraib.[5] Major General Taguba found "numerous instances of sadistic, blatant, and wanton criminal abuses . . . ."[6] New details of the abuse emerged in May 2004 when the *Washington Post* obtained copies of sworn statements by detainees at Abu Ghraib that "describe in raw detail abuse that goes well beyond what has been made public, adding allegations of prisoners being ridden like animals, sexually fondled by female soldiers and forced to retrieve their food from toilets."[7] Other detainees reported incidents of forced sodomy and other forms of sexual abuse, much of which was documented by photographs.[8]

What shocked many was not only the depravity of the abuse but also the fact that women were among some of the most active perpetrators.[9] The fact that women were active perpetrators betrayed essentialist notions that women—as compassionate, pure, givers of life—were not capable of such vulgarity and cruelty.[10] The participation of women in the abuse seemed to add to the level of public disgust.[11] After all, women do not behave this

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4. Scott Higham & Joe Stephens, *New Details of Prison Abuse Emerge: Abu Ghraib Detainees' Statements Describe Sexual Humiliation and Savage Beatings*, WASH. POST, May 21, 2004, at A1.

5. Whitney, *supra* note 2, at xii.

6. DEPT. OF DEFENSE, ARTICLE 15–6 INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE (2004) [hereinafter THE TAGUBA REPORT], *reprinted in* THE TORTURE PAPERS, *supra* note 1, at 416.

7. Higham & Stephens, *supra* note 4, at A1.

8. *Id.* Some detainees said they were pressed to denounce Islam or were force-fed pork and liquor. *Id.*

9. *See, e.g.*, Barbara Ehrenreich, *Feminism's Assumptions Upended*, L.A. TIMES, May 16, 2004, at M2. Mary Jo Melone, a columnist for the St. Petersburg (Fla.) Times, wrote on May 7:

> 'I can't get that picture of England [pointing at a hooded Iraqi man's genitals] out of my head because this is not how women are expected to behave. Feminism taught me 30 years ago that not only had women gotten a raw deal from men, we were morally superior to them.'

Id.

10. *Id.*

11. Barbara Ehrenreich, *Foreword* to ONE OF THE GUYS: WOMEN AS

way.[12] Or do they?

The images of women perpetrating sexual abuse caused dissonance within the national narrative, depicting women acting outside of their prescribed, stereotypical roles. Unlike other women in the national spotlight of the Iraq War, these women did not represent the captured female soldier in need of rescue[13] or the grieving mother who had tragically lost a son to the war.[14] As perpetrators of sexual violence, these women were a cultural reference point seemingly without mooring in popular culture.[15]

Although women were among the perpetrators of sexual abuse and men among its victims, the abuse played upon and reinforced gender-subordinating stereotypes that serve to regulate male and female behavior, enforce heterosexuality, and privilege Whiteness.[16] The sexual abuse became a process whereby the enemy was feminized, and masculine and heterosexual norms of behavior, which thrive in the U.S. military, were reified.[17] This analytical focus on the female perpetrators of Abu Ghraib is in no way meant to detract from the discussion of the victims in this case: the Iraqi prisoners of Abu Ghraib.[18]

The U.S. military is a highly masculinized institution.[19] This

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AGGRESSORS AND TORTURERS 2 (Tara McKelvey ed., 2007) [hereinafter ONE OF THE GUYS] ("A certain kind of feminism, or perhaps I should say a certain kind of feminist naiveté, died in Abu Ghraib. It was a feminism that saw men as the perpetual perpetrators, women as the perpetual victims, and male sexual violence against women as the root of all injustice.").

12. *See, e.g.*, Ilene Feinman, *Shock and Awe: Abu Ghraib, Women Soldiers, and Racially Gendered Torture*, *in* ONE OF THE GUYS, *supra* note 11, at 77 ("In the months following Abu Ghraib, I had to consider why women soldiers would torture, and what it is about the broader culture that persistently reaffirms images of women as above or incapable of such horrors.").

13. *See infra* notes 222–33and accompanying text (detailing Jessica Lynch's role in the national narrative).

14. *See infra* notes 234–41 (describing Cindy Sheehan's role in the national narrative).

15. *See* WILLIAM IAN MILLER, HUMILIATION AND OTHER ESSAYS ON HONOR, SOCIAL DISCOMFORT, AND VIOLENCE 73 (1993).

16. For a more expansive discussion of these problems, see Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259 (2004) (arguing that race comes into play here because the nationalistic response to 9/11 became highly racialized, with Arab-Americans suffering violence and cruelty in the name of patriotism).

17. Paul Higate & John Hopton, *War, Militarism, and Masculinities*, *in* HANDBOOK OF STUDIES ON MEN AND MASCULINITIES 432, 432–41 (2005) (looking at gender norms in the military, including its masculine emphasis).

18. The commission of torture and cruel, inhuman, and degrading treatment at Abu Ghraib must remain at the forefront of activist and academic inquiry. This Article seeks to add to existing literature by exploring the gendered and gender-subordinating nature of the abuses.

19. Melissa Sheridan Embser-Herbert, *A Missing Link: Institutional*

gendered environment provides crucial social context as we assign responsibility for the torture and abuse at Abu Ghraib. The actions of the female perpetrators, along with those of their male counterparts, were reprehensible, inexcusable, and violative of international law.[20] Yet, the question of accountability presents a thorny issue for feminists, myself among them. The female perpetrators exhibited a flagrant disregard for human dignity and human rights and should suffer the legal consequences. In addition to inflicting severe physical pain, they wielded gender stereotypes, racial privilege, and homophobia to dominate and abuse their prisoners.[21] We would be remiss, however, if we did not also consider the social and political context in which these women acted. A contextual approach to the horrors of Abu Ghraib may help us to understand not only what happened—but why it happened.

Although we may never know with certainty, it is possible—indeed likely—that military elites envisioned a specific role for women at Abu Ghraib, one in which women were asked or ordered to use sexuality as a means to humiliate male Iraqi prisoners.[22] In a highly masculinized military, female service members undoubtedly saw a chance to fit in by deploying against others the very tactics of sexual abuse and humiliation typically reserved for women.[23] It is possible that Lynndie England, Sabrina Harmon, and Megan Ambuhl, the women accused of abuse at Abu Ghraib, were intimidated and subordinated by their male colleagues and superiors, including Specialist Charles Graner, making it unlikely

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Homophobia and Sexual Harassment in the U.S. Military, *in* IN THE COMPANY OF MEN: MALE DOMINANCE AND SEXUAL HARASSMENT 217 (James E. Gruber & Phoebe Morgan eds., 2005) ("[I]n the military, achieving masculinity takes this process one step further and demands the denigration of the feminine and the subordination of women.").

20. *See, e.g.*, ABA, AMERICAN BAR ASSOCIATION REPORT TO THE HOUSE OF DELEGATES (2004), *reprinted in* THE TORTURE PAPERS, *supra* note 1, at 1132 (discussing the torture as a violation of the Geneva Conventions).

21. *See, e.g.*, Shahin Gerami, *Islamist Masculinity & Muslim Masculinities*, *in* HANDBOOK OF STUDIES ON MEN AND MASCULINITIES, *supra* note 17, at 448 (outlining gender norms in Islam-dominated regions); Higham & Stephens, *supra* note 4, at A1 (describing the use of gender stereotypes, racial privilege, and homoerotic situations in torture scenarios); Philip Gourevitch & Errol Morris, *Exposure: The Woman Behind the Camera at Abu Ghraib*, NEW YORKER, Mar. 24, 2008, at 52 (detailing the tactics of female stereotypes in torture).

22. Gourevitch & Morris, *supra* note 21, at 54 (examining the usefulness of female presence and participation in torture sessions).

23. Embser-Herbert, *supra* note 19, at 222, 227 (reporting that sixty-nine percent of military women have been sexually harassed and seventy-six percent felt the military had not done enough to eliminate these problems).

that they would voice dissent regarding the torturous practices.[24] This in no way excuses the disturbing predatory behavior of the female perpetrators, but merely places their exercise of agency in the context of a masculinized military in which choices for women are necessarily somewhat constrained.

But what do these observations say about women's agency in the context of the U.S. military or, more specifically, about the agency of these particular women? If we adopt a purely anti-subordination lens, as the "dominance" feminists of the 1980s would advocate, we eviscerate women's agency.[25] We conclude quite simply that, in a hyper-masculinized, hierarchical culture such as the U.S. military, we cannot expect women to exercise agency in the form of resistance or dissent.[26] This conclusion is a perilous one for women's equality. If we adopt this extreme characterization of women as victims incapable of independent action or leadership, women will never be valued as equal contributors to society. The exclusive focus on women as victims may also elide the subtler ways women in the military are exerting agency either positively through resistance or negatively through domination and torture of others.[27]

The national narrative surrounding Abu Ghraib both reinforces and challenges gender stereotypes in important ways. The sexual abuse at Abu Ghraib reflects and re-inscribes gender stereotypes by violently feminizing Iraqi men and, in so doing, policing the boundaries of masculine and feminine behavior.[28] By

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24. *See, e.g.*, Gourevitch & Morris, *supra* note 21, at 51 (illustrating Graner's interactions with prisoners, as well as direct contact with, and approval from, superiors).

25. *See, e.g.*, Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-Direction*, 40 WM. & MARY L. REV. 805, 822 (1999) [hereinafter Abrams, *Autonomy*] (describing feminist agency viewpoints, including women's domination by men as the source of social injustice); Ehrenreich, *supra* note 12, at 2 (depicting "a feminism that saw men as the perpetual perpetrators, women as the perpetual victims, and male sexual violence against women as the root of all injustice").

26. Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304, 306 (1995) [hereinafter Abrams, *Sex Wars*] (discussing a masculine military limiting women's options for forms of action and resistance).

27. In exercising agency by dominating others, women exert agency along a continuum. There may be less agency involved when female perpetrators of violence reluctantly follow direct orders and more involved when they actively embrace the subordination of others.

28. Larry Catá Backer, *Emasculated Men, Effeminate Law in the United States, Zimbabwe, and Malaysia*, 17 YALE J.L. & FEMINISM 1, 4 (2005) ("Gendering male behavior as male (desirable) and 'not-male' or 'female,' what is commonly understood as the 'homosexualization' of male behavior, thus contributes to the regulation of women and reinforces a social hierarchy of behaviors in which that gendered 'female' is subordinated to that gendered 'male.'").

examining the gendered and gender-subordinating nature of the abuse, this Article seeks to explore the culpability of the female perpetrators of Abu Ghraib in order to better understand their involvement, determine their accountability, and prevent future abuses.

Doing so requires acknowledging that these women acted with agency but that they did so within the context of an institutional structure that devalues women and perpetuates subordination based on gender, sexual orientation, and race.[29] Challenging the traditional construction of women as victims, and not perpetrators, of sexual violence requires recognition of women's agency.[30] The narrative surrounding Abu Ghraib thus leads to an ambiguous conception of women as both victims of gender subordination and agents capable of inflicting severe abuse.[31]

Part I of this Article provides an abbreviated description of the torture and abuses at Abu Ghraib.[32] It then analyzes the ways in which existing gender stereotypes are reinforced through the U.S. military's construction of the enemy as a feminized, subordinated "other" unworthy of dignity and basic human rights. The Abu Ghraib abuse was explicitly and implicitly gendered, relying on several highly gendered tropes within the national narrative that laid the foundation for the abuse.[33]

Part I also explores the role of the female perpetrators at Abu Ghraib. In particular, this part builds upon the tension in feminist theory between the anti-subordination framework, which focuses on women's historical victimization by men, and the agency framework, which focuses on women's autonomy and agency.[34] It probes the ways in which the public narratives

29. *See, e.g.*, Abrams, *Autonomy*, *supra* note 25, at 805 (describing the interaction of women's agency and constraints against it); Abrams, *Sex Wars*, *supra* note 26, at 304 (detailing partial agency limited by outside subordination).

