“Setting the Conditions” for Abu Ghraib: The Prison Nation Abroad

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I am referring to a state of doubleness of social being in which one moves in bursts between somehow accepting the situation as normal, only to be thrown into a panic or shocked into disorientation by an event, a rumor, a sight, something said, or not said—something that even while it requires the normal in order to make its impact, destroys it. You find this with the terrible poverty in a Third World society and now in the centers of U.S. cities too, such as Manhattan; people like you and me close their eyes to it, in a manner of speaking, but suddenly an unanticipated event occurs, perhaps a dramatic or poignant or ugly one, and the normality of the abnormal is shown for what it is. Then it passes away, terror as usual, in a staggering of position that lends itself to survival as well as despair and macabre humor.

Michael Taussig, The Nervous System

Terror as Usual

At Abu Ghraib, the normality of the abnormal was placed on spectacular display when photographs of American GIs proudly humiliating and torturing Iraqi detainees suddenly and surprisingly achieved worldwide media coverage. The shock value of the Abu Ghraib photos lies not in their images of torture during wartime or in prison but in the apparent patriotic delight of the torturers, in America “out of place.” In them, we are presented with a seemingly unsustainable contradiction: an image of liberators engaged in torture, of a democracy acting sadistically in a totalitarian setting. We are confronted with America decentered publicly and unavoidably, its “imagined community” disrupted by way of a hyper-aggressive patriotism.

Simultaneously, we are not surprised at all. Mark Danner identifies the soldiers’ actions at Abu Ghraib as “a logical extension of treatment they have seen every day under a military occupation that began harshly and has grown, under the stress of the insurgency, more brutal.” Slavoj Žižek insists that “in the photos of the humiliated Iraqi prisoners, what we get is, precisely, an insight into ‘American values,’” a “flipside” to public morality, premised in the obscene, where soldiers perceive torture and humiliation as acceptable. In
As the story of Abu Ghraib unfolds, the limits of such conflicting discourses are being constructed primarily by and through law. This legal contest centers in many ways upon how various kinds of law will come to view events at the Baghdad prison while under American occupation and which vision of law will be privileged. As is clear from the first wave of legal hearings and courts-martial, the stakes of that contest, much like the conditions of Abu Ghraib, are centered in a vocabulary of punishment, including its correlates: interrogation, accountability, and blame. Culpability is and will be based ultimately upon a legal judgment as to Abu Ghraib’s uniqueness or its typicality, its abnormalcy or its normalcy, when, in reality, it is the combined qualities of normal abnormalcy that make Abu Ghraib possible at all. Nowhere is this more apparent than in the penal contexts at home, which mirror the kinds of technologies, techniques, and discourses found at Abu Ghraib.

As a site of unseemly conjunctures between various kinds of competing law, Abu Ghraib is an unusually complex instance of American imprisonment. Its gates mark encounters with United States, Islamic, military, criminal, and international human rights law. Its walls mark not simply the contours of sovereignty and the boundaries of the nation/state but, more significantly, their violation as an immense superpower engages in a preemptive strike, invasion, occupation, and torture. Within this configuration of power, transnational exportations of punishment materialize in a variety of manifestations: (1) in the sociopolitical contexts that define the lives of the primary actors caught up in the prison/military-industrial complex and its increasingly global economies; (2) through the international implementation of U.S. penal technologies with unprecedented exclusionary capabilities, epitomized in President Bush’s desire to raze Abu Ghraib and build a “state of the art” supermax prison in its place; and (3) in the unregulated use of force outside of the boundaries of law, a violence juxtaposed and conflated with the memory and backdrop of penal horror under the regime of Saddam Hussein. Abu Ghraib, then, is the kind of place always caught in a double gesture. Regimes and governments attempt to deny and erase the prison’s existence. Yet we are simultaneously unable to turn away from its grotesqueness, a site that demands investigation and thus constitutes, as ordered by military judicial ruling, “the scene of the crime.”

Prisons have long served as liminal spaces both inside and outside the boundaries of constitutional law, belonging to (in fact, invented by) but not of the United States. The birth of the penitentiary, a form of punishment defined
entirely upon the denial of freedom, is culturally grounded in democratic values. As historian David Rothman points out, incarceration emerged “at the very moment when Americans began to pride themselves on the openness of their society, when the boundless frontier became the symbol of opportunity and equality . . . as principles of freedom became more celebrated in the outside society.”7 Sociolegal scholar David Garland depicts the penitentiary as a regime constructed upon notably American value systems, including “the targeting of ‘liberty’ as the object of punishment” and the “intensive focusing upon the individual in prison cells.”8 However, as an institution fundamentally constructed through the inverse of these values, the American penitentiary rests upon a crucial cultural contradiction, the removal of liberty in a nation that would seek to preserve it, the use of violence to counter violence. As Michael Ignatieff writes: “Outside was a scrambling and competitive egalitarianism; inside, an unprecedented carceral totalitarianism.”9 The prison is built upon an interior secret, a union of antithetical ideas and values. Its invocation always risks disclosing the weakness not simply of the sovereign state but of American democracy, founded in distinctly penal terms, including genocide and slavery. Prisons, then, are strategic research sites, from which we may always uncover the contradictions of American power.

