Gender Performance Requirements of the U.S. Military in the War on Islamic Terrorism as Violence by and Against Women
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testimony and adjudication on their head asking whether in fact the feminist value for women's autonomy may not be better served by pursuing "non-Western" styles of adjudication and testimony, such as recognizing the power of silence. What is the responsibility of feminism to probe these intersections?

Where Ron's paper implies cultural difference, Mary Anne's emphasizes sameness: she began with the intuition that Muslim prisoners of war were being debased in ways that focused on religion and race, but then changed her priors during the course of her study, where she found that the treatment of Muslim male prisoners was not very different from how the military treats its own officers through processes of hazing. "We were doing to them what was done to us," an officer in her study explains.

I laud Mary Anne's ability to be open to such a critical and disturbing finding—she is admittedly uncomfortable ending up on the side of the Bush Administration and Rush Limbaugh on this one, though she comes there not without a normative critique of the entire gendered process. But I want to focus on the erasing of race, religion, and culture here and ask whether there is a link to Mary Anne's concept of "feminist fundamentalism" (FF) as she has described it in other writing. As I understand it, FF says that just as some cultural and religious groups have gotten traction from claiming fealty to religious and cultural beliefs—and getting respect for these beliefs in international law—we ought to have a similar recognition for feminist commitment to core values of equality and freedom. Is this paper part of this feminist fundamentalist approach and, if so, is there a way in which an FF approach must necessarily reject intersectional analysis? Is such a fundamentalist approach possible in our postcolonial, war-inflicted world?

## Gender Performance Requirements of the U.S. Military in the War on Islamic Terrorism as Violence by and Against Women

*By Mary Anne Case*[*]

Among the many disturbing reports emerging from a variety of venues at which the U.S. military has conducted interrogations of Islamic male detainees since September 2001 are those detailing exploitation of sexual and gender stereotypes and taboos as a central part of efforts to humiliate and degrade detainees. It appears from reports that female U.S. military personnel are often deliberately used in this process. For example, Army linguist Kayla Williams reports being told to say sexually humiliating things in Arabic to naked male prisoners; other female military personnel were allegedly instructed to degrade Muslim prisoners through forced cross-sex contact or exposure or through touching of prisoners with items apparently soaked in menstrual blood. Sometimes attempts seem to have been made to feminize the detainees themselves, for example, through use of women's underwear. Some similar practices have been reported in state prisons in the United States. My paper considers ways in which these practices do gender-based harm, not only to the men who are their alleged targets, but to the military women involved, voluntarily or not, in carrying them out, as well as to women generally. It compares the U.S. military exploitation of Islamic gender norms in interrogation with its attempted accommodation to those norms in the case of Martha McSally, the U.S. Air Force pilot whose constitutional complaint against being directed by the U.S. military to wear an abaya was resolved in her favor by the U.S. Congress.

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I argue that both the exploitation and the accommodation have at their root a subordination of women.

My analysis is structured around three quotations, two from interrogators, and one from a detainee. I had thought that a central focus of the paper would be the ways in which stereotypes about the "other," in particular about Arab Muslims, influenced abusive practices. But my most surprising finding was that precedents for all of the sexualized practices, and for a very high percentage of the non-sexualized abuse practices, could be found in what soldiers themselves experienced in military hazing. Abuse it is not simply about treating the prisoners as "the other." It is doing to "them" what was done to "us." Rather than needing to imagine or learn from anthropologists of the Arab mind how sexualized abuse might make the detainees feel, soldiers could recollect how it made them feel, and they also tried to use their own experience as a justification for what they inflicted on the detainees. As one of the U.S. military interrogators in Afghanistan put it, "You're telling me it's wrong to do to the prisoners what the Army does to its own soldiers?"[1]

How did the abuse make those subjected to it feel? In the words of one detainee, "They wanted us to feel as though we were women, the way women feel and this is the worst insult, to feel like a woman."[2] Anyone who has looked at the way single-sex military academies in the United States such as the Virginia Military Institute, for whose court-ordered integration I was an observer, traditionally treated recruits, regularly comparing them to women as a means of denigrating them, knows that being made to feel like a woman can also seem insulting and degrading to conventional American males, not just Arab Muslims.