30. Kelly Askin, *The Quest for Post-Conflict Gender Justice*, 41 COLUM. J. TRANSNAT'L L. 509, 513 (2003) (discussing trends of women being perceived as agents and perpetrators rather than victims).

31. *Id.* at 513 (characterizing women as agents of abuse); Gourevitch & Morris, *supra* note 21, at 49 (showing that the women were subordinates to male officers and military intelligence agents).

32. This Article does not address the myriad ways in which the interrogation methods run afoul of international human rights law. That is the very worthy subject of another article; it is simply outside the scope of the present one.

33. *See, e.g.*, Gourevitch & Morris, *supra* note 21, at 49, 54 (including examples of explicit gender roles with prisoners forced to wear women's panties and implicit gender roles with female presence during interactions with prisoners).

34. Abrams, *Autonomy*, *supra* note 25, at 835 (describing feminist notions of agency recognizing capacity for action or resistance, but also gender-based

surrounding Jessica Lynch, Cindy Sheehan, and Lynndie England reflect popular gendered tropes of the damsel-in-distress, the war-weary mother, and the over-sexed deviant.[35]

Part II explores the ways in which the Abu Ghraib abuse constructs women as perpetrators of sexual violence and victims of sexual stereotypes, resulting in an ambiguous form of agency. This section probes the ambiguous identity of the female soldiers at Abu Ghraib as both perpetrators and victims, as objects and subjects of law, and as actors and acted upon.[36] It concludes that recognition of this ambiguity leads to a more accurate understanding of the multifaceted roles that women play in times of armed conflict.

I. Sexual Abuse As a Tool to Re-inscribe Social Hierarchies

Although the full story may never surface, it appears that it was not mere coincidence that women were actively involved in the abuses at Abu Ghraib.[37] A 2005 military investigation concerning interrogation conditions in the U.S. military prison in Guantánamo Bay, Cuba, which have been described as similar to the interrogation tactics used at Abu Ghraib,[38] suggests that "sexually oriented [interrogation] tactics may have been part of the fabric of Guantánamo interrogations."[39] The investigation "uncovered numerous instances in which female interrogators, using dye, pretended to spread menstrual blood on Muslim men . . . and other cases in which interrogators touched the detainees suggestively."[40]

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oppression).

35. *See, e.g.*, Whitney, *supra* note 2, at xv (demonstrating England's characterization as a deviant); Sam Coates, *Standoff Continues in Crawford: As Bush, Sheehan Return, Both Sides Plan Rallies*, WASH. POST, Aug. 25, 2005, at A4 (outlining Sheehan's role); Eugene Robinson, *(White) Women We Love*, WASH. POST, June 10, 2005, at A23 (commenting on Lynch's status as a damsel in distress).

36. *See infra* notes 66, 133, 140 and accompanying text.

37. *See* Jeremiah N. Ollennu, *Abu Ghraib: Assessing the Efficacy of Individual Responsibility in Enforcing International Human Rights*, 10 HOLY CROSS J.L. & PUB. POL'Y 5, 26 (2006) ("[I]t is doubtful that the idea was cooked up by a few low ranking Army reservists. It appears that sexual humiliation became a tool in the war on terror.").

38. Carol Leonnig & Dana Priest, *Detainees Accuse Female Interrogators: Pentagon Inquiry Is Said to Confirm Muslims' Accounts of Sexual Tactics at Guantánamo*, WASH. POST, Feb. 10, 2005, at A1, A9 ("Some of the accounts resemble the sexual aspects of the humiliation of Iraqi prisoners at the U.S. prison at Abu Ghraib.").

39. *Id.* at A1.

40. *Id.* at A9. German detainee Murat Kurnaz told his lawyer that three women in lacy bras and panties strutted into the interrogation room, cooed about how attractive he was, and suggested "they could have some fun." *Id.* "When

In addition to the more extreme forms of physical torture inflicted upon Iraqi prisoners at Abu Ghraib, some of which proved fatal,[41] humiliation and degrading treatment at the hands of the U.S. military was rampant.[42] The sexual abuse and humiliation played upon sexist, racist, and heterosexist stereotypes and served to re-inscribe social hierarchies within the U.S. military and, more broadly, within the U.S. and Iraqi societies.[43]

U.S. forces contend that the abuse was intended to "soften up"[44] detainees for interrogation.[45] The abuse continued despite evidence that it failed to yield useful intelligence information.[46] It is likely that the motivation for the abuse was multifaceted,

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Kurnaz averted his eyes, . . . one woman sat on his lap, another rubbed her breasts against his back and massaged his chest and a third squatted near his crotch." *Id.* According to Yemini detainee Yasein Esmail, during one interrogation, a female soldier wearing a tight T-shirt entered and asked him "Why aren't you married?" and "You are a young man and have needs. What do you like?" *Id.* "Esmail said 'she bent down with her breasts on the table and her legs almost touching' him." *Id.*

41. *See* FINAL REPORT OF THE INDEPENDENT PANEL TO REVIEW DEPARTMENT OF DEFENSE DETENTION OPERATIONS, *reprinted in* ABU GHRAIB INVESTIGATIONS, *supra* note 2, at 12–13 ("As of the date of this report, there were about 300 incidents of alleged detainee abuse across the Joint Operations Areas. . . . There were five cases of detainee deaths as a result of abuse by U.S. personnel during interrogations.").

42. *Id.* at 2 ("Abuses of varying severity occurred at differing locations under differing circumstances and context. They were widespread and, though inflicted on only a small percentage of those detained, they were serious both in number and in effect.").

43. *See* Zillah Eisenstein, *Sexual Humiliation, Gender Confusion and the Horrors at Abu Ghraib*, WOMEN'S HUM. RTS. NET (July 2004), http://www.aletta.nu/ezines/web/WHRnet/2004/July.PDF ("These women should be held responsible and accountable; but they also are gender decoys. As decoys they create confusion by participating in the very sexual humiliation that their gender is usually victim to. This gender swapping and switching leaves masculinist/racialized gender in place.").

44. Guy B. Adams, Danny L. Balfour & George E. Reed, *Abu Ghraib, Administrative Evil, and Moral Inversion: The Value of "Putting Cruelty First,"* 66 PUB. ADMIN. REV. 680, 687 (2006) ("Specialist Charles Graner, Jr., a military policeman and a central figure in the abuses, steadfastly maintained at his court-martial that he was just following orders—that he had been encouraged to soften up inmates for interrogation."). Even the language of "softening up" is gendered. "Softening" connotes traits culturally associated with women in contrast to the hardened or masculine.

45. THE TAGUBA REPORT, *supra* note 6, at 518 ("Q: Have you ever been directed by the Military Intelligence personnel or any other government agency to 'soften-up' a prisoner prior to the interrogation? A: Yes, I would have them do physical training to tire them out.").

46. *See Frontline: The Torture Question* (PBS television broadcast Oct. 18, 2005) ("You might have had some soldiers at Abu Ghraib who, of their own nature, were willing to torture or abuse detainees, but I don't think that was the situation at Gitmo, and that would have to be an intentional, planned, thought-out technique in order to develop intelligence, because things that had previously been tried simply hadn't worked.").

including not only intelligence gathering but also vengeance and punishment.[47] The abuse punished detainees for having an ethnic and religious identity that was equated with terrorism in the national narrative.[48] The abuse also served to feminize the male detainees, thereby valorizing masculinity and denigrating femininity.[49] The enforced femininity and coercive sex acts in the context of severe abuse and the corresponding degradation re-inscribed male dominance, heteronormativity, and U.S. nationalism.[50] It is the interplay of these social hierarchies that multiplies and enhances their effect.

Both female and male perpetrators used sexual violence and humiliation against Iraqi prisoners at Abu Ghraib.[53] The perpetrators relied on imperatives of masculine behavior, heteronormativity, and women's subordinated status to inflict maximum humiliation in Abu Ghraib. They employed a number of related strategies including: feminization of the enemy, hegemonic nationalism, manipulation of honor and humiliation, performativity and exploitation of gendered tropes within U.S. culture. I discuss each strategy below.

A. Feminizing the Enemy

As an institution, the U.S. military places a high value on masculinity.[56] Women comprise less than fifteen percent of

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47. *See* MAJ. GEN. GEORGE R. FAY,INVESTIGATIONS OF THE ABU GHRAIB DETENTION FACILITY AND 205TH MILITARY INTELLIGENCE BRIGADE (Jan. 22, 2002), *reprinted in* ABU GHRAIB INVESTIGATIONS, *supra* note 2, at 113–14 ("The use of isolation at Abu Ghraib was often done as punishment, either for a disciplinary infraction or for failure to cooperate with an interrogation.").

48. *See* Ahmad, *supra* note 16, at 1262.

49. *See* Eisenstein, *supra* note 43 ("Men who are naked and exposed remind us of the vulnerability usually associated with being a woman. The brown men at Abu Ghraib are then constructed as effeminate and narrate a sub-text of homosexuality.").

50. *See* Jasbir K. Puar, *Abu Ghraib: Arguing Against Exceptionalism*, 30 FEMINIST STUD. 522, 533 (2004) ("That is to say, this 'scandal,' rather than being cast as exceptional, needs to be contextualized within a range of other practices and discourses, perhaps less obvious than the Iraqi prisoner abuse, that pivotally lasso sexuality in the deployment of U.S. nationalism, patriotism, and increasingly, empire.").

53. *See* Leonnig & Priest, *supra* note 38; *see also* THE TAGUBA REPORT, *supra* note 6, at 506 ("I saw [a detainee] in Room #1, who was naked and Grainer was putting the phosphoric light up his ass. [The detainee] was screaming for help. There was another tall [W]hite man who was with Grainer, he was helping him. There was also a [W]hite female soldier, short, she was taking pictures of [the detainee].").

56. Joane Nagel, *Nation*, *in* HANDBOOK OF STUDIES ON MEN & MASCULINITIES

military personnel, and "the military, with its mission of preparing for war, remains a socially sanctioned mechanism for the achievement of a masculine identity."[57] The U.S. military has fostered a homophobic culture that is resistant to change[58]—even though it has formally withdrawn its "Don't Ask, Don't Tell" policy for gay and lesbian service members.[59] Under this policy, gay, lesbian, and bisexual service members were permitted to serve in the military as long as they did not reveal their sexual orientation.[60] The repeal of the policy is a welcome development, although the military will likely remain a highly heteronormative institution for many years to come.[61]

Noting that "[a] hallmark of hegemonic masculinity is homophobia," Melissa Sheridan Embser-Herbert concludes in her examination of institutional homophobia within the U.S. military that "[f]ew, if any, institutions are more openly [anti-gay] than the U.S. military."[62] In the context of this hyper-masculinity and enforced heterosexuality, it is not surprising that the sexual abuse in Abu Ghraib took masculinist and heterosexist forms.[63] Muneer Ahmad asserts that racism, homophobia, and misogyny played significant and mutually reinforcing roles in motivating the hate crimes against Arab Americans in the wake of 9/11.[64] Homophobic epithets accompanied some of the anti-terror messages displayed in mainstream and popular media after 9/11.[65] Rumors also "began to circulate that Mohamed Atta and possibly others among

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397, 406 (Michael S. Kimmel, Jeff Hearn & R.W. Connell eds., 2005) (acknowledging the highly masculine nature of the military).