For these reasons, special attention must be given to how recent assertions of sovereignty by the United States, coded in penal terms, set the conditions for what Judith Butler refers to as the “new war prison,” where “the current configuration of state power, in relation both to the management of populations (the hallmark of governmentality) and the exercise of sovereignty in the acts that suspend and limit the jurisdiction of law itself, are reconfigured,” a context rife with possibilities for the violation of human rights.10 This corruptibility is, in part, an intrinsic property of punishment. To borrow Ignatieff’s terminology, prisons are inherently “lesser evil” institutions. Even as democratic defense, such institutions always risk, in any invocation, the violation of foundational commitments to democracy. Even when applied in the context of legislative deliberation, judicial review, and adversarial constraint, they remain necessarily tragic and ultimately evil.11 However, events at Abu Ghraib and other contemporary domestic and war prisons prove most disconcerting not simply because of the absence of open, adversarial justification, but because of the larger absence of any perceived need for justification. As evidence emerges that Abu Ghraib was simply one site of detainee abuse among many in the war against terror,12 we realize the fear, as expressed by Amy Kaplan in her 2003 presidential address to the American Studies Association, that Guantánamo would become a story of our future, a world where “this floating
colony will become the norm rather than an anomaly, that homeland security will increasingly depend on proliferating these mobile, ambiguous spaces between the domestic and foreign.” Abu Ghraib is, consequently, the kind of “unanticipated event,” dramatic, poignant, and ugly all at once, in which the “normality of the abnormal is shown for what it is”—terror as usual. For these reasons, it also marks a critical site from which to consider how what it means to do American studies is irrevocably bound up with the practice and conjugation of U.S. punishment, not simply at home but abroad, and especially in those “mobile, ambiguous spaces” lost somewhere in between in a time of empire.

What the Law Can Name

The photographs of abuse at Abu Ghraib constitute a compelling case of Amy Kaplan’s “anarchy of empire,” a distinct site in which we witness how “domestic and foreign spaces are closer than we think” and “how the dynamics of imperial expansion cast them into jarring proximity” (fig. 1). Kaplan observes, “If ‘the anarchy of empire’ refers to the destruction and exploitation inflicted on the colonized world, it also suggests the internal contradictions, ambiguities, and frayed edges that unravel at imperial borders, where binary divisions collapse and fractured spaces open.” In the United States, these “fractured spaces” simultaneously materialize and are eclipsed in the legal debate surrounding Abu Ghraib, which, by definition, permits particular kinds of understandings and discussions to emerge while postponing or closing off others. Two seemingly oppositional accounts of law emerged in the immediate aftermath of the release of the Abu Ghraib photos, both indicative of primary discourses that seek to make meaningful American actions through penal terms. The first frame is grounded in one of individual responsibility—the “few bad apples” theory. This prosecutorial perspective centers upon an assumption launched by the state that Abu Ghraib is an instance of a small group of out-of-control army reservists who decided to photograph detainees in degrading positions. As General Mark Kimmitt, the Deputy Director of Coalition Operations in Iraq, declares at the conclusion of the 60 Minutes II episode that broke the story: “So what would I tell the people of Iraq? This is wrong. This is reprehensible, but this is not representative of the 150,000 soldiers that are over here. I’d say the same thing to the American people. Don’t judge your army based on the actions of a few.” This has been the singular rhetoric of the Bush administration, and such a framing permits the
depiction of these actors, much like prisons themselves, as “in” but not “of” the nation. From this perspective, the instances of abuse at Abu Ghraib are an “aberration,” the result of a particular institutional pathology during a single shift, among a single unit, or between seven individuals.

However, such a narrow explanation is difficult to sustain, as evidenced by the administration’s consistent conflation of both individualistic and systemic accounts. The two seemingly oppositional discourses persistently, relentlessly converge. For instance, in an interview with ABC News, Secretary of Defense Donald Rumsfeld equivocates: “There certainly is no excuse for anyone in the armed forces to behave the way these photographs indicate some individuals behaved. We also know that the 1.4 million men and women in uniform on active duty and the terrific Guard and reserve forces are filled with fine, talented, honorable people who don’t do that type of thing. No human being, regardless of their training or anything else, would engage in those kinds of acts in a normal, acceptable way. They’re, it’s unacceptable.”17 Rumsfeld’s public statements, much like this one, in the aftermath of Abu Ghraib are marked by a persistent hesitance and incoherence, which speak to the centrality of the tropes of vagueness and uncertainty in the war on terror. Are these actors “some” or “individuals”? Are they human beings or monsters? What constitutes a “normal, acceptable way” to interrogate, detain, punish, torture? His pauses reveal the way in which legal ambiguity successfully blurs categories of “humanness,” normalcy, and torture into an official language of denial, culminating in the use of law to evade responsibility and Rumsfeld’s now famous declaration concerning acts at Abu Ghraib: “What has been charged so far is abuse, which I believe technically is different from torture. I’m not going to address the ‘torture’ word.”18 Across rhetoric, reports, “torture memos,” and recently released Department of Defense files, the legal architecture of the war on terror is visible only in an elusive language that makes border zones like Abu Ghraib not simply susceptible to human rights violations, but renders dramatic dislocations of cultural responsibility acceptable.
The second legal frame relies upon the rule of law in the form of the military order with its dispersal of responsibility through chain of command and hierarchy to create the “obedience to authority” explanation. In interviews, diaries, and letters home, the soldiers at the center of the Abu Ghraib scandal explain the manner in which “soft” torture tactics were being employed to “set the conditions” for military intelligence to conduct interrogations. As former CIA counterterrorism coordinator Cofer Black insisted in congressional hearings, “All I want to say is that there was ‘before 9/11’ and ‘after 9/11.’ After 9/11 the gloves came off.” Seymour Hersh argues similarly that the “roots” of Abu Ghraib converge in the predominance of military and penal strategies as appropriate courses of action in response to 9/11, not “in the criminal inclinations of a few Army reservists, but in the reliance of George Bush and Donald Rumsfeld on secret operations and the use of coercion—and an eye-for-an-eye retribution—in fighting terrorism,” including the administration’s expansion of covert special access programs into prison settings.