Although the descriptive fact that many practices were common both to fraternity and military hazing and to detainee treatment caused commentators such as Rush Limbaugh to claim the treatment of detainees was nothing to worry about, it confirmed in me the conviction that we should worry more than we do about hazing. The use of feminization as a means of degradation is not only harmful to sex equality, but also to military effectiveness. For example, although gentler interrogation techniques have a proven track record and are favored by most experts, harsh techniques are now in favor among policymakers, among those handling detainees, and have even, over time, gained favor among interrogators, including female interrogators who began by using gentler techniques effectively. The best explanation why is the third of the three quotations around which I've organized my analysis, spoken by an interrogator seeking to justify using harsher techniques: "They'll think we are total fucking pussies—we can't let them fuck us every time."[3] This is the flip side of feminization – just as it is important to make the detainees feel like women, it is the worst thing in the world to feel or look like a woman yourself. On this the Arab Muslim detainees and the American soldiers can agree.

This flip side of the problematic, the need to be perceived as masculine even at the cost of being effective, to value the appearance of strength over the reality, is also one I'm familiar with from my long study of gender in the United States. One of the things I looked at a dozen years ago in my study of the gendering of professions such as the police[4] was the report of the Christopher Commission, whose purpose was to investigate and fix, not sex and gender inequality, but violence in the LAPD in the aftermath of the Rodney King incident

[1] CHRIS MACKEY & GREG MILLER, THE INTERROGATORS: INSIDE THE SECRET WAR AGAINST AL QAEDA 96 (2004).

[2] Al-Shweiri in Associated Press Wire, Scheherezade Faramarzi, Former Iraqi Prisoner Turns Against His American Jailers for Humiliating Him as Allegations of U.S. Torture are Investigated (May 3, 2004).

[3] Mackey & Miller, *supra* note 1, at 349.

[4] *See* Mary Anne Case, *Disaggregating Gender from Sex and Sexual Orientation*, 95 YALE L.J. 1, 86–95 (1995).

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in which members of the LAPD very severely beat a black suspect. Without having as their mandate either sex or gender, the Christopher Commission came back with a series of reports and recommendations that said, in effect, we have in the past constructed the role of police officer in a thoroughly masculine way when it might be more effective to have it gendered feminine. We sought to hire people who are aggressive; what we should want are good communicators. We sought them from the armed forces; we should seek them from among social workers. The response of the L.A. City Council was *let's hire more women, let's have a goal of at least 43% women on the force*. But the message of the Christopher Commission is not so much to hire more women as to value effective techniques gendered feminine and not confuse masculinity with effectiveness. The lessons of the Christopher Commission have been lost in the war on terror, however.

Several aspects of my subject and my approach to it make it out of the ordinary from a feminist perspective, and thus appropriate for a panel on feminism v. feminism. First, it takes up Fiannola NiAolin's injunction to look past narrow categories of acceptable or "appropriate" victim-hood for women and focuses in part on women as perpetrators and men as victims. Second, its emphasis is not just on sex, but on gender, that is on characteristics coded masculine or feminine, sometimes irrespective of and sometimes inflected by the maleness or femaleness of the persons exhibiting these characteristics. Third, rather than ignore or underplay intersectionality, as commentator Madhavi Sunder has suggested it does, my paper turns the intersectional lens in an unexpected direction, at those in power, not just those on the bottom. It reinforces the lesson that not only Arab Muslims, but white Anglo-Saxon Protestants, are an intersectional category with a culture and a race. In this way, it does, as Sunder has suggested, have something in common with my ongoing project on feminist fundamentalism, in which Martha McSally's constitutional challenge to the U.S. Military's abaya requirements has a prominent place. Feminist fundamentalism, as I define it, is an uncompromising commitment to the equality of the sexes as intense and at least as worthy of respect as, for example, a religiously or culturally based commitment to female subordination or fixed sex roles.

One of my central purposes in pursuing a feminist fundamentalist project is to disrupt the oft-perceived dichotomy between feminist or liberal universalism on the one hand and local cultural commitments on the other, by insisting that we in the liberal, feminist, constitutional West have our localized, cultural commitments, too, which are at least as important to us as the local cultural commitments of others are to them. Among the cultural commitments we should defend are equality and freedom with respect to sex and gender. Whether critiquing the cultural commitments of the U.S. military as manifest in its use of feminization as degradation or defending the cultural commitments of the U.S. constitutional order as manifest in its repudiation of "fixed notions concerning the roles and abilities of males and females,"[5] I am not rejecting, but embracing intersectional analysis. I have just shifted the intersectional lens away from an exotic and subordinated "other" and toward the dominant culture in the United States.