57. Embser-Herbert, *supra* note 19, at 215–17.

58. Aaron Belkin, *Breaking Rank: Military Homophobia and the Production of Queer Practices and Identities*, 3 GEO. J. GENDER & L. 83, 87 (2001) ("[S]ome aspects of military culture . . . have fluctuated but . . . despite these fluctuations, fundamental homophobic currents have remained stable for many decades.").

59. Elisabeth Bumiller, *A Final Phase for Ending 'Don't Ask, Don't Tell'*, N.Y. TIMES, July 23, 2011, at A13.

60. *Id.*

61. *See supra* note 58 and accompanying text.

62. Embser-Herbert, *supra* note 19, at 220.

63. *See* Pugliese, *supra* note 54, at 256 ("[T]hese homophobic practices of anal rape upon the Iraqi prisoners by U.S. military personnel must not be seen as 'aberrant' practices that can somehow be delimited to Abu Ghraib; on the contrary, these violent practices must be seen as institutionally enabled by the very culture of military organizations in the U.S.").

64. Ahmad, *supra* note 16, at 1309–10 ("This simultaneous invocation of racism, misogyny, and homophobia speaks to the constitutive interrelationship of different systems of subordination. As Nancy Ehrenreich has argued, systems of subordination are mutually supportive, operating not merely simultaneously, but in coordination with one another.").

65. *Id.* at 1309.

the terrorists were homosexuals."[66] Similarly, the soldiers involved in the Abu Ghraib torture used violence laden with ethnocentrism and homophobia in attempt to humiliate Iraqi prisoners.[67]

The investigative report filed by Major General Antonio M. Taguba ("the Taguba Report") reveals a number of instances in which homophobic slurs accompanied detainee abuse. In one affidavit accompanying the Taguba Report, for example, a detainee alleged, "he called [ ] me 'faggot' because I was wearing [ ] wom[e]n's underwear, and my answer was 'no.' Then he told me 'why are you wearing this underwear', then I told them 'because you make me wear it.'"[68] In another instance, a translator present at many of the interrogations at Abu Ghraib, reported translating, "[d]on't try to run away, stop right there, are you gay, do you like what is happening to you, are you all gays, you must like that position."[69]

U.S. service members attempted to bolster their own masculinity and dominate their enemy by constructing the enemy as a feminized "other."[70] As Ahmad cogently argues, "[t]hese persistent attempts to feminize and (homo)sexualize the enemy underscore that what is at stake in American wars since Vietnam is not merely national security, international order, or terrorism, but American masculinity."[71] The U.S. soldiers accomplished this process of feminizing Iraqi prisoners primarily through four processes: (1) through the commission of sexual assault generally;[72] (2) through verbal harassment and disparagement accompanying the physical abuse;[73] (3) through costuming;[74] and

66. *Id.*

67. Elizabeth Maddock Dillon, *Is That the Pose of a Liberated Woman?*, *in* ONE OF THE GUYS, *supra* note 11, at 169 ("The figure of the liberated American woman [at Abu Ghraib] plays into and reinforces an implicit logic of homophobia and racism, and suggests that women's authority will occur at the cost of men's sexual prowess.").

68. THE TAGUBA REPORT, *supra* note 6, at 503.

69. *Id.* at 499.

70. *See* Feinman, *supra* note 12 and accompanying text.

71. Ahmad, *supra* note 16, at 1310; *see also* Backer, *supra* note 28.

72. *See* Pugliese, *supra* note 54, at 268 ("The rape and sexual assault of the male Iraqi prisoners by the U.S. guards must be seen as homophobically transcoding homosexuality . . . .").

73. *See* The TAGUBA REPORT, *supra* note 6, at 499.

74. *See, e.g.*, INT'L COMM. OF THE RED CROSS, REPORT OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) ON THE TREATMENT BY THE COALITION FORCES OF PRISONERS OF WAR AND OTHER PROTECTED PERSONS BY THE GENEVA CONVENTIONS IN IRAQ DURING ARREST, INTERNMENT AND INTERROGATION (2004), *reprinted in* THE TORTURE PAPERS, *supra* note 1, at 383, 392–93 (documenting,

(4) through forced and simulated same-sex sexual contact.[75]

Victimhood is culturally coded as female;[76] this is particularly true for victims of sexual violence.[77] The very fact that the Iraqi prisoners were victimized served to feminize them.[78] William Ian Miller, who has written extensively on the social phenomenon of humiliation, argues that humiliation itself is coded as feminine.[79] To experience humiliation, therefore, is to be feminized. This suggests that because the Iraqi prisoners were subjected to humiliation, they were feminized in the process. The fact that their humiliation was expressed in sexual terms and occurred at the hands of women compromised their masculinity even further.

The U.S. soldiers at Abu Ghraib used a number of methods to emasculate Iraqi prisoners.[80] The Taguba Report contains sworn statements by a number of detainees in which they allege that they were kept naked for days at a time and often threatened with rape.[81] The involvement of male perpetrators served to police the boundaries of masculinity and, correspondingly, heterosexuality.[82] Male U.S. soldiers coupled the sexual abuse with taunts about Iraqi male masculinity and homophobic epithets.[83]

The U.S. soldiers forced Iraqi male prisoners to wear women's underwear, and several of the photographs depict this deliberate costuming.[84] This represents an effort to humiliate male Iraqi prisoners, but it does so in a markedly sexualized way.

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among other methods of ill-treatment, the practice of forcing detainees to wear women's underwear, often on their heads).

75. *See* THE TAGUBA REPORT, *supra* note 6, at 501.

76. MILLER, *supra* note 15, at 55 ("Victimizers, according to our common notions, will tend to be male, and victims, if not female to the same extent as victimizers are male, will, in many settings, be gendered female nonetheless."); *see also* Eisenstein, *supra* note 43 (describing how sexual violence committed against men confuses traditional gender roles because women are usually victimized).

77. *See* Elizabeth J. Kramer, *When Men Are Victims: Applying Rape Shield Laws to Male Same-Sex Rape*, 73 N.Y.U. L. REV. 293, 317 (1998) ("Our society, profoundly uncomfortable with men being dominated and humiliated as they are in sexual assault, believes that 'victims' are women.").

78. *Id.* at 318 ("I was held in contempt because I was a *victim*—feminine, hence perceived as less masculine.").

79. *See* MILLER, *supra* note 15, at 168.

80. *See supra* note 49 and accompanying text.

81. *See* THE TAGUBA REPORT, *supra* note 6, at 522–24.

82. *See* Pugliese, *supra* note 54, at 268 ("[S]exual practices (sodomy) and sexualities (homosexuality) that challenge regimes of heteronormativity are violently transcoded as 'aberrant' and 'perverse' and are thus absorbed into a hetero-fascist eroticization and aestheticisation of torture that targets the homosexual, the cross-dresser, the feminized Oriental male, and so on.").

83. *See supra* note 69 and accompanying text.

84. *See supra* note 74 and accompanying text.

In writing about sexual harassment, Margaret S. Stockdale observes, "[s]exual harassment is a tool to maintain a masculine hierarchy that rewards men who possess the requisite masculine traits."[86] By forcing the prisoners to don women's underwear, the U.S. soldiers seek to feminize and sexualize their captives.[87] By defining the prisoners as un-masculine, or feminine, the male U.S. service members reinforce their own masculinity, reinforce the nation's masculinity, and justify further abuse in an effort to regulate the boundaries of masculinity.[88] They use costuming without any subtlety to exclude the male prisoners from the category of "men," an exclusion that, in turn, justifies further abuse.[89]

U.S. soldiers forced Iraqi prisoners to engage in or simulate sexual acts with other male prisoners.[90] This form of abuse served to enforce heteronormativity.[91] The soldiers' disdain for same-sex sexual acts is readily apparent through the humiliation, violence, and mockery that they couple with the sexual abuse.[92] Like many instances of same-sex and opposite sex sexual harassment in the U.S.,[93] the sexual abuse appears to have been motivated not by the sexual gratification of the U.S. service members, but by a desire to

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86. Margaret S. Stockdale, *The Sexual Harassment of Men: Articulating the Approach-Rejection Theory of Sexual Harassment*, *in* IN THE COMPANY OF MEN, *supra* note 19, at 117, 117.

87. *See supra* text accompanying note 49.

88. *See supra* text accompanying note 82.

89. *Id.*

90. *See* THE TAGUBA REPORT, *supra* note 6, at 501–08.

> [T]hey laughed at me and beat me. And one of them brought my friend and told him 'stand here' and they brought me and had me kneel in front of my friend. They told my friend to masturbate and told me to masturbate also, while they were taking pictures. After that they brought my friends . . . and I, and they put us 2 on the bottom, 2 on top of them, and 2 on top of those and one on top. They took pictures of us and we were naked.
>
> . . . .
>
> And also the American soldiers told to do like homosexuals (fucking).
>
> . . . .
>
> They brought three prisoners handcuffed to each other and they pushed the first one on top of the others to look like they are gay and when they refused, Grainer beat them up until they put them on top of each other and they took pictures of them.*Id.*

91. *See* Pugliese, *supra* note 82 and accompanying text.

92. *See supra* note 68 and accompanying text; *see also supra* note 90 and accompanying text.

93. *See* Stockdale, *supra* note 86, at 123 ("The rare, but nonetheless egregious, same-sex rape experiences reported . . . may have been typical of sexual assaults of men that occur in sex-segregated institutions, which are committed not as acts of sexual attraction but as acts of domination.").

dominate.[94] This type of sexual abuse "is conducted to enforce preferred heterosexist, hyper-masculine gender-role behavior."[95]

To fully understand the gender subordinating effect of the men's involvement in the abuse, it is useful to analogize to same-sex sexual harassment in the U.S. domestic legal context. Writing about same-sex sexual harassment, Katherine Franke notes that "it perpetuates, enforces, and polices a set of gender norms that seek to feminize women and masculinize men."[96] Franke concludes, "Thus, the sexism in sexual harassment lies not in the fact that it is sexual, but in what it does as a disciplinary, constitutive, and punitive regulatory practice."[97] Perpetrators use harassment and humiliation to police the boundaries of masculinity and femininity, punishing those who do not conform to social norms without regard to the gender of either victim or perpetrator.[98]

U.S. soldiers at Abu Ghraib took great pains to forcibly feminize Iraqi prisoners through verbal harassment, forced "costuming" in women's underwear, and sexual abuse.[99] The Iraqi prisoners were then disciplined for exhibiting, albeit non-volitionally, characteristics and clothing associated with women.[100] This coercive feminization justified greater punishment and policing of gender boundaries.[101]

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94. *See* Pugliese, *supra* note 54, at 265 ("At Abu Ghraib, the military rape of Arab women instantiates the contemporary reproduction of this colonial violence as a form of sociopolitical terrorism and control, precisely as the reach of this sexual violence is expanded to encompass the phallocentrically transgendered bodies of conquered Arab men.").

95. Stockdale, *supra* note 86, at 124–25 (discussing rejection-based sexual harassment and defining hypermasculinity as "a rigid male sex-role stereotyped identity composed of calloused sex attitudes toward women, a conception of violence as manly, and a view of danger as exciting.").

96. Katherine M. Franke, *What's Wrong with Sexual Harassment?*, 49 STAN. L. REV. 691, 696 (1997).

97. *Id.*

98. Francine D'Amico, *Citizen-Soldier? Class, Race, Gender, Sexuality and the US Military*, *in* STATES OF CONFLICT: GENDER, VIOLENCE AND RESISTANCE 105, 113 (Susie Jacobs et al. eds., 2000) ("Since its inception, the [U.S.] military has attempted to police the sex[]uality of those who serve.").