These kinds of tactics are what journalist Mark Bowden refers to as “torture lite,” methods that, in the aftermath of September 11, are interpreted by some as “not quite” torture, including “sleep deprivation, exposure to heat or cold, the use of drugs to cause confusion, rough treatment (slapping, shoving, or shaking), forcing a prisoner to stand for days at a time or to sit in uncomfortable positions, and playing on his fears for himself and his family,” and are perceived by many, including Bowden, to be, in times of emergency, now necessary. At Abu Ghraib, Sgt. Ivan Frederick, the senior enlisted man convicted in the scandal, wrote in a letter home: “Military intelligence has encouraged and told us ‘Great job.’ They usually don’t allow others to watch them interrogate, but since they like the way I run the prison, they’ve made an exception. We help getting them to talk with the way we handle them. We’ve had a very high rate with our style of getting them to break. They usually end up breaking within hours.” The kind of prisoner exploitation implied in Frederick’s statement is an exemplar of the loose manner in which the rule of law has been redefined by the Bush administration in the context of a “new” kind of war with “new” enemies. In the systemic explanation, responsibility and accountability for the abuse at Abu Ghraib must be distributed across a network of agencies and security levels, including private contractors, civilian interrogators, military intelligence, the CIA, and the Department of Defense. This particular frame demonstrates how a particular kind of legal interpretation that privileges the narrowing of human rights protections culminated in lax and abusive patterns in leadership, training, and communication across the military and within the Department of Defense. It is a defense that per-
mits explanation by foregrounding patterns, hierarchy, and networks of institutions rather than viewing Abu Ghraib through the lens of individual actors in a single incident. Each of these legal frames, however, with its strict insistence upon the rules of evidence and emphasis upon direct lines of causality permits only the most formal articulations of law and does not get at the ways in which law and punishment permeate our daily lives and actions in indirect, informal ways.

Consequently, we are left with only two primary discursive frames from which to work through the complexity of Abu Ghraib, two legal frames that, in an even more limiting manner, are presented as irreconcilable—a zero sum game—whereas, Judith Butler writes, “the framework for hearing presumes that the one view nullifies the other.” In such a context, explanation itself is suspect, “as if to explain these events would involve us in a sympathetic identification with the oppressor, as if to understand these events would involve building a justificatory framework for them.” Both kinds of frames limit discussions of the origins of violence and the cultural conditions necessary for extreme punitiveness, such as torture, in democratic contexts. Both also position the actors and agents involved in the violence at Abu Ghraib outside of the culture from which they emerge, thus promoting a particular kind of cultural denial. This kind of denial and evasion constitutes a third frame that falls outside of or beyond the law and includes what the law cannot name, the cultural conditions and structural contexts that culminate in acts of violence. The dominance of this denial has precluded as well any thorough elaboration of the causes and conditions of terrorism. Benjamin Barber observes that “terrorists swim in a sea of tacit popular support and resentful acquiescence, however, and these waters—roiling with anger and resentment—prove buoyant to ideologies of violence and mayhem.” Along these lines, Mark Juergensmeyer writes that “because I want to understand the cultural contexts that produce these acts of violence, my focus is on the ideas and the communities of support that lie behind the acts rather than on the ‘terrorists’ who commit them. . . . the word ‘terrorist’ is problematic.” Abu Ghraib positions these predicaments in relief and inverts the subjects of these kinds of statements, insisting that no one is caught outside of culture, however far from home they might be.

As the legal dispositions of these cases are slowly decided, it is clear, based upon the first wave of courts-martial, that it is the first frame, centered upon individual culpability, that has achieved dominance. Although the scandal has resulted in at least eight major investigations, one thousand interviews, more than fifteen thousand pages of reports, a series of congressional hearings, the release of Department of Defense files, and a suspended general, all docu-
menting widespread abuse internationally across American military prisons, no one above the rank of staff sergeant has been charged at this point. Those who have been prosecuted and convicted are serving sentences that range anywhere from demotion to prison time. A two-day court-martial for shift supervisor Ivan Frederick ended in a ten-year sentence reduced to eight by way of a pretrial agreement. Charles Graner, the most visible actor in the Abu Ghraib photos, has received the harshest sentence to date, ten years in prison. Graner’s mother, in the aftermath of his conviction, insisted “my son was convicted the day that President Bush went on television and said the seven bad apples disgraced the country.” It appears that the cases will end in the same context of democratic irony from which they emerged, the invocation of imprisonment to resolve problems exacerbated by the unacknowledged impacts of punitiveness.