[5] Miss. Univ. for Women v. Hogan, 458 U.S. 718, 725 (1982).

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## REMARKS

*By Ronald C. Slye*[*]

While international criminal law encompasses a wide variety of mechanisms for holding individuals accountable for the most serious crimes under international law, the dominant paradigm adopted by many in the field is based on retributive criminal prosecutions. Trials are problematic, however, in part because there are multiple audiences and a wide variety of definitions of crimes. In addition, many tend to look to trials or other similar mechanisms as a vehicle for achieving a number of goals, from punishment, to succor and healing to victims, to establishment of the rule of law, to reconciliation. Others highlight some of the limitations of trials and support the idea of a more commission-based approach—usually through something called a Truth Commission or Truth and Reconciliation Commission. Commissions provide a more nuanced and holistic approach, one that is anchored more securely on principles of feminism and feminist jurisprudence than traditional trials. Commissions are less adversarial, and the emphasis in these proceedings is on testimony, the role of victims, and a more restorative form of justice.

But this shift from traditional criminal trials to more innovative commissions does create tensions with the feminist philosophy that contributed to their use. The first concerns the expressive function of public accounting. The second concerns the effect of such processes on victims.

The first tension raised by a preference for commissions over trials is that it risks relegating the worst acts of violence (often acts directed against civilians, and often having a disproportionate impact on women) to a mechanism that has low expressive power. For all of their faults, trials have the advantage of providing strong moral condemnation. That advantage of course is socially constructed—we view a guilty verdict as a strong statement of condemnation. That social construction is, in turn, based upon the fact that trials, with their rigorous rules of evidence and procedure, create a high threshold for finding someone guilty. Thus when such a finding is made, it is generally accepted as having a high certainty of truth. Of course our experience with DNA testing in the last decade or so has, or should have, humbled us to the limitations of this form of truth-seeking and accountability. This tension is exacerbated if such commissions operate within a traditional functioning legal system, as many, though not all, do. In such circumstances one could have a criminal justice system that, for example, prosecutes a woman for killing her batterer (even if self-defense is available as a defense), whereas individuals who systematically raped, tortured, and killed women and other civilians are subject to a much less punitive form of accountability.

The second tension is that the commission's major function of soliciting testimony from perpetrators and victims may not always result in the healing process many claim as a virtue of commissions over trials. In fact there is a tension between the truth function and healing function attributed to such commissions. For victims, knowing the truth can sometimes be traumatic. Perpetrators often are not remorseful, tend to be defiant, and often cannot (even if they are willing) answer the questions of the victims. In addition, psychoanalysis teaches us that the link between truth and healing is a tenuous one. Psychoanalysis preferences healing over truth, and in fact recognizes that constructed truths (that is, truths that may not be based on empirical reality) are important vehicles for working through trauma. Thus a

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"truth" that is useful for purposes of healing may be problematic as a basis for assigning responsibility, and vice versa.

Commission proponents look to victims' ability to testify to accomplish a number of goals, such as providing truth, healing, empowering victims, and providing information. But these goals have different requirements, and often the fulfillment of one may detract from the fulfillment of the other. Revealing does not necessarily lead to healing. Psychoanalysis—which is the basis by which the link between revelation and healing is made—is predominantly a western and, certainly in its origins, male-dominated, discipline. It is not clear that the primacy psychoanalysis places on revelation, even if therapeutically useful in the West, translates to other cultures and societies. Even though psychoanalysis can be more nuanced about the role of silence, the dominant assumption among those who support commissions is that speaking/revelation is to be preferred over silence. This general assumption that silence is harmful—or at best not particularly useful—is a problematic one. Fiona Ross studied women in South Africa who were victims of apartheid and found that for those who refused to testify before the Truth and Reconciliation Commission, silence was an affirmative choice. Silence, rather than being an absence of speech, is itself a performative, and in some cases useful, act. In fact for many of these women the choice to be silent was empowering. Some societies and cultures embrace silence as a positive trait. While feminist theory often rightly views culture suspiciously because it can be used as an excuse to mask injustices, it is important to critically examine the assumptions around revelation be open to the possibility that silence may play an important role in restoring dignity, and facilitating the healing, of some victims.