99. *See* ZILLAH EISENSTEIN, SEXUAL DECOYS: GENDER, RACE AND WAR IN IMPERIAL DEMOCRACY 34 (2007); Higham & Stephens, *supra* note 4.

100. *See* Higham & Stephens, *supra* note 4, at A17.

101. Holly Allen, *Gender, Sexuality, and the. Military Model of U.S. National Community*, *in* GENDER IRONIES OF NATIONALISM: SEXING THE NATION 309, 314 (Tamar Mayer ed., 2000) [*hereinafter* GENDER IRONIES] (describing how central to the military fraternity is and its commitment to "[H]eterosexuality and traditional gender roles."); *see* EISENSTEIN, *supra* note 99, at 34 ("Men who are tortured and sexually degraded are 'humiliated' *because* they are treated like women; they are forced to be women — sexually dominated and degraded. Men who are naked and

Because homosexuality is coded as "wrong" or "inferior" in both U.S. and Iraqi cultural contexts,[103] the "allegation" of homosexuality explicit in forced same-sex sexual activity, as with some of the abuse at Abu Ghraib, becomes a subordinating force.[104] In the context of Abu Ghraib, members of the U.S. military manipulated notions of honor and shame in an effort to induce Muslim men to confess to having terrorist ties and to implicate others out of fear of being exposed as having engaged in homosexual behavior—albeit involuntarily.[105] Heteronormativity both in the U.S. military and within Iraqi society gave power and force to the threat of blackmail.[106] The popular media's focus on Arab culture as repressive and intolerant of homosexuality ironically led to an image of the U.S. as "more tolerant of homosexuality (and less tainted by misogyny and fundamentalism) than the repressed, modest, nudity-shy 'Middle East.'"[107]

In addition to the pain and humiliation for male Iraqi prisoners who were subjected to abuse,[108] there may be harmful consequences for Iraqi women over time.[109] The long-term effect of emasculating Iraqi men before a global public may be a robust re-inscription of a hyper-masculinized image of man and country.[110] Such reclamation of masculinity and masculinized nationhood[111] may take a toll on Iraqi women in the future.[112]

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exposed remind us of the vulnerability usually associated with being a woman.").

103. *See* Puar, *supra* note 50, at 526–27.

104. *See* Backer, *supra* note 28, at 4.

105. The military invokes honor—and its corollary, shame—as a military instrument. Some degree of emotional manipulation inheres in any interrogation context. To think otherwise would be naive. Here, the emotional manipulation takes explicitly sexist, ethnocentric, and heterosexist forms. *See, e.g.*, MILLER, *supra* note 15, at 117–18 ("Honor goes hand in hand with shame. In a culture of honor one can be shamed only if one has honor, . . . Shame is, in one sense, nothing more than the loss of honor.").

106. *See* Puar, *supra* note 50, at 525 (explaining that the goal behind the sexual humiliation and photography at Abu Ghraib was to instill a fear of dissemination in the prisoners in order to manipulate them; it was believed that the prisoners would do nearly anything to avoid the publication of such photographs).

107. *Id.* at 527.

108. *See* Higham & Stephens, *supra* note 4.

109. *See* Gerami, *supra* note 21, at 449.; *see also* CYNTHIA ENLOE, BANANAS, BEACHES, AND BASES 52 (1990).

110. *See id.* at 449 (describing how the dominance and universal recognition of Western images of masculinity overshadow the national and cultural masculinity figures in Muslim societies).

111. The reclamation of national masculinity may, in fact, be part of the motivation for the U.S. going to war after 9/11. *See* Ahmad, *supra* note 16, at 1310.

112. *See* Gerami, *supra* note 21 at 450.

B. Nationalism

In his book, *Imagined Communities*, Benedict Anderson described the process through which a group recognizes a shared sense of community and belonging—an "imagined community."[113] Groups, or imagined communities, identify themselves as different from other groups that do not share the same cultural representations and practices.[114] This process of self-categorization and differentiation often involves constructing the identity of members in contrast to non-members.[115] The imagined community thus lends itself to local or national allegiances.[116] Nation-states have long relied on both geographic borders and this collective sense of belonging to define themselves and their populations.[117] Despite the perceived permanence of geographical boundaries, the boundaries of community are necessarily imprecise and fluctuating.[118]

Nationalism or a sense of national belonging can become an important aspect of individual and collective identity.[119] Indeed, it often assumes such significance that it fosters clashes, sometimes brutal confrontations, over who belongs in the collective and who does not.[120] "Nationalism becomes . . . radically constitutive of

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113. BENEDICT ANDERSON, IMAGINED COMMUNITIES 14 (6th ed. 1983).

114. *See* MCCLINTOCK, *supra* note 52, at 353.

115. *See* ENLOE, *supra* note 109, at 45.

> A 'nation' is a collection of people who have come to believe that they have been shaped by a common past and are destined to share a common future. That belief is usually nurtured by a common language and a sense of otherness from groups around them. Nationalism is a commitment to fostering those beliefs and promoting policies which permit the nation to control its own destiny.

Id.

116. *See* Nagel, *supra* note 56, at 401 (examining how nationalism fosters allegiance towards the community and nation, which in turn manifests itself through national action).

117. *Id.* ("The tasks of defining community, of setting boundaries, and of articulating national character, history, and a vision for the future tend to emphasize both unity and 'otherness.'").

118. Examples include immigrant populations, some of whom enjoy legal status but may consider their primary allegiances to the diaspora rather than the nation-state. *See, e.g.*, Kathleen Newland, MIGRATION POL'Y INST., VOICE AFTER EXIT: DIASPORA ADVOCACY 4–7 (2010).

119. Tamar Mayer, *Gender Ironies of Nationalism*, *in* GENDER IRONIES, *supra* note 101, at 3 (describing the bond members of a nation share in their "[beliefs] in their common origins and in the uniqueness of their common history, and . . . hope for a shared destiny").

120. In any given nation, the salience of nationalism fluctuates over time. Nationalism, for example, surges during popular uprisings seeking to end colonial rule in favor of an independent state. More generally, nationalism gains momentum during times of conflict with another nation. *See* ENLOE, *supra* note 109, at 45 (viewing "colonialism [as] especially fertile ground[s] for nationalis[m] . .

people's identities through the social contests that are frequently violent and always gendered."[121] The social contests that give meaning to nationalism also involve a social construction of women's role within the community or nation.[122]

The events of September 11, 2001 illustrate the dynamic nature of the national imagining.[123] September 11th was a defining moment in the history and self-conception of the United States.[124] It was a cataclysmic, time-stopping event in the national imagining, one that organizes our experiences as *pre-* or *post-*9/11.[125] In the face of the attacks on the World Trade Center and the Pentagon, two strong architectural symbols of American identity and American power, the U.S. public rallied behind the image of a country under siege.[126]

September 11th thus marked the beginning of an era of intensified nationalism and patriotism.[127] Viewed in the most positive light, it was a time during which Americans felt united in their outrage and grief.[128] The rhetoric in the aftermath of the attack assumed a monolithic unity of victimhood with one exception: Arab Americans.[129] Although the outrage in the U.S. at the cruelty of the attacks was widespread—if not universal—the response in public discourse was racialized; much of the rhetoric invoked images of a collective, victimized, American "us" versus a

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. .").

121. MCCLINTOCK, *supra* note 52, at 353.

122. *See* ENLOE, *supra* note 109, at 46 (illustrating how nationalist movements rarely consider women's past experiences and agendas for the future despite exerting pressure on them to support the nationalist system as a whole); Nagel, *supra* note 56, at 161 ("A nationalist movement that encourages women's participation in the name of national liberation often balks at feminist demands for gender equality.").

123. *See, e.g.*, Ahmad, *supra* note 16, at 1278 (showing the shift in perceptions of Muslim Americans post-9/11).

124. It is misrepresentative to suggest that the United States has *one* self-conception, for it is inevitably the conception of the dominant group. *See* Mayer, *supra* note 119, at 12 (explaining that a nation's elite, who have the power to define the nation in a manner that furthers their own interests, determine those who are included and excluded in the national agenda).

125. *See, e.g.*, SUSAN FALUDI, THE TERROR DREAM: FEAR AND FANTASY IN POST-9/11 AMERICA 8 (2007) (outlining the general sentiment of the American public post-9/11).

126. *See* Ahmad, *supra* note 16, at 1300 (describing the post-September 11th unification felt amongst Americans and a common desire for vengeance).

127. FALUDI, *supra* note 125, at 44 ("The captivity-and-rescue metaphor underlay Bush's declaration on the first anniversary of 9/11 that we had 'raised this lamp of liberty to every captive land.'").

128. Gary Younge, *Can the United States Move Beyond the Narciscism of 9/11?*, GUARDIAN, Sept. 4, 2011, at 25.

129. *See* Ahmad, *supra* note 16, at 1294.

collective, conspiratorial, brown-skinned, and Arab "them."[130] Arab Americans represented an incongruity in this racial formulation.[131] As a result, they were suspect and became the targets of racial profiling and violent hate crimes.[132]

This racialized patriotism formed the backdrop to the invasion of Afghanistan and Iraq.[133] It provides a crucial context within which to view the torture and abuse at Abu Ghraib, which also assumed virulently racist and nationalistic forms.[134] The social construction of "terrorist" became explicitly racialized and included any Arab- or Muslim-looking man.[135] The strident nationalism that followed in the wake of 9/11 was also invoked to excuse both state[136] and non-state[137] violence. U.S. government officials began to publicly describe a "new paradigm" in which the old rules governing state violence did not apply.[138]

The national imagining assumed a militarized posture.[140] In the United States after 9/11, nationalist convictions surged; there was a common perception that we were attacked "as a nation."[141]

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130. Martha C. Nussbaum, *Introduction: Cosmopolitan Emotions?*, *in* FOR LOVE OF COUNTRY? x (Joshua Cohen ed., 2002). "All too often, however, our imaginations remain oriented to the local; . . . . Compassion for our fellow Americans can all too easily slide over into an attitude that wants America to come out on top, defeating or subordinating other peoples or nations." *Id.*

131. *Id.*

132. *See* Ahmad, *supra* note 16, at 1319 (detailing the racial profiling and racial violence in the aftermath of the September 11th attacks).

133. *See, e.g.*, Ahmad, *supra* note 16 (documenting the racism and violence towards "Muslim-looking" people that emerged amongst the American public post-9/11).

134. *See* Ahmad, *supra* note 16, at 1319 (describing how post-September 11 perpetrators adjudged all "Muslim-looking" people to be terrorists and consequently carried out acts of retribution against them).

135. *Id.*

136. *See* Whitney, *supra* note 2, at viii.

137. Ahmad, *supra* note 16, at 1261 ("[I]n the days and weeks after September 11, over one thousand bias incidents against Arabs, Muslims, and South Asians were reported.").

138. The "New Paradigm" refers to a legal framework developed in the aftermath of September 11th that allows the President to disregard standards established by the Geneva Conventions should national security require it. The purpose behind the New Paradigm is to allow the administration to try terrorists in as timely a manner as possible. Under this view, military and criminal courts are considered too ponderous. Former Vice President Dick Cheney explained, "We think it guarantees that we'll have the kind of treatment of these individuals that we believe they deserve." *See* Jane Mayer, *The Hidden Power*, NEW YORKER, July 3, 2006, at 44.

140. *See, e.g.*, Coates, *supra* note 35, at A4 (showing that the media portrayed the nation's pro-war and anti-war movements using the President and mothers of fallen soldiers as symbols).