In an attempt to move beyond these simplifying frames, I would like to examine the specific penal conditions that gave rise to events at Abu Ghraib and that exist, in many ways, beyond the formal articulations of the law. In this pursuit, I rely carefully upon Judith Butler’s nuanced distinction between conditions and causes and her insistence that “conditions do not ‘act’ in the way that individual agents do, but no agent acts without them.” Certainly, the acts that took place at Abu Ghraib deserve attention as distinct, discrete events involving specific perpetrators and victims, but it is also crucial to any understanding of the meanings of those acts that they be contextualized within the paradoxical conditions of imprisonment, democracy, and military occupation. At Abu Ghraib, soldiers in the 372nd military company engaged in brutality and torture. According to the Taguba report, the first internal investigation of the 800th Military Brigade (which oversaw Iraqi prisons), the company, amid riots, escapes, and insurgency, engaged in “sadistic, blatant, and wanton criminal abuses” against prisoners. These documented acts include shooting and beating detainees; acts of sodomy and rape; videotaping and photographing naked male and female detainees, many in sexually explicit postures and forced sexual performances; arranging detainees in human piles and jumping and sitting on them; simulating electrocution; using dogs to intimidate and in some instances injure detainees; keeping detainees naked and awake for days at a time; holding detainees in isolation cells without recourse to running water, toilet, ventilation, or windows; exposing detainees to extremes of heat and cold; pouring chemicals and cold water on detainees; and posing with photographs of dead detainees. According to the primary investigative reports and the legal defenses mounted on their behalf, these soldiers were individual actors caught inside an institutional contradiction. Poorly trained, inexperienced, understaffed, and facing limited resources and
extensive service in prisons (not unlike correctional officers at home) and war zones, soldiers were being asked to "provide a safe, secure, and humane environment" that simultaneously supported "the expeditious collection of intelligence" by "setting the conditions for successful exploitation of the detainees." It was also a world in which the patterns of punishment in the United States were more broadly applied in the extralegal setting of Guantánamo and then imported into Iraq. In making the terrible decisions to perform acts of torture, the 372nd found themselves in an ill-defined world with ambiguous expectations in a setting inherently designed to be retributive and loosely regulated enough for torture to be seen as permissible and desirable. In negotiating that ambiguity, they committed crimes, acts that depended upon their cultural beliefs and values, their work experience and ideologies, all of which led to particular assumptions about the meaning of the rule of law, the worth of human life, and the routine use of a particular mode of punishment: torture.

What the Law Cannot Name

The register in which Americans are continuing to render meaningful the terrorist attacks of September 11 as well as the expansive war on terrorism in Afghanistan and Iraq is one that has dominated American notions of crime and punishment for more than three decades. It is a distinctly penal discourse centered upon a particular philosophy of punishment, retribution, with its attendant oppositional, binary, and dehumanizing logic. Retributive frames of punishment marked the contours of the war on terror from the beginning, as evidenced when President Bush assured the American public and the world in the hours after the events of September 11: "Make no mistake: The United States will hunt down and punish those responsible for these cowardly acts," those responsible being individuals, to employ the administration's binary rhetoric, who had "burrowed" into the everyday life of Americans, the hidden "cowards," "barbarians," and "evil-doers," lurking in the "shadows" and "caves," afraid to show their faces. It was also an event that occurred in an already entrenched penal context, in which the privileging of retribution, individual responsibility, and cultural denial had become the hallmarks of American justice. This hyper-penal context creates the necessity for a reconceptualization of the way in which punishment is present and at work in the lived spaces and practices of everyday life, well beyond the institutional forms punishment may take. In the story of Abu Ghraib, punishment circulates beyond the prison walls into every facet of social experience. It is apparent in the political rhetoric of war, in the rise of a nationalist solidarity built upon retribution and
aggression. It is found in the architecture and configuration of Abu Ghraib’s “hard” site, the tiers in which the abuse occurred, in the policies and practices that defined life there, borrowed from the penal system at home. It is apparent in the precedents and policies reformulating and restricting the rights of prisoners, not just in war zones abroad, but in the domestic interior of the United States. And it networks through the biographies of those involved in the scandal, which have become the focus of soap-opera-style media coverage and thus constitute primary signs in the cultural decoding of the case.

Several of the reservists at the center of the prisoner abuse scandal were assigned to Abu Ghraib precisely because they had experience working in prisons. Ivan Frederick was described by Dan Rather as “well suited” for his job at Abu Ghraib as a former Virginia corrections officer (along with his wife), described by his warden as “one of the best.” Charles Graner worked as a guard at a high-security prison in Waynesburg, a former Pennsylvania mining town, home to most of the state’s death row inmates (including Mumia Abu-Jamal) and subject to numerous complaints of human rights violations and prisoner abuse. Sgt. Joseph Darby, the Abu Ghraib whistle-blower, testified in Article 32 hearings that Graner had said of the abuse at Abu Ghraib: “The Christian in me knows it was wrong, but the corrections officer in me can’t help but want to make a grown man piss himself.” Specialist Sabrina Harman, a former pizzeria manager, had no explicit ties with prisons but had hoped to follow her father and brother into law enforcement. She is now charged with taking photographs of naked detainees while they were abused and of having attached electrodes to the fingers, toes, and penis of a hooded prisoner who was then threatened with electrocution. The military war machine converges with the prison-industrial complex in the biographies of these Abu Ghraib actors, often overtly, otherwise indirectly.

The other actors involved are remarkably similar in their class status and work experience, all of which are consistent with the kinds of work available to individuals who are more likely to enlist in the Army Reserve and/or go to work in a prison. These include Jeremy Sivits, a former McDonald’s employee, who pled no contest and is now serving a one-year prison sentence; Megan Ambuhl, who insisted in her defense that she thought humiliating treatment of detainees was normal and acceptable and no one had taught her otherwise; Javal S. Davis, a New Jersey–born father of two who was the only African American convicted in the scandal (now serving an eighteen-month sentence); and Lynndie England of Forth Ashby, West Virginia, who worked at a chicken factory and bagged groceries before joining the Army Reserve to earn money for college in order to become a meteorologist. England, whose photo once
hung on the “wall of honor” at the Cumberland, Maryland Wal-Mart where the reservists were based, is now routinely presented in the media as the “anti–Jessica Lynch” and the “poster child” for Abu Ghraib, notorious for having been photographed while holding a leashed prisoner on a dog chain and pointing and smiling at detainees forced to simulate sexual positions (fig. 2). At Abu Ghraib, she engaged in an affair with Graner, her supervisor, which resulted in her pregnancy, and is, at the time of this writing, undergoing preliminary hearings in preparation for a general court-martial in the United States, following a recent mistrial. Her case is the last to be tried in connection with the scandal.