What is thus needed is a more robust feminist analysis of these mechanisms that recognizes their strengths, but also critically assesses and engages with their weaknesses.

## Remarks

*By Catherine O'Rourke*[*]

This roundtable explores the degree to which the law of unintended consequences renders some feminist initiatives in transnational criminal law problematic from a feminist point of view, especially considering some of the unlikely political alliances that have been made by feminist campaigning in the area. I would suggest that "problematic from a feminist point of view" is too low a threshold from which to begin this discussion —indeed, very little in this world is *un*problematic from a feminist point of view. The real question here is whether certain feminist initiatives in transnational criminal law are *so* problematic as to be counter-productive or self-defeating. Compromise and politics operate hand-in-glove. In the face of an epidemic of violence, therefore, I submit that it is more useful to think about particular feminist campaigns, and the unlikely bedfellows that campaigning sometimes necessitates, in terms of costs versus benefits.

The roundtable description lists three specific issues of feminist campaigning for consideration: human trafficking, female genital cutting (fgc), and transitional justice. The most serious potential pitfalls—or costs—in feminist campaigning in these areas are two-fold: The first is that, because these issues each touch in distinctive ways upon the regulation of women's sexuality, campaigns seeking legal reform may inadvertently promote a politics of morality that is ultimately damaging to women. The unlikely coalitions that have been formed,

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in particular in this country between feminists and the Christian right in securing new anti-trafficking legislation, risks strengthening actors and viewpoints that are deeply antithetical to feminist political commitments. Secondly, human trafficking, fgc, and to a lesser extent, transitional justice, are problems chiefly occurring "over there" in the global South. Although we certainly see and feel the impact of these issues in the West, they generally affect women who are not of the West. The problems of representation are obvious, as these campaigns for reform of transnational criminal law often essentialize non-Western women as victims of sexual exploitation within their respective "cultures." While it's critical to place this supposed clash of cultures in historical perspective—white men have been attempting to save brown women from brown men for centuries now[1]—the recent turn in feminist interventions into transnational criminal law means that it is now men and *women* of a diverse range of ethnic backgrounds who are involved in this rescue work.

In light of these acknowledged potential pitfalls of feminist advocacy in transnational criminal law, this discussion might go several ways: what is the feminist position on fgc? Should campaigns on human trafficking be focusing on strengthening the rights of sex workers, rather than pushing for further criminalization of human trafficking? What is the appropriate way for transitional justice mechanisms to deal with crimes of sexual violence? We might talk about the cooption of feminist politics by the religious right in this country. However, I would like to focus my comments on the perennial question of "what is the feminist project in law?"[2] In keeping with my earlier assertion that feminist campaigns are usefully considered in terms of their costs and benefits, my question is: what—if any—is the added value of seeking a specifically legal intervention or response to human trafficking, fgc, or the gendered deficiencies of transitional justice?

Examining the distinctive role of law in feminist strategy is the main question that motivates my own research. My research concentrates on legal change at the domestic level: feminist engagement with states in transition from periods of repression or violence. However, it does seem to me that there is a certain re-invention of the wheel taking place within feminist legal advocacy at the transnational criminal level. The seduction of law, whereby we define a political or social problem as a matter of legal deficiency, and then seek a legal "solution," has been the object of sustained feminist critique for decades.[3] For example, hard-learned lessons around the efficacy or benefit of legal reform in the domestic criminal context have prompted consideration of feminist strategies to tackle gender-based violence outside of the formal criminal justice system, such as bringing civil actions for sexual assault,[4] or exploring restorative justice mechanisms.[5] Increasingly, there is a recognition of campaigns for legal change at the domestic level as important not because of their desired legislative or jurisprudential outcomes, but as an opportunity for feminist networking and capacity building,[6] and as a discursive and educational process.[7]

[1] *See* Gayatri Spivak, *Can the Subaltern Speak?*, *in* MARXISM AND THE INTERPRETATION OF CULTURE (Cary Nelson & Lawrence Grossberg eds., 1988).