141. *See* Nussbaum, *supra* note 130, at ix ("Our media portray the disaster as a tragedy that has happened to our nation, and that is how we naturally see it. So too

The cultural markers of militarization and patriotism were omnipresent in the plethora of "America Fights Back" and "United We Stand" bumper stickers; images of flags and patriotic shibboleths became commonplace and identified with the notion that the United States would "fight back."[142] The need to avenge the tragic deaths of those who died on September 11th, combined with a collective demonization of "them" (anyone who resembles the fungible proxy for "terrorist"),[143] set the stage for the invasion of Afghanistan and later Iraq.[144] Although patriotism is often imbued with militarism, post-9/11 patriotism became decidedly more so.[145]

This militaristic patriotism was also gendered.[146] In cultural terms, it was coded as masculine, intelligible only as a function of masculinity.[147] As Muneer Ahmad observed, "The militarism ascendant since the terrorist attacks quickly recalls the familiar ties between masculinity and violence, and predictably has found expression in masculinist terms."[148] September 11th thus

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the ensuing war: it is called 'America's New War,' . . . .").

142. Indeed, public sentiment was so strong that the few who questioned the motives or effectiveness of the U.S. were pilloried in the press. *See* FALUDI, *supra* note 125, at 19–45 (highlighting the intense criticism aimed at a handful of women, including Susan Sontag, Barbara Kingsolver, and Katha Pollit, who challenged the national narrative surrounding 9/11).

143. *See* Ahmad, *supra* note 16, at 1278 (describing the racial construct of the "Muslim-looking" person and racial profiling as the "treat[ment of] all people appearing to share a certain identity characteristic as 'fungible' with some object—real or imagined—suspicion.").

144. *See* Nussbaum, *supra* note 130, at x ("[O]ur sense that the 'us' is all that matters can easily flip over into a demonizing of an imagined 'them,' a group of outsiders who are imagined as enemies of the invulnerability and the pride of the all-important 'us.'").

145. FALUDI, *supra* note 125, at 5.

> [O]ur commander in chief issued remarks like 'We'll smoke him out' and 'Wanted: dead or alive,' our political candidates proved their double-barreled worthiness for post-9/11 office by brandishing guns on the campaign trail, our journalists cast city firefighters as tall-in-the-saddle cowboys patrolling a Wild West stage set, and our pundits proclaimed our nation's ability to vanquish 'barbarians' in a faraway land they dubbed 'Indian County.'

Id.

146. *See* Higate & Hopton, *supra* note 17, at 434 (depicting the historically reciprocal relationship between the military and masculinity).

147. *See id.*; Liz Kelly, *Wars Against Women: Sexual Violence, Sexual Politics and the Militarised State*, *in* STATES OF CONFLICT 45, 49 (Susie Jacobs et al. eds., 2000).

148. *See* Ahmad, *supra* note 16, at 1309. Ahmad cogently argues that the racist attacks on Arabs, Muslims, and South Asians in the wake of 9/11 should be understood, at least metaphorically, as crimes of passion intended to reclaim the honor of a victimized nation. In this way, Ahmad demonstrates how this racial violence is gendered in many of the same ways that traditional crimes of passion

transformed the national imagining, making it increasingly militarized and, correspondingly, increasingly masculinized.[149]

Nationalism is often bound up in ego and personal identity,[150] and when the nation is threatened, it is a threat to the masculinized ego.[151] In times of war, the country's national imagining takes on an even more militarized, patriotic fervor.[152] It was in this highly militarized and highly masculinized context that the abuse at Abu Ghraib prison emerged.[153]

C. Honor and Humiliation

Honor and its antithesis, shame, reinforce social hierarchies; dominant groups use the tropes of honor/humiliation to police the boundaries of privileged categories. "The emotions of humiliation and shame construct, destroy, and recreate volatile hierarchies of moral and social rank. . . . Thus not infrequently honor, humiliation, and the obligation to pay back what one owes find themselves inextricably bound up with violence."[154] As tools of social construction, honor and humiliation are used both to reflect and to re-inscribe existing social hierarchies—often in ways that are quite dangerous and damaging to women and others disadvantaged along the axes of, *inter alia*, ethnicity, sexual orientation, and religion.[155] Humiliation is a marker used to distinguish between members of the community who are worthy of dignity and those who are not.[156] As a cultural marker, it falls into the hands of the powerful within the community and is used against those with less power, including, for example, women, people of color, members of the LGBT community, and others who face systemic discrimination.[157]

Honor has proven a perilous concept for women the world over. It has been used to justify atrocious violence targeted at women for sexual transgressions or perceived transgressions.[158]

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are gendered. *Id.* at 1264.

149. ENLOE, *supra* note 109, at 44 ("[N]ationalism typically has sprung from masculinized memory, masculinized humiliation and masculinized hope.").

150. *See* Mayer, *supra* note 119, at 6.

151. *Id.* ("It is men who are generally expected to defend the 'moral consciousness' and the 'ego' of the nation.").

152. Ahmad, *supra* note 16, at 1309.

153. *See* Eisenstein, *supra* note 43.

154. *See* MILLER, *supra* note 15, at x–xi.

155. *See id.* at 130.

156. *Id.*

157. *See, e.g.*, Mayer, *supra* note 119, at 12 (discussing how the power to use humiliation falls into the hands of the elite).

158. *See* Johanna Bond, *Honor As Property*, 23 COLUM. J. GENDER & L. 202, 214–

Honor and related notions of sexual purity have encouraged the use of mass rape in armed conflict not only as a way to injure individual women but also to inflict great physical and mental anguish on the group as a whole.[159] In the case of Abu Ghraib, honor and humiliation became tools of the U.S. to be used against Iraqi prisoners.[160]

In the U.S. military context, notions of honor and nationalism are mutually referential.[161] To serve one's country is honorable; to die in the service of one's country is the ultimate honor and sacrifice.[162] The notion of honor has resonance not only as a construct of national identity, but also as a defining principle of the military itself.[163] Honor is a cornerstone of U.S. military philosophy and training principles.[164] If the military chooses to disassociate itself from an individual, it does so through a "dishonorable discharge."[165] Within the military, nationalism and honor are treated as primary guiding principles.[166]

Notions of honor are inextricably linked to constructs of nationhood and masculinity.[167] "[T]he culture of nationalism is constructed to emphasize and resonate with masculine cultural themes. Terms such as *honor*, *patriotism*, *cowardice*, *bravery*, and *duty* are hard to distinguish as either nationalistic or masculinist since they seem so thoroughly tied both to the nation and to manhood."[168] Members of the military, still overwhelmingly male,

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18 (2012).

159. *See* Askin, *supra* note 30, at 511; Kelly, *supra* note 147, at 52; Mayer, *supra* note 119, at 18.

160. *See, e.g.*, Gourevitch & Morris, *supra* note 21, at 50 (commenting on the humiliating and degrading tactics used at Abu Ghraib against detainees).

161. *See* President George W. Bush, President Addresses Military Families, Discusses War on Terror (Aug. 24, 2005), *available at* http://2001-2009.state.gov/s/ct/rls/rm/51695.htm.

162. *Id.*

163. *See* Maj. Gen. Maxwell D. Taylor, *West Point Honor System: Its Objectives and Procedures*, WEST-POINT.ORG,http://www.west-point.org/users/usma1983/40768/docs/taylor.html (last visited Oct. 14, 2012).

164. *Id.* ("Honor . . . is a fundamental attribute of character. . . . It is not a complicated system of ethics, but merely 'honest dealing and clean thinking.'").

165. In the aftermath of Abu Ghraib, Specialist Sabrina Harmon was convicted by court-martial and sentenced to six months in prison, a reduction in rank, and a bad-conduct discharge in connection with the photographs she posed in and captured. *See* Gourevitch & Morris, *supra* note 21, at 44.

166. *See* Taylor, *supra* note 163.

167. *See, e.g.*, Ahmad, *supra* note 16, at 1264 (asserting that the hate crimes perpetrated against Arab Americans in the wake of 9/11 "constituted an attempt to protect male honor . . . .").

168. NAGEL, *supra* note 52, at 160.

are defenders of the nation's honor.[169] Honor, in its masculinized form, is thus valued as a defining principle for collective identity, for the nation as a whole.[170]

In an example from Afghanistan, on October 19, 2005, male U.S. soldiers burned the bodies of two suspected Taliban militants while simultaneously taunting, "This just proves you are the lady boys we always believed you to be" and "You attack and run away like women. . . . [Y]ou bring shame upon your family. Come and fight like men . . . ."[171] The U.S. soldiers taunted the Afghan men by calling them "ladies," thereby attacking their masculinity, and by manipulating gendered notions of honor and shame, much like the soldiers at Abu Ghraib.

U.S. servicemembers deployed a gendered version of humiliation against Afghan men and against prisoners at Abu Ghraib because this gendered humiliation was a meaningful cultural reference point within U.S. culture.[172] Seymour Hersh, an early critic of Abu Ghraib, explained the abuse as motivated by a simplistic, Orientalist understanding of "the Arab mind"[173] and the perceived cultural sensitivity toward honor and shame within Afghan and Iraqi culture.[174] The simplistic depiction of culture that Hersh criticizes elides the fact that the humiliation paradigm

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169. *Id.*; *see also* Craig Whitlock, *Pentagon to Ease Ban on Women in Some Combat Roles*, WASH. POST, Feb. 10, 2012, at A3 (reporting that women make up only fourteen percent of the armed forces, so the majority of servicemembers are male).

170. Nagel, *supra* note 56, at 401.

> By definition, nationalism is political and closely linked to the state and its institutions. Like the military, most state institutions have been historically and remain dominated by men. It is therefore no surprise that the culture and ideology of hegemonic masculinity go hand in hand with the culture and ideology of hegemonic nationalism.

Id.

171. Bradley Graham, *U.S. to Probe Treatment of Dead Taliban Fighters*, WASH. POST, Oct. 20, 2005, at A16.

172. KAREN MAHLER, MS. FOUND. FOR WOMEN, YOUTH, GENDER AND JUSTICE: BUILDING A MOVEMENT FOR GENDER JUSTICE 3 (2007), http://ms.foundation.org/resources/publications ("Gender in the U.S. is also fiercely binary: gendered violence extends to any individual whose appearance or behavior does not conform to accepted ideas of masculinity or femininity. Individuals perceived by others as not sufficiently masculine or feminine are often targets of harassment, hostility and even brutal attack.").

173. Seymour M. Hersh, *The Gray Zone*, NEW YORKER, May 24, 2004, at 42 (referring to Raphael Patai's book *The Arab Mind* as "the bible of the neocons").

174. According to Hersh, the U.S. military devised interrogation tactics that capitalized on perceived cultural sensitivities. *Id.* ("The notion that Arabs are particularly vulnerable to sexual humiliation became a talking point among pro-war Washington conservatives in the months before the March, 2003, invasion of Iraq.").

is a popular social regulatory device within the U.S. military precisely because it is a meaningful referent within U.S. culture.[175] My intent here is not to examine Iraqi culture, but rather to examine the culture of honor and patriotism within the U.S. military,[176] a culture that—in the context of Abu Ghraib—supported the use of humiliation in the service of sexual abuse.

Because honor is so valued and humiliation so feared in the U.S. military context, humiliation is seen as an effective emotional weapon, extreme forms of which were used in Abu Ghraib.[177] In this context, sex-based humiliation served to support and re-inscribe hierarchies based on gender, sexual orientation, and position in the geopolitical hierarchy.[178] As we have seen, sex-based humiliation plays a critical role in defining both members of the collective and its outcasts.[179] It is often effective in distinguishing between those who enjoy privilege and those who do not, as was the case at Abu Ghraib.[180]

D. Performativity

Gender is socially constructed.[181] Most contemporary feminist theorists reject the notion that gender is a natural, reified by-

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175. Humiliation is a social regulatory device within society. Catherine L. Fiske, *Humiliation at Work*, 8 WM. & MARY J. WOMEN & L. 73, 76 (2001) (arguing that studies show "the tremendous importance of emotions like humiliation and shame in the human psyche and the devastating consequences of systematic humiliation").