These biographies reveal little specifically about soldiers and correctional officers in general, and perhaps even less about these specific individuals. However, they do depict the chain of signs and linkages that are being made across media outlets and in legal settings concerning accountability at Abu Ghraib. The primary narrative is one itself based upon voyeuristic sadism, the fascination and relentless public speculation concerning how average Americans come to be private, now public, torturers. However, faintly in the background context of these biographies, a larger cultural narrative is implied, one built upon class, prisons, and labor—work in fast food restaurants and factories, rural prisons built in old mining towns, military and law enforcement families, unrealized dreams of college and careers. The prison-industrial complex and military-industrial complex converge in a sociopolitical economy grounded in rural and lower-class life. The prison itself brings together the elements that have marked their work experience: assembly line efficiency, people and objects as aggregate numbers, an emphasis upon process, routine, and petty rules. The sheer scale and design of American incarceration shapes their lives and stories, supplying work and a particular kind of prison logic to their labor and life experience. Former military bases, now renovated prison-industrial complexes, are rapidly providing economically depressed regions with a new labor base and a new emphasis upon security, the kinds of public works that are unlikely to go away anytime soon. As these sites pull teachers, police, doctors, nurses, cooks, and other professionals out of local economies and into the prison-industrial complex, as they accumulate contracts with
some of the world’s largest commercial industries, commentators argue that a “new American city” develops—one whose self-sustaining abilities depend upon the production of hard-line attitudes, more prisons, and, equally significant, more prison towns. These kinds of complexes are to be found in nearly all states at this point, communities built around multiple prisons that, in turn, serve as primary sources of livelihood for entire regions, culminating in a reconfiguration of social and economic life in distinctly penal terms.36

These kinds of penal contexts have been the direct source for much of the exportation process. Several million dollars were set aside in the war package to hire prison consultants to advise construction abroad. Most of these justice envoys include former directors of corrections, predominantly from border states, such as Texas, Arizona, and New Mexico. Their expertise centers upon illegal immigrant detention and the privatization of prisons, while their professional histories reflect the same questionable patterns of human rights complaints and documented abuses as those found at Abu Ghraib. In the aftermath of the scandal, a steady stream of Internet articles published largely by alternative media have chronicled the shared features of abuse at home with that of Abu Ghraib, including nearly identical acts under the tutelage and directorship of these consultants.37 The context of imprisonment continues to materialize at Abu Ghraib in other instances emblematic of recent transformations in patterns of American punishment. Civilian interrogators are suspected to have played primary roles in the scandal, routinely brought in to question detainees at Abu Ghraib precisely in order to evade the rule of law (as they are exempt from U.S. military law), implying another story of commercial contractors, the privatization of prisons, and the global expansion of the security sector. A recent estimate suggested that there are at least twenty thousand private military contractors in Iraq alone.38 Before September 11, numerous private prison companies had begun to remodel themselves as private security agencies focused upon a global market, and they represented some of the first stocks to rise when the markets reopened.39

We also witness the inverse as prisons at home become transnational sites for punishment. Within American borders, we find a longstanding history of the detention of foreign nationals outside the rule of law, and not simply in times of crisis. It has been estimated that before September 11, more than twenty thousand undocumented immigrants were held in custody for long periods of time and in harsh conditions, many placed outside of INS facilities in the general populations of U.S. jails and prisons, and many of whom spoke little or no English.40 This process takes place while asylum seekers await back-
ground checks with little or no legal representation, while facing no charges. Since the 1980s, immigration policy has consistently hardened amid increasing documentation of human rights abuse.⁴¹ In the aftermath of September 11, the number of detainees held indefinitely without charges by American forces is estimated to be at or above fifty thousand.⁴² In conjunction with these developments, the war on terror brings about new patterns of penalty in the offshore, off-limit prisons such as Guantánamo Bay, the myriad undisclosed locations at which detainees are being held, the “rendering” of suspects or exporting of prisoners to other countries for torture, and U.S. “disappearances” that are occurring internationally.⁴³