[2] *See, e.g.*, Martha Fineman, *Feminist Theory in Law: The Difference It Makes*, Colum. J. Gender & L. (1992); MARTHA FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES (Routledge 1995); J. Conaghan, *Reassessing the Feminist Theoretical Project in Law*, 27 J.L. SOC'Y 351 (2000).

[3] The dynamic of "running hard to stand still" succinctly captured in Carol Smart, *Feminism and Law: Some Problems of Analysis and Strategy*, 14 INT'L J. SOC. L. 109, 109–123 (1986).

[4] Conaghan, *supra* note 2.

[5] Barbara Hudson, *Restorative Justice and Gendered Violence: Diversion or Effective Justice?*, 42 BRIT. J. CRIMINOLOGY 616, 616–634 (2002); C.Q. Hopkins & M.P. Koss, *Incorporating Feminist Theory and Insights into a Restorative Justice Response to Sex Offenses*, VIOLENCE AGAINST WOMEN, Spring 2005, 693–723.

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These observations about the potential benefits or costs of feminist campaigns suggest a need for clearer articulation of the objectives of specific feminist initiatives in areas of transnational criminal law. Is the objective legal change *per se*? Or is the objective the reduction or elimination of a certain practice? Given the volume of unenforced law on statute books, and the highly contested nature of the relationship of legal change to social change, it is axiomatic to state that legal prohibition is not synonymous with elimination of a specific practice. It is nevertheless argued that given the privileged role of law as both reflective and constitutive of a society's moral order, legal recognition of a practice as harmful embodies societal condemnation of that practice. Express legal condemnation thereby activates a variety of non-legal deterrents to the practice that supplement law enforcement.[8] However, concerns about the efficacy or benefit of legal reform at the domestic criminal level are surely all the more potent at the level of transnational or international level, where the coercive capacity and compliance pull of such law is highly questionable. While concerns of reputation and legitimacy are important in securing ostensible state compliance to aspects of international law,[9] because of its coercive impotence, it could be argued that law at the transnational criminal level is often purely about moral condemnation. If this is the case in respect of transnational legal developments concerning human trafficking, fgc, and transitional justice, then there are serious questions to be asked about what is the objective of feminist campaigns in this area. The effect of the campaigns could be easily dismissed as soothing the guilty conscience of the first world through the explicit moral condemnation of the third world, without actually having any particular "bite" on the problems that have been articulated.

These observations are clearly speculative, but they do point to the need for more sober assessment of the efficacy of campaigns for legal reform to address problems that are not principally questions of more law, or the "right" law. My observations point to the need for evidence-based, empirically-grounded, assessments of the costs and benefits of particular feminist legal strategies. For example, campaigns for the further criminalization, or more effective enforcement of the existing transnational criminal law, around human trafficking must examine the extent to which "anti-trafficking efforts function to restrict migration and avert attention from the socioeconomic pressures that make women vulnerable to trafficking."[10] The 2000 Trafficking Victims Protection Act conflates trafficking with prostitution and offers no assistance to women voluntarily smuggled into the country. Evidence suggests that the sanctions provided for in the Act are being used selectively to further punish already blacklisted countries such as Cuba, rather than the main source and destination countries of human trafficking.[11] Further, assessments to date of campaigns to encourage the abandonment of fgc conclude that criminalization is—at best—supportive, but in no case sufficient to meet

[6] *See, e.g.*, Harriet Samuels, *Feminist Activism, Third Party Interventions and the Courts*, FEMINIST LEGAL STUD. 15, 15–42 (2006).

[7] NICOLA LACEY, UNSPEAKABLE SUBJECTS: FEMINIST ESSAYS IN LEGAL AND SOCIAL THEORY 97 (Hart Publishing 1998).

[8] ELIZABETH M SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKERS (Yale University Press 2000).

[9] BRAD R. ROTH, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW (Oxford University Press, 2000).

[10] Karen Engle, Symposium: Comparative Vision of Global Public Order, *Liberal Internationalism, Feminism, and the Suppression of Critique: Contemporary Approaches to Global Order in the United States*, 46 HARV. INT'L L.J., 427 (2005).

[11] Almas Sayeed, *Making Political Hay of Sex and Slavery: Kansas Conservatism and the Global Regulation of Sexual Moralities*, 83 FEMINIST REVIEW, 119–131 (2006).