176. Allen, *supra* note 101, at 309–10; *see also* Nagel, *supra* note 56, at 402 ("The culture of nationalism is constructed to emphasize and resonate with masculine cultural themes. Terms such as honor, patriotism, cowardice, bravery, and duty are hard to distinguish as either nationalistic or masculine because they seem so thoroughly tied both to the nation and to manhood.").

177. *See* MILLER, *supra* note 15, at 117 (establishing the importance of honor in society).

> [Honor] was your very being. For in an honor-based culture there was no self-respect independent of the respect of others, no private sense of 'hey, I'm quite something' unless it was confirmed publicly. Honor was then not just a matter of the individual; it necessarily involved a group, and the group included all those people worthy of competing with you for honor.

Id. See also id. at 165 (describing how society uses humiliation to regulate activity.); Maj. Gen. Fay, *supra* note 47, at 112–13 (reporting that U.S. servicemembers performed the following actions with the intention to degrade or humiliate detainees: nakedness, photographing abuse, and simulated sex positions).

178. Barbara Finlay, *Pawn, Scapegoat, or Collaborator?*, *in* ONE OF THE GUYS, *supra* note 11, at 199, 204 (asserting that U.S. soldiers used torture at Abu Ghraib to "dehumanize[] prisoners of a despised race, culture, and language.").

179. *Id.* at 204 (describing how soldiers used prisoner abuse to unify their ranks in opposition to "the other.").

180. *Id.*

181. Sally Haslanger, *Gender and Social Construction*, *in* THEORIZING FEMINISMS 16 (Elizabeth Hackett & Sally Haslanger eds., 2006).

product of sex.[182] In the words of feminist theorist Judith Butler, gender is "in no way a stable identity or locus of agency from which various acts proceede [sic]; rather, it is an identity tenuously constituted in time – an identity instituted through a *stylized repetition of acts*."[183] Building on Michel Foucault, Butler has developed a theory of gender performativity, in which gender is performed through a series of repetitive acts that become intelligible as "gender" by reference to societal norms of behavior.[184] "Whatever the prevailing norms in any time and place, . . . these and other gendered behaviors and ways of being are part of the repertoire in the performances we give as men and women, straight and gay as we move through the day and through life."[185]

Gender performance can be subversive if it is used to contravene social expectations through exaggeration and parody.[186] Because it self-consciously refuses to conform to these stylized norms of social behavior, Butler posits that cross-dressing (or drag) has subversive power.[187] Drag uses parody to destabilize our notions of a binary connection between sex and gender, and, as such, it has transformative potential.[188]

Butler and others, however, recognize that drag is not always subversive.[189] At times, it supports the very cultural privilege that

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182. *Id.* at 16 ("No longer willing to regard the differences between women and men as 'natural', feminists have studied the variety of cultural processes by which one 'becomes' a woman (or a man), ultimately with the hope of subverting them.").

183. Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 THEATRE J. 519, 519 (1988).

184. *Id.* Significantly, Butler has linked the notion of "natural" sexes to compulsory heterosexuality. "My point is simply that one way in which this system of compulsory heterosexuality is reproduced and concealed is through the cultivation of bodies into discrete sexes with 'natural' appearances and 'natural' heterosexual dispositions." *Id.* at 524.

185. NAGEL, *supra* note 52, at 52.

186. MCCLINTOCK, *supra* note 52, at 67 ("Cross-dressing, as a culturally variant example of mimicry, is a case in point. Clothes are the visible signs of social identity but are also permanently subject to disarrangement and symbolic theft. For this reason the cross-dresser can be invested with potent and subversive powers.").

187. Butler, *supra* note 183, at 527 ("The transvestite, however, can do more than simply express the distinction between sex and gender, but challenges, at least implicitly, the distinction between appearance and reality that structures a good deal of popular thinking about gender identity.").

188. Helen Bode, *Is Drag Subversive of Binary Gender Norms?*, DIALOGUE, 2003, at 19, 19 ("[I]n some instances, drag can provide a genuine subversion of gender norms.").

189. *Id.* ("[S]ome of its detractors may argue that drag merely reproduces a dichotomous model of gender, or that drag ignores gender-based power imbalances.").

it might otherwise subvert.[190] "[T]hat cross-dressing disrupts stable social identities does not guarantee the subversion of gender, race or class power. When marines in the United States army [*sic*] deck themselves in drag or put on blackface, [W]hite power is not necessarily subverted nor is masculinity thrown into disarray."[191] The photographs of prisoners in Abu Ghraib depict men being forced to wear women's underwear on their heads.[192] Unlike Butler's notion of drag, the costuming involved in Abu Ghraib had a decidedly subordinating—rather than subversive—effect.[193]

The difference between the transformative potential of drag and the subordinating effect of costuming in the context of Abu Ghraib is a matter—quite simply—of autonomy.[194] Drag, as subversion, involves the voluntary and intentional appropriation of costume for the purpose of destabilizing social expectations.[195] The costuming involved in Abu Ghraib was coercive, violent, and devoid of autonomy.[196] Although the costuming also temporarily destabilized gender expectations, it did so with the goal of humiliating and punishing the subject and shoring up the masculinity or status of the perpetrators.[197]

Photographic documentation of the abuse is itself gendered.[198] It is reminiscent of male bravado in the face of sexual exploits.[199] It is the very scriptedness, the performance-driven nature of the

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190. *Id.*

191. MCCLINTOCK, *supra* note 52, at 67.

192. Gourevitch & Morris, *supra* note 21, at 49 (claiming that soldiers put women's panties on prisoners' heads in order "to break them.").

193. Finlay, *supra* note 178, at 204 (asserting that U.S. servicemembers forced Abu Ghraib prisoners to wear women's underwear in order to humiliate or to subordinate them).

194. MCCLINTOCK, *supra* note 52, at 62 (outlining the importance of autonomy in decision-making).

195. Bode, *supra* note 188, at 21 ("Drag is particularly useful in exposing the lack of truth in binary gender norms because of its staged quality reveals that gender is indeed performed, both off stage and on.").

196. Gourevitch & Morris, *supra* note 21, at 49.

197. *Id.*

198. Laura Frost, *Photography / Pornography / Torture: The Politics of Seeing Abu Ghraib*, *in* ONE OF THE GUYS, *supra* note 11, at 135:

> The photographs [of the abuse at Abu Ghraib] are complicated by the way they seem constructed around a number of parodies: of tourism ("wish you were here" postcards), of conquest and trophies (a man as a five-point buck), of national pastimes like sports and cheerleading (the huddle, the pyramid), of macho men of American movies (Lynndie England's dangling cigarette and mugging, the two-thumbs-up pose), and of America's gruesome history of lynching.

Id.

199. *Id.*

Abu Ghraib drama—the costuming of women's underwear, the sadomasochistic props in the form of the infamous leash that Lynndie England used, the photographic documentation—that reveals its constructed and contingent character.[200] In other words, by working so hard, albeit clumsily and transparently, to *perform* superiority and domination, Lynndie England and the others remind us that their "domination" is constructed, not natural—dynamic, not fixed—and historically contingent, not ahistorical.[201] It is a social construction, carefully re-inscribed through performance, which reflects racial, geopolitical, heterosexist, and gendered privilege. [202]

E. Gendered Tropes Supporting the Abuse

Of the U.S. soldiers prosecuted by the military for abuses at the Abu Ghraib prison, three were women: Lynndie England, Sabrina Harman, and Megan Ambuhl.[203] Private Lynndie England, then twenty-one years old, grew up in rural Fort Ashby, West Virginia.[204] England now has a son with Army Private Charles A. Graner, Jr.[205] She served half of her three year sentence for her participation in the prisoner abuse at Abu Ghraib.[206] Specialist Meghan Ambuhl, who later wed Graner, grew up in Virginia and was described as "soft-spoken and serious."[207] Ambuhl pleaded guilty and was discharged by the Army.[208] Specialist Sabrina Harman was the twenty-six-year-old roommate of Ambuhl.[209] Harman took many of the photographs that eventually surfaced and has suggested that she did so in part to

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200. *Id.*

201. Butler, *supra* note 183, at 519 (asserting that gender and identity are created through performance and social construction).

202. Sally Haslanger, *Gender and Social Construction*, *in* THEORIZING FEMINISMS, *supra* note 181, at 16, 17.

203. Kate Zernike, *Testimony Fails to Back GIs' Defense on Abuses*, INT'L HERALD TRIB., Aug. 4, 2004 (confirming that seven U.S. soldiers were prosecuted for their role in Abu Ghraib abuse); Higham & Stephens, *supra* note 4, at A17 ("Three female MPs have been charged in the case so far."); *see also* Finlay, *supra* note 178, at 203 ("It's significant that of the seven soldiers convicted in the Abu Ghraib scandal, three were women.").

204. Emma Brockes, *'What Happens in War Happens'*, GUARDIAN, Jan. 3, 2009, http://www.guardian.co.uk/world/2009/jan/03/abu-ghraib-lynndie-england-interview.

205. *Id.*

206. *Id.*

207. Zernike, *supra* note 203, at A13.

208. *Id.*

209. Gourevitch & Morris, *supra* note 21, at 46, 54.

document the abuses.[210] In May 2005, a court martial convicted Harman of conspiracy to maltreat prisoners, dereliction of duty, and maltreatment; she was sentenced to six months in prison.[211] Whatever their individual motivations, England, Ambuhl, and Harman were active participants in the torture and humiliation of prisoners at Abu Ghraib.

In one of the most notorious photographs, for example, England is pictured leading a naked Iraqi man around by a leash.[212] The abuse conveys the message that the prisoner is less than human, a message underscored by the involvement of England, who, herself, enjoys less human value than her male military counterparts.[213] The symbolic "text" of subordination is thus given more bite because the perpetrator herself is subordinated, magnifying the effect of abuse.[214] Rather than subverting gender hierarchy, the abuse served to reify existing sexist stereotypes.[215]

1. Mythic Women

In the current iteration of the U.S. national narrative, women have assumed several mythic roles consistent with the classic virgin/whore/mother construct.[216] In the national imagining, Jessica Lynch represents the pure, virtuous woman in need of rescue.[217] Lynndie England personifies the hyper-sexed, deviant

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210. *Id.* at 44. Gourevitch and Morris show, through her letters home, that Harman had serious misgivings about the torture at Abu Ghraib and that she took pictures of the abuse "just to show what was going on, what was allowed to be done." *Id.*

211. *Id.* at 56.

212. Leonnig & Priest, *supra* note 38, at A9.

213. Dillon, *supra* note 67, at 169.

214. Finlay, *supra* note 178, at 204 ("Ironically, these misogynistic rituals were acted out in a way that depended on the devalued status of women, as male detainees were humiliated in part by being treated 'as women' – sodomized with objects and forced to wear women's underwear.").

215. *Id.* ("The victims' experience of being under the power of women, who could taunt them, observe them in sexually humiliating poses, and lead them about on a leash, was rendered even more degrading by their assumption that women are properly beneath men in status and authority.").

216. Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869, 871 (1996).