Although these practices have garnered little popular attention, they are identified by some as evidence of a trend toward “criminal justice militarization,” in which social relations are redefined through a convergence of militaristic, police, and penal contexts. Much of this transformation, however, is concealed in the rise of incapacitation, a justification for imprisonment that seems to flow from the prison’s very structure, lending itself to an easy, seemingly natural morality of convenience that in turn naturalizes the logic of expansion, exclusion, and detention. That logic is exemplified in the social reality of prisons as institutions. Erving Goffman’s classic work on total institutions exemplified how prisons, as “social hybrids,” attempt to manage individuals through the creation of persistent tensions and strategic leverages defined by power differentials (the “staff/inmate split”) and the use of institutional force (“mortification processes”)—a world, in Goffman’s terms, sociologically defined by abasement, degradation, humiliation, and profanation.⁴⁴ In this way, total institutions, including the prison, are ultimately “the forcing houses for changing persons in our society. Each is a natural experiment, typically harsh, on what can be done to the self.”⁴⁵ These classic “pains of imprisonment” are to be carefully considered as “a set of threats or attacks which are directed against the very foundation of the prisoner’s being.”⁴⁶ Prisons, thus, are best understood in the context of democracies as laboratories of the self, wherein control is directed precisely at the regulation of individuals and individualism. In American rhetoric and penal practice, prisoners are rationalized as being in prison because they “chose” to commit a crime and consequently are in need of “breaking down,” as it is the burden of the state to restructure “free” will.⁴⁷ This function, as exemplified by Foucault, is distinctly similar to a military model itself, particularly the boot camp, and is apparent in the imagining of the prison as a pedagogical instrument, teaching patterns of obedience and discipline, creating a “good,” albeit unthinking, citizenry.
These institutional patterns extend beyond prison walls in the cultural circuits and behavioral maps that make up the social order. As Alexis de Tocqueville first and Foucault later make clear, democracy would necessitate a subtle mechanism for the enforcement of social order, one that would not be perceived as violating individual autonomy and civil liberties, but one that would be pervasive and invisible. Both point out that the model for that form of power would necessarily be the twin of democracy, the birth of the prison following from the birth of the republic. It is Tocqueville who first insists that the conditions of democracy in the United States offered up the possibility of an entirely new form of repression, one so unique that its articulation was not entirely possible, “unlike anything that ever before existed in the world; our contemporaries will find no prototype of it in their memories.”

48 Tocqueville imagined this order as “an immense and tutelary power” that “covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd.”

49 In such a society, he writes, “the will of man is not shattered, but softened, bent, and guided; men are seldom forced by it to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people.”

50 These ideas emerged for Tocqueville while visiting the United States and touring its prisons. These markers of democratic despotism are, of course, the very patterns of the penitentiary, whose sociology demonstrates a nearly identical phenomenon, culminating in a disciplinary force that expands beyond institutional walls into the very fabric of social life, where abuse and torture are no longer necessarily recognized as such, and, if they are, are perceived as necessary and acceptable.

This logic has reached its zenith in a particular style of contemporary punishment, the control prison or “supermax” confinement. The institutional similarities between Abu Ghraib and the rise of the supermax prison in the United States mark a particularly dangerous pattern in the exportation of punishment. Most of the human rights violations and detainee abuse at Abu Ghraib took place in a particular wing of the prison, the “hard site,” where, it is argued, the “worst” detainees were being held. The “hard site” follows the logic of an emergent form of custody at home that sees all prisoners as violent threats. Commonly described as a new type of prison and/or classification level, supermax prisons are the prisons-within-prison systems, sites where the total lockdown of one unit or facility becomes standard daily operating procedure. The basic premise of supermax units is to apply the absolutely highest level of
security to those inmates whose behavior has been defined administratively as manageable only through isolation from other inmates and staff. Most states in the United States have added or are in the process of adding a supermax unit to preexisting institutions or building entire facilities designed solely for supermax purposes.

Designed to house what is increasingly being referred to as “the worst of the worst,” the supermax unit is a place to which an inmate can be assigned by engaging in any serious rule violation through disruptive behavior (threatening or injuring other inmates or staff, participating in escapes or escape attempts, or possessing contraband, including deadly weapons or drugs). However, there are a number of more loosely defined ways in which an inmate can end up in isolation, including association with groups that are perceived as security threats (usually based upon gang, political, or religious associations—which, in practice, have often been linked to racial identity—as well as organized crime, terrorist, or drug cartel associations). Others who are likely to be segregated include the mentally ill, those with HIV, and offenders who have been placed in protective custody (informants, for instance). The manner in which supermax classification occurs is similar to the manner in which terrorists are being identified and detained in and out of the United States, with little public notification or legal recourse.

Although “supermax confinement” is often used synonymously with the older “solitary confinement,” in practice, and in its proliferation, it represents a new and distinctive phenomenon. Whereas solitary confinement centered upon punishment, supermax classification is a managerial strategy, focused upon the redistribution of individuals on the basis of risk. The guiding principle of supermax design, consequently, centers upon isolation and exclusion, including the restriction of all communication and face-to-face contact with staff and visitors for security purposes. The most typically shared features of the supermax prison include the creation of an entirely self-contained unit or facility where inmates spend twenty-three hours a day in confinement, with one hour for recreation, showering, and visitation. Confined in sterile cells, with no movable parts, prisoners live in worlds of concrete and steel “tamper-proof” environments. Cell doors, usually solid steel with a narrow opening for food, materials, and handcuffing procedures, are electronically opened from a control center where staff maintain contact with the inmate via intercom and often conduct regular observations through video surveillance systems. If cells have windows at all, they are narrow, shatterproof glass slats that are usually smoked to prevent visibility to the outside. When removed from cells, prisoners are handcuffed, placed in leg irons, and escorted by two to three
guards. Recreation takes place in high-walled, concrete exercise yards ("cages" or "kennels"), where usually the sky is the only visible point of reference. Restrictions in movement and the absence of points of reference are designed to make the institution’s layout difficult to ascertain. In many supermax units, all services are automated and provided door-to-door in a manner designed managerially to counter inmates’ abilities to throw materials or engage in disruptive behavior. Visitation occurs in “no contact” settings. In short, supermax facilities are so technologically advanced that prisoners can go for days, months, and years with the virtual elimination of human interaction. Institutionally, total isolation is the index of design success.