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the stated objective.[12] Transnational campaigns for criminalization of the practice have come under heavy criticism from African feminists within the U.S. legal academy for the implicit racism and imperialism of anti-fgc campaigns that fetishize the sexuality of African women.[13] At the same time, the United States is rowing back on its recognition of gender-based persecution as grounds for asylum, specifically concerning fgc.[14]

In terms of feminist initiatives in transitional justice, in contrast to human trafficking or fgc, I think that it can convincingly be argued that principles of transitional justice articulated at the transnational level have a real and immediate impact. Given the prominence of members of the international community in designing and implementing transitional justice mechanisms, sustained feminist mobilization to ensure that transitional justice mechanisms recognize gender-based violence have had a direct impact on the scope and mandate of these mechanisms.[15] The difficulty, however, is that prompting transitional justice mechanisms to recognize the most grievous violent crimes committed against women in conflict—crimes that were for so long simply invisible to transnational criminal law—was supposed to mark the beginning of a conversation about how gender is a determining factor in one's experience of violent conflict and its aftermath. The recognition of rape as a tool of war was supposed to challenge narrow understandings of peace as simply the absence of "public political" violence.[16] Instead, however, recognition by transitional justice mechanisms of rape in wartime has marked the end of the conversation about gender and conflict: "We recognize crimes of sexual violence. We therefore have a gender-friendly truth commission/local/domestic/international/hybrid (delete as appropriate) transitional justice mechanism." Or so the reasoning appears to go. How did so much get lost in translation between feminist advocacy and implementation? The problem, I would suggest, is the limits of the legal imagination. The process by which a political objective is translated into a desired legal reform is almost invariably depoliticizing. The need for a legal "diagnosis" of a particular social ill tends to divorce the problem from its cultural, social, and political context. For example, rape within marriage can be criminalized without addressing the particular (largely economic) circumstances that make women so dependent on their male partners, or addressing the understandings of privacy that discourage police officers from entering the marital home to investigate violence. Trafficking in humans can be criminalized without having any progressive impact on either the economic circumstances or the increasingly restrictive immigration laws on which the continuation of the trade depends. Legal change can therefore be effected without significantly impacting the context from which the problem emerges.

My observations on the limits of legalism and legal reform are not new. They have been reiterated by feminist legal scholars for decades. However, these observations appear to have been slower to penetrate advocacy at the level of transnational criminal law. This is regrettable, particularly, as I would argue, that the efficacy of legal reform at the transnational level is

[12] Symposium, *Population Council's Lessons Learned from Over a Decade of Evaluating Approaches to Encourage Abandonment of Female Genital Mutilation/Cutting (FGM/C)* (Feb. 6, 2008), *available at* <http://www.popcouncil.org/mediacenter/events/2008fgczerotoleranceagenda.html>.

[13] *See* L. Amede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign against Female Circumcision*, 47 CASE W. RES. L. REV., 275, 275–378 (1997); Isabelle Gunning, *Uneasy Alliances and Solid Sisterhood: A Response to Professor Obiora's Bridges and Barricades*, 47 CASE W. RES. L. REV., 445, 445–459 (1997) (for a more sympathetic account).

[14] *AT*, 24 I&N Dec. 296 (BIA 2007), Interim Decision #3584, September 27, 2007; and *AK*, 24 I&N Dec. 275 (BIA 2007).

[15] For an overview of these developments, see Christine Bell & Catherine O'Rourke, *Does Feminism Need a Theory of Transitional Justice? An Introductory Essay*, 1 INT'L J. TRANSIT'L L., 23, 23–44 (2007).

[16] Christine Chinkin, *Rape and Sexual Abuse in International Law*, 5 EUR. J. INT'L L., 326, 326–341 (1994).

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even more questionable than at the domestic criminal level, and the potential pitfalls are even greater with the deeply problematic linkage of transnational criminal law to Western imperialism. I conclude by arguing that reform to transnational criminal law should never be viewed as an end in itself. It should only be viewed within a broader feminist *political* campaign, with clear objectives, and with a clear evidence-based articulation of the added value of any specifically legal reform sought. Most importantly, in conducting a cost-benefit analysis of particular campaign strategies, there must be a willingness to acknowledge that sometimes some legal reform is worse than no legal reform.

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