217. Raised in Palestine, West Virginia, Private Jessica Lynch enlisted in the U.S. Army and was deployed to Iraq. Nancy Gibbs & Mark Thompson, *At Home: The Private Jessica Lynch*, TIME, Nov. 17, 2003, at 24; *see also* John M. Broder, *Commandos Rescue Soldier; She Was Held Since Ambush*, N.Y. TIMES, Apr. 2, 2003, at A1. On March 23, 2003, her unit was ambushed. *Id.* Private Lynch was injured, sexually assaulted, and held captive in the Saddam Hospital in Nasiriya. *Id.* On April 2, 2003, Private Lynch made international news when she was

woman.[218] Cindy Sheehan has assumed a maternal role in the national narrative.[219] The myths of the damsel-in-distress and the war-weary mother are myths that reflect and resonate with prescribed, familial, and subordinate roles for women.[220] These images provide a social context within which to explore England's mythic role in the Abu Ghraib abuse, a role that serves to reinforce gender stereotypes and simultaneously challenge our understanding of women as victims rather than perpetrators.[221]

The narrative of Jessica Lynch gave the American people a damsel in distress: a young, White[222] woman in need of rescue.[223] Buttressed by Lynch's image as a virtuous, feminine ideal, her story gave meaning to the mission in Iraq, if only for a short time.[224] The rescue mission embodied the young child's fairy tale,

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dramatically rescued by U.S. forces. U.S. media sources later criticized the U.S. government for manipulating the much-hyped rescue to boost the public's war morale. *Id.*

218. Kate Zernike, *The Woman with the Leash Appears in Court on Abu Ghraib Abuse Charges*, N.Y. TIMES, Aug. 4, 2004, at A8 (outlining evidence introduced in England's court-martial, including a sex tape she made with Graner as well as photographs of her topless and having oral sex with Graner); *see also* Janis Karpinski, *Lynndie England in Love*, *in* ONE OF THE GUYS, *supra* note 11, at 216 (describing England's sexual relationship with Graner); Aziz Huq, *Bitter Fruit: Constitutional Gender Equality Comes to the Military*, *in* ONE OF THE GUYS, *supra* note 11, at 125, 132 (referring to the media's characterization of Private Lynndie England as a "dirty girl").

219. Cindy Sheehan's son, Army Specialist Casey Sheehan, served in Iraq and was killed in 2004. Richard W. Stevenson, *Of Many Deaths in Iraq, One Mother's Loss Becomes a Protest of the President's Policy*, N.Y. TIMES, Aug. 8, 2005, at A13. After his death, Ms. Sheehan became an anti-war activist, camping outside of President Bush's ranch in Crawford, Texas, until he agreed to meet with her. *Id.* Her protest sparked international headlines and galvanized the anti-war movement in the United States. *Id.*

220. Robinson, *supra* note 35, at A23.

221. Finlay, *supra* note 178, at 204 ("Most of the women involved in the actual tormenting of detainees at Abu Ghraib served mainly as instruments of masculine aggression, pawns in the game, responding to orders and encouragement by men who often held positions of authority over them.").

222. Lynch's narrative is also a racialized one. Lynch's friend, Lori Piestwa, a young Native American woman, was killed in the same battle that resulted in Lynch's kidnapping. Piestwa, the first woman to die in the Iraq war, was rarely mentioned other than passing references to her relationship to Lynch. *See* Gary Younge, *What about Private Lori?*, GUARDIAN, Apr. 9, 2003, § G2, at 4, *available at* http://www.guardian.co.uk/world/2003/apr/10/iraq.garyyounge ("For the last week America has been gripped by the 'Saving Private Jessica' mission. But nobody wanted to hear the sadder story of her friend and tentmate Private Lori Piestewa, who died in combat.").

223. Robinson, *supra* note 35 ("[A]mong the thousands of Americans who are murdered or who vanish each year, the pattern of choosing only young, white, middle-class women for the full damsel treatment says a lot about a nation that likes to believe it has consigned race and class to irrelevance.").

224. *See* WAR SPIN: THE MEDIA AND THE IRAQ WAR (Films Media Group 2003)

complete with a masculinized rescue.[225] Lynch's now famous words "I am an American soldier too" take on new meaning in the context of a hyper-masculinized military and rescue operation.[226] She is the embodiment of a conflicted category: she is a woman in a man's military, yet she is a soldier too. The media portrays her as a victim and a hero.[227]

Allegations that the rescue effort was exaggerated for public relations purposes surfaced shortly after the successful rescue.[228] The rescue was captured on videotape, adding to the dramatic impact of the operation.[229] The videotape, like the photos from Abu Ghraib, underscores the performative nature of the activity.[230] Lynch commented, "[The U.S. military] used me as a way to symbolize all this stuff."[231] The military scripted a highly gendered drama starring Lynch and many heavily armed male rescuers.[232] It was Lynch who eventually deviated from the script, challenging the military's manipulation of her story.[233]

While Lynch was a damsel to be rescued from the horrors of war, Cindy Sheehan became the face of the anti-war movement.[234] Her story resonated with the American public; and in many ways, it should. She is a mother—a mother who lost a son to the war.[235]

(showing how the United States and its allies used Lynch's story "to spread their message[]that the war in Iraq was worth fighting and was fought well.").

225. *See, e.g.*, *Lynch Calls Filming of Rescue 'Wrong'*, WASH. POST, Nov. 11, 2003, at C7 (quoting Lynch as she thanked the soldiers who rescued her: "Those are my heroes.").

226. Jim Garamone, *Lynch to Rescuers: 'I'm An American Soldier, Too'*, DEP'T OF DEF. AM. FORCES PRESS SERV., Apr. 5, 2003, [hereinafter Garamone, *Rescuers*], *available at* http://www.defense.gov/news/newsarticle.aspx?id=29157.

227. *Compare* Gibbs & Thompson, *supra* note 217, at 24 (describing how, even after news reports questioned the authenticity of Lynch's rescue, Lynch continues to receive letters, flowers, and gifts from supporters saying, "[t]hank you for your service."), *with* Garamone, *Rescuers*, *supra* note 226 (quoting soldiers from the rescue who described that Lynch was "scared" and "she didn't know what was happening.").

228. *See* John Kampfner, *Saving Private Lynch Story 'Flawed,'* BBC (May 15, 2003), http://news.bbc.co.uk/2/hi/programmes/correspondent/3028585.stm (calling Lynch's rescue "one of the most stunning pieces of news management ever conceived."); *see also* WAR SPIN, *supra* note 224 (describing the rescue story as "a script made for Hollywood, made by the Pentagon.")

229. See WAR SPIN, *supra* note 224 (showing excerpts from the military video).

230. *Id.*

231. *Lynch Calls Filming of Rescue 'Wrong,' supra* note 225.

232. *See* WAR SPIN, *supra* note 224.

233. *Id.*

234. *See* Brad Knickerbocker & Kris Axtman, *Antiwar Sentiment Gets Champion*, CHRISTIAN SCI. MONITOR, Aug. 15, 2005, *available at* www.csmonitor.com/2005/0815/p01s01-uspo.html.

235. *Id.*

Her story pains us all. We identify with it. The story comports with our understanding of women's roles in the family, the community, and the nation. It is no coincidence that we have not heard about and rallied behind a Jane Doe, who left three young children behind to fight in Iraq, because her family depends on the income or perhaps because she believes in the cause. The story of Doe's hardship does not resonate; after all, there is no room for such a mother in the national narrative.[236]

The notion of "mother" in the construction of national myths, particularly national, wartime myths, is powerful. It "valorize[s] the heterosexual family as the bedrock of the nation."[237] Precisely because Sheehan's story resonated with the public and generated significant support for withdrawal of the troops, President Bush unleashed his own "mother of the war."[238] In an effort to provide an alternative narrative, President Bush offered the story of Tammy Pruett in an August 2005 speech.[239] President Bush chose Pruett because her husband and five sons have served or are serving in Iraq.[240] President Bush highlighted her sacrifice and justified it in the name of patriotism and freedom.[241]

2. Deviancy

In addition to reinforcing gender stereotypes, the rhetoric of nationalism in the wake of Abu Ghraib has served to distance the perpetrators of the abuse from military elites and the American public generally.[242] Secretary of Defense Donald Rumsfeld and others scorned England and the other perpetrators as "un-

236. *See, e.g.*, Kampfner, *supra* note 228 (identifying Lori Piestwa, though not as well-known as her friend Jessica Lynch, as "in more ways than one, . . . the other American face of this war, fought by a military whose ranks have been swelled by poor, non-White women. A volunteer army comprising recruits who, whatever their patriotic credentials, have few other choices.").

237. NAGEL, *supra* note 52, at 166.

238. The obvious and heavy-handed juxtaposition of the stories of Cindy Sheehan and Tammy Pruett was seen as comical by some. Late night comedian Jon Stewart called President Bush's introduction of Pruett an attempt to start a "symbolic mom-off." *The Daily Show with Jon Stewart: Mess O'Potamia: He Said, Sheehan Said* (Comedy Central television broadcast Aug. 25, 2005).

239. Coates, *supra* note 35.

240. *Id.*

241. President Bush, *supra* note 161 (remarking that "a time of war is a time of sacrifice, and a heavy burden falls on our military families. . . . [T]he families are standing for America. . . . American lives in freedom because of families like the Pruetts.").

242. *See, e.g.*, Gourevitch & Morris, *supra* note 21, at 56 ("The only person ranked above staff sergeant to face a court-martial was cleared of criminal wrongdoing. No one has ever been charged for abuses at the prison that were not photographed.").

American."[243] In carefully chosen words, the administration characterized the torture as abuse at the hands of "rogue soldiers,"[244] using the same designation reserved for countries that do not conform to U.S. foreign policy expectations.[245] The nationalistic rhetoric was intended to exclude the perpetrators from the community of "Americans."[246] Military leadership undoubtedly hoped that the demonization of the low-ranking individuals directly involved would forestall any further investigation into support for the practices in the upper levels of the chain of command.[247] The administration, again, attempted to manipulate national identity in contrast to these "others" who had fallen from grace.[248]

The process of politically distancing oneself from the abuse relies on portrayals of the abuse as "deviant" and aberrational.[249] In this way, politicians, military elites, and the public can view and condemn the violence without engaging in any serious self-reflection.[250] Lu-in Wang similarly describes the phenomenon of hate crimes in the United States, observing that a "[h]ate crime is often viewed as an extreme or isolated phenomenon that involves conduct that is dramatic and aberrant and is perpetrated by deviant, rage-filled individuals who are 'out of touch' with the rest

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243. Jim Garamone, *Rumsfeld Accepts Responsibility for Abu Ghraib*, , DEP'T OF DEF. AM. FORCES PRESS SERVICE (May 7, 2004) [hereinafter Garamone, *Rumsfeld*], http://www.defense.gov/news/newsarticle.aspx?id=26511.

244. *See* Whitney, *supra* note 2, at viii.

245. *See, e.g.*, K.P. O'Reilly, *Perceiving Rogue States: The Use of the "Rogue State" Concept by U.S. Foreign Policy Elites*, 3 FOREIGN POL'Y ANALYSIS 295, 305 (2007) (defining "rogue nations" as "generally conducting themselves in a manner U.S. policy makers deem as outside the bounds of the international community").

246. *See* Garamone, *Rumsfeld*, *supra* note 243 (quoting Rumsfeld, who called the behavior of the perpetrators "inconsistent with the values of our nation, inconsistent with the teachings of the military, and it was fundamentally un-American").

247. Even those who knew the leaders in the administration should share the blame were thwarted in their efforts of proving that, due to ambiguities in policy relating to chain of command. *Cf.* Hersh, *supra* note 173, at 38–42 (interviewing a former Pentagon consultant, who "spread the blame" for the Abu Ghraib disaster, stating that even if Rumsfeld is not "personally culpable, . . . he's responsible for the checks and balances."); *see also* THE TAGUBA REPORT, *supra* note 6, at 434 (finding that "[t]here was no clear delineation of responsibility between commands . . . . Coordination occurred at the lowest possible levels with little oversight by commanders.").