Prisoners, much like detainees in the war against terror, may be placed in supermax confinement for indeterminate periods of time, with limited review procedures in place to monitor the reasons for and length of time spent in segregation. The average time spent in segregation nationally is not known; however, inmates have been known to spend years, some being released directly from these high-security units to the street with no transition programming. Given that inmates are assigned to these facilities for various reasons, many of which are based upon subjective criteria and the discretion of prison staff, supermax classification has been subject to a good deal of legal scrutiny, centered upon two constitutional claims. The first argues that supermax settings exhibit a degree of harshness in conditions that violates international guidelines for the minimum standards for the treatment of prisoners, including the prohibition of torture, and also challenges Eighth Amendment protections against cruel and unusual punishment. A number of human rights organizations have documented the highly disturbing conditions of supermax settings, including high noise levels; the throwing of food, urine, feces, and belongings; the flooding of toilets; the destruction of clothes; and the widespread practice of self-mutilation (many of the same kinds of conditions documented at Abu Ghraib and visible in photos). These surroundings are argued to be highly punitive, dehumanizing, and potentially volatile living conditions for both inmates and staff, resulting in higher levels of hostility, an enhanced psychological setting of “us versus them,” and a generally more confrontational daily institutional setting with an increased likelihood of the use of force. Such sensory and socially deprived environments, in which confrontation is a routine part of daily existence, are argued to have often deeply adverse psychological effects. The sparse amount of research that addresses the psychology of supermax confinement provides evidence for increased problems with concentration, thinking, impulse control, and memory, as well as the development of severe anxiety, paranoia, psychosis, depression, rage, claus-
trophobia, and hallucinations. When the Red Cross documented identical psychological patterns in its examination of detainees subjected to U.S. interrogation practices, military intelligence officers explained these tactics and effects as “part of the process.” Many argue that these conditions increase the likelihood of self-fulfilling prophesies. By placing troublesome prisoners who cannot adapt well to prison life in segregation, supermax settings potentially render them less able to return not only to the general prison population, but to society as well. Such treatment also makes them angrier, more conspiratorial and alienated, fundamentally disconnected from the basic commitments to social life.

The second constitutional critique follows the logic of detention and centers upon the absence of full due process in supermax assignments. Staff decision making and practices, much like the current administration’s approach to the war on terror, are argued to be unrestricted and often unreviewable, specifically when addressing the provision of services and supermax admission requirements. Classification and disciplinary hearings are argued to base assignment to supermax settings upon suspicions, hearsay, informers, staff, and anonymous tips as well as simply the potentiality of threatening behavior (gang association, for instance) rather than its exhibition. This operational procedure epitomizes the logic of incapacitation and detention in the war on terror, wherein penal policy is set by potential behavior rather than past actions. Critics of the supermax system argue that the necessity of an extensive, highly intensified level of security for certain populations, with its attendant strict movement restrictions, is unclear and may lead to more complications through an excessive pursuit of security.

The growth in supermax prisons in the United States represents an important penological moment, particularly since supermax confinement is a largely American phenomenon, which other countries with similar governing structures and economic status have openly rejected. It is even more significant in the manner in which it maps contemporary patterns of global action in the post–9/11 new world order. In his discussion of the control prison at California’s Pelican Bay, Zygmunt Bauman writes that “as a (thus far) distant ideal, a total isolation beckons, one that would reduce the other to a pure personification of the punishing force of law.” That future now seems much less distant as we witness the logic of custody and incapacitation at home converging with the global application of detention by the United States. In retrospect, it is clear that most of the detainees held at the Abu Ghraib “hard site” were common criminals who were of little intelligence value. Here again, we find “domestic and foreign spaces” cast “into jarring proximity” against global corre-
lates of isolation, exclusion, and immobility. In the words of anthropologist Lorna Rhodes, who has published the most systematic cultural analysis of the control prison,

the contemporary prison has developed a new technology—in the form of the control prison—for the creation of a potentially absolute social exclusion. Historically, and in many prison systems in the United States, this exclusion is correlated with and profoundly linked to race. The current proliferation and expansion of the technology suggests that it is being enlisted to manage other projects of separation and isolation as well. When these projects of exclusion are framed in entirely individualistic and non-rehabilitative terms, they confront us with disturbing questions about what it means to be a human—a social—being. I believe this is the issue most deeply at stake in the contemporary prison.

Rhodes argues that it is this widespread emphasis upon absolute exclusion that makes the will of the individual prisoner the only proper object of the law. In such a setting, what it means to be human and to be social devolve into arbitrary legal categories concerning the amount of natural light a human should have, the level of noise that is unbearable to human ears, the kind of punch or slap that is permissible, the essence of punishment denied.

Abu Ghraib and the Future of Prisons and Borders

The work of *mestiza* consciousness is to break down the subject-object duality that keeps her a prisoner and to show in the flesh and through the images in her work how duality is transcended. The answer to the problem between the white race and the colored, between males and females, lies in healing the split that originates in the very foundation of our lives, our culture, our languages, our thoughts. A massive uprooting of dualistic thinking in the individual and collective consciousness is the beginning of a long struggle, but one that could, in our best hopes, bring us to the end of rape, of violence, of war.