248. Garamone, *Rumsfeld*, *supra* note 243.

249. Ahmad, *supra* note 16, at 1288 (referencing Lu-in Wang, *Transforming the Power of Hate: Social Cognition Theory and the Harms of Bias-Related Crime*, 71 S. CAL. L. REV., 47 (1997)).

250. *See id.* at 1288–89.

of society."[251] By calling it an aberration, we avoid exploring to what extent the abuse reflects biases in American culture.

II. Implications of Women's Agency: Women as Perpetrators Rather than Victims

The involvement of women in the sexual abuse at Abu Ghraib offended our notions of women as victims of sexual abuse rather than its perpetrators.[252] "[B]ecause violence is gendered male, violent females are considered more deviant than violent males."[253] As such, England did not fit into her prescribed role as a female victim.[254] It became easier to distinguish her as an aberration. The public condemned England's overt sexual abuse of male Iraqis—and rightly so.[255] The Bush Administration denied that England's behavior was part of a broad policy supporting the use of intimidation, humiliation, and torture, preferring instead to characterize the events as the work of a few "bad apples."[256] Within this national narrative, England became the sexual

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251. Lu-in Wang, *"Suitable Targets"? Parallels and Connections Between "Hate" Crimes and "Driving While Black,"* 6 MICH. J. RACE & L. 209, 211–12 (2001).

252. *See* MILLER, *supra* note 15, at 55 ("Victimizers, according to our common notions, will tend to be male, and victims

. . . will, in many settings, be gendered female. . . ."). This undoubtedly reflects the reality that women are far more likely to be the victims of sexual abuse than are men. *See, e.g.*, Patricia Tjaden & Nancy Thoennes, *Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*, U.S. DEP'T. OF JUSTICE, NAT'L INST. OF JUSTICE, Exhibit 1 (Nov. 1998) (finding that, in a survey of 8,000 women and 8,000 men, 17.6% of women reported either a completed or attempted rape at some point in their lifetime, compared to only 3% of men).

253. MILLER, *supra* note 15, at 73.

254. *See id.*

255. *See, e.g.*, Brockes, *supra* note 204, at 14 ("[T]he face of the scandal will always be Lynndie England."); James Dao, *The Struggle for Iraq: The Solider; From Picture of Pride to Symbol of Abuse*, N.Y. TIMES, May 7, 2004, http://www.nytimes.com/2004/05/07/us/the-struggle-for-iraq-the-soldier-from-picture-of-pride-to-symbol-of-abuse.html?pagewanted=all&src=pm (calling England the "most prominently displayed person" in the Abu Ghraib scandal); Josh White, *Reservist Sentenced to Three Years for Abu Ghraib Abuse,* WASH. POST, Sep. 28, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/09/27/AR2005092701603.html (reporting England's sentence of three years in prison and her dishonorable discharge from the Army).

256. The first person in the administration to call the soldiers "bad apples" was Deputy Secretary of Defense Paul Wolfowitz in an interview on the Pentagon Channel, but the phrase became ubiquitous in the media in the aftermath of the abuses. *See* Interview with Paul Wolfowitz, Deputy Sec'y of Def., U.S. Dep't of Def. (May 4, 2004), *available at* http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2970; *see also* Garamone, *Rumsfeld*, *supra* note 243.

deviant, her pathology evident in her aberrational behavior.[257]

Although immoral, England's behavior reflects agency.[258] Women may exert agency in many ways, some positive and some negative.[259] Women who are victims of sexual violence in armed conflict may exert agency by participating in the prosecution of the perpetrators, by helping other victims, or by simply recovering.[260] As the Abu Ghraib abuse and the prosecutions of women in Rwanda and the former Yugoslavia demonstrate, women also exhibit agency in the commission of atrocities alongside their male counterparts.[261] As Kelly Askin, an international expert on gender-based war crimes, notes, "[w]omen are increasingly recognized as actors, enablers, and even perpetrators, instead of simply as victims, of wartime violence."[262] This increasing recognition of agency helps to conceptualize women as full participants in society, including as human rights offenders.[263]

Despite this, acknowledging women's potential for agency as perpetrators or resisters of violence does not require abandoning the lens of gender subordination.[264] Women exert agency, sometimes in harmful ways as in Abu Ghraib, within a framework of gender-based oppression, a framework that often functions to constrain or limit their choices.[265] Kathryn Abrams observes:

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257. *See, e.g.*, Huq, *supra* note 218, at 132.

258. *Cf.* Abrams, *Autonomy*, *supra* note 25, at 832 (identifying a form of agency as resistant self-direction, in which women "pursue their own choices and plans in contexts where doing so evokes serious gender-based challenge").

259. *See id.* at 816.

260. *See* Askin, *supra* note 30, at 515 (describing stories of women who have survived wartime sexual violence and the lives they went on to lead).

261. *Id.* at 513–14 n.29 (telling the stories of Pauline Nyiramasuhuko, from Rwanda, and Biljana Plavši, from the former Yugoslavia, who have both been charged with war crimes, including responsibility for rape crimes).

262. *Id.* at 513.

263. *See id.*

264. *See* Abrams, *Autonomy*, *supra* note 25, at 832 (establishing a feminist notion of agency that recognizes women's capacity for action and resistance—defined broadly—in the context of gender-based oppression); *see also* Kathryn Abrams, *Subordination and Agency in Sexual Harassment Law*, *in* DIRECTIONS IN SEXUAL HARASSMENT LAW 111, 113 (Catharine A. MacKinnon & Reva B. Siegel eds., 2004) [hereinafter Abrams, *Subordination*] ("[A]gency reflects an aspect of what is lost through women's oppression that is not fully captured by the moral relational concept of subordination.").

265. Abrams, *Autonomy*, *supra* note 25, at 835.

> These characteristics may be attributable in part to the greater external and internal constraints imposed upon women and other members of disempowered groups, but they also reflect the response of a subject who is formed by a complex array of social influences. The way these numerous, variable factors intersect in a particular time and place may determine her capabilities for self-direction in that context. . . . The integrity or coherence associated with feminist notions of agency may thus be less stringent and

> Some of the harm of oppression consists in the ways that women are dominated by men, the ways that they are confined to devalued positions within a range of hierarchies. But another, equally important part of the harm consists in the effects such domination and confinement produce on women's ability to make choices for themselves.[266]

Although the female perpetrators of Abu Ghraib became agents of terror and humiliation, their decisions to do so were made in the context of limited options.[267] In other words, they made choices to participate in torture and humiliation, and they should be accountable for this under the law. It is worth noting, however, that the range of options these women faced may have been constrained by the difficulty of dissenting in a highly nationalistic, hyper-masculinized military that remains hostile in many ways to the presence of women.[268]

Racism, heteronormativity, and gender subordination all played a role in the prisoner abuse at Abu Ghraib.[269] The female perpetrators, although themselves subordinated based on their gender, exercised racial privilege over their captives.[270] The women who were implicated in the abuse are White; their victims are not.[271]

> [T]he rationed privileges of race all too often put [W]hite women in positions of decided – if borrowed – power, not only over colonized women but also over colonized men. As such, [W]hite women were not the hapless onlookers of empire but were ambiguously complicit both as colonizers and colonized, privileged and restricted, acted upon and acting.[272]

It is precisely this ambiguity that gave force to the

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more context-based than the conceptions of autonomy advanced by liberal theorists.

Id.

266. Abrams, Subordination, *supra* note 264, at 133.

267. Abrams calls similar concepts "a partial agency consistent with widespread patterns of subordination." Abrams, *Sex Wars*, *supra* note 26.

268. Embser-Herbert, *supra* note 19, at 217 ("Both formal policy and informal practice [in the U.S. military] reproduce hierarchical relations between men and solidarity among them in ways that encourage the subordination of all women and some men.").

269. *See supra* Part I and accompanying text; *see also* Puar, *supra* note 50.

270. MCCLINTOCK, *supra* note 52, at 6.

271. Although all of the female perpetrators were White, the group of perpetrators who have been tried to date includes at least one person of color. *See* Feinman, *supra* note 11, at 67; *see also* KIMBERLEY L. PHILLIPS, WAR! WHAT IS IT GOOD FOR?: BLACK FREEDOM STRUGGLES AND THE U.S. MILITARY FROM WORLD WAR II TO IRAQ 281 (2012) ("African American soldiers and Marines . . . have both witnessed and participated in the military's systemic use of urban tactics in Iraqi prisons and communities. . . .").

272. MCCLINTOCK, *supra* note 52, at 6.

humiliation at Abu Ghraib.[273] It was women, operating on "borrowed" power, who inflicted sexual humiliation with great success—the combination of their racial privilege and subordinated gender intended to make the sting of humiliation even more significant.[274]

At the micro level of Abu Ghraib, individual women may, therefore, be both a victim of gender subordination *and* an agent of abusive, torturous power.[275] Gender subordination may subject the female perpetrators of Abu Ghraib to being sexualized themselves, to facing the difficulty of dissenting in the context of a masculinized military, and to being subject to stereotypes that reinforce male, heterosexual dominance.[276] At the same time, these individual women are wielding abusive power, albeit "borrowed" power, to reinforce their own racial privilege.[277] As such, they are the embodiment of ambiguity; they are both victim and agent.[278]

At the more macro level of international law, women are increasingly being recognized not only as victims of crimes in armed conflict but also as actors with the capacity to commit such crimes.[279] At the international level, the category of "women" thus represents a more ambiguous, complex identity category, one that can no longer be simplistically equated with victimhood.[280] Although the international community must remain cognizant of the fact that women constitute the vast majority of victims of sexual assault in armed conflict, the community must not ignore female perpetrators. To do so undermines notions of women's agency and leads to an incomplete picture of women's engagement in times of war.

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273. *See, e.g.*, Puar, *supra* note 50, at 528 (explaining the particular potency of the images of England and other women participating in the prison abuse).

274. *See id.*

275. *See, e.g.*, Gourevitch & Morris, *supra* note 21, at 51–57 (chronicling both the torture inflicted by Harmon and her subsequent efforts to document the torture that continued to occur that she was powerless to stop).

276. *See, e.g.*, Embser-Herbert, *supra* note 19, at 217.

277. *See* MCCLINTOCK, *supra* note 52.

278. "Thinking in dichotomous terms limits the ways we can analyze the situation; it confines our perspective to simple either-or propositions; it makes certain actions seem inevitable or nonnegotiable." Hilary Charlesworth & Christine Chinkin, *Sex, Gender, and September 11*, 96 AM. J. INT'L L. 600, 605 (2002).

279. *See* Askin, *supra* note 30, at 513.

280. *Id.*

Conclusion

The Abu Ghraib abuse horrified many around the world. The pictures depicting women perpetrating crimes of sexual violence and humiliation caused confusion, because essentialist notions of women as the more compassionate sex still prevail. Seemingly an inversion of gender and power dynamics in the context of sexual abuse, the abuse actually served to perpetuate discriminatory stereotypes based on gender, sexuality, and ethnicity. A decade later, it is time to take stock and consider what we have learned from the tragedy of Abu Ghraib.

The abuse serves as a reminder that women are capable of committing such crimes. As such, it challenges the exclusive equation of "women" with "victims" and encourages an exploration of women's agency in the context of armed conflict. Although women continue to suffer from sexual violence in armed conflict in vastly disproportionate numbers, it is a mistake to ignore or under-theorize their role as perpetrators. Indeed, international humanitarian law is evolving toward greater recognition of the full range of women's engagement in armed conflict, including the potential for women to be both victim and agent.