Gloria Anzaldúa, *Borderlands/La Frontera*

Abu Ghraib, like Guantánamo and other U.S. military prisons, marks the kind of penal expansion that takes place in the context of wars with no end: wars on drugs, crime, and terror. In the U.S., we imprison more than anyone in the world and more than any other society has ever imprisoned for the purposes of crime control, and we do so in a manner that is defined by race. This unprecedented use of imprisonment has largely taken place outside of democratic checks or public interest, in disregard of decades of work by penal scholars and activists who have introduced a vocabulary of warning through terms such as “penological crisis,” “incarceration binge,” “prison-industrial complex,” and the “warehousing” of offenders. Such massive expansion has direct effects upon the private lives of prisoners, prison workers, their families,
and their communities. I have tried, at least, to point to the ways in which these effects may extend far beyond their immediate contexts into a potential reconfiguration of public life. Such unprecedented penal expenditures mark the global emergence of a new discourse of punishment, one whose racial divisions and abusive practices are revised into a technical, legal language of acceptability, one in which Americans are conveniently further distanced from the social realities of punishment through strategies of isolation and exclusion, all conducted in a manner and on a scale that exacerbates the fundamental class, race, and gender contradictions and divisions of democracy. In this respect, the “new war prison” is constituted by both material practices and a discursive language whose expansion and intensification need recognize no limits, no borders, no bounds.

I have used punishment and torture interchangeably across this piece, not because I believe they are without distinction or difference, but because I believe, as history and social theory teach us, that they are grounded in the same fundamental practice: the infliction of pain. Because punishment carries pain, rupture, and trauma with it, its implementation will always be fundamentally tragic. Torture, then, is not incidental to punishment. It is at its core. Instead of accepting this reality, the history of the practice and study of punishment is marred by an assumption that intention matters, that explanations and justifications define punishment and its appropriate use, and that the law can control its violence. However, these kinds of assumptions conceal the presence of the law itself. When punishment is invoked, it is always intended to remind the people of the power and presence of the state. However, this is an invocation that is precisely meant to be avoided in democratic contexts, as strong governments have no need to rely upon force. According to both Nietzsche and Durkheim, it is a weak state that will resort to a display of force and violence. Any regime that decides to inflict pain and harm will inevitably find itself caught up in a unique social institution whose essence is violence and whose justifications are inherently problematic. Punishment is, thus, always most usefully understood at its most elemental level: as a bloodlust for revenge, one whose essence is passion, unreason, anger, and emotion, whose invocation is highly individualized, subjective, and personal, an insatiable urge that knows no limits. In such a setting, as sociological scholar Austin Sarat argues, a “wildness” is introduced into the “house of law,” wherein “private becomes public and public becomes private; passion is introduced into the temple of reason, and yet passion itself is subject to the discipline of reason. Every effort to distinguish revenge and retribution nevertheless reveals that ‘vengeance arrives among us in a judicious disguise.’”58 The vengeance that under-
lies the implied calm reason of systematic, procedural, proportional retribution cannot be repressed and is evidenced in contemporary patterns of punishment in the United States that often defy a rational logic of any kind. Any solidarity or sociality gained at the price of such punishment, then, speaks not only to the end of democracy but of humanity as well. And so we went from September 11 to a war on terror, from Abu Ghraib to the summer of beheadings in an endless repetition whose limits are defined currently only in the possibility of sheer exhaustion.

For American studies, this means that Abu Ghraib operates at a series of intersections and borders that have rendered the fundamental contradictions of imprisonment in a democratic context acutely visible, if only temporarily. As the impossible case for democracy, the “scandal” at Abu Ghraib reveals how an unmarked proliferation of penal discourses, technologies, and institutions not only “set the conditions” for the grossest violations of democratic values but revealed the normalcy and acceptability of these kinds of practices in spaces beyond and between the law. Consequently, Abu Ghraib falls within a distinct category of legal and territorial borders, those spaces that sociolegal scholar Susan Bibler Coutin observes “defy categories and paradigms, that ‘don’t fit,’ and that therefore reveal the criteria that determine fittedness, spaces whose very existence is simultaneously denied and demanded by the socially powerful.” Capturing the sense of doubleness that characterizes Abu Ghraib, she describes these “targets of repression and zones of militarization” as contradictory spaces that “are marginalized yet strategic, inviolate yet continually violated, forgotten yet significant.” Many peoples exist at these borders, and all stories may be told there. But, and this is of crucial significance, there is no guarantee that these stories will be told. So much of the writing and thought surrounding the borderlands has been directed at the development of a new social vision, derived from the pain of history and experience, but grounded in the celebratory justice of the inevitable, vindicating arrival of the hybrid. As Gloria Anzaldúa insists, “En unas pocas centurias, the future will belong to the mestiza.” Yet Abu Ghraib falls squarely into the kind of border zone that cannot be celebrated, a subaltern site where many stories and voices will never be told or heard, no matter how we reconstruct its history and its events.

Judith Butler observes that the subject outside of the law “is neither alive nor dead, neither fully constituted as a subject nor fully deconstituted in death.” Under Saddam Hussein’s rule, numberless thousands were lost in the prison. Under American occupation, “ghost detainees” were a prevalent problem, unidentified, vanished inside the institution’s own lost accountability. As Žižek points out, these individuals constitute the “living dead,” those missed
by bombs in the battlefield, “their right to life forfeited by their having been
the legitimate targets of murderous bombings.” This positioning has direct
impact upon the legal privilege of their captors: “And just as the Guantánamo
prisoners are located, like homo sacer, in the space ‘between two deaths,’ but
biologically are still alive, the U.S. authorities that treat them in this way also
have an indeterminate legal status. They set themselves up as a legal power,
but their acts are no longer covered and constrained by the law: they operate
in an empty space which is, nevertheless, within the domain of the law.”52
The spectacle of abuse at Abu Ghraib makes plain the consequences of putting
prisoners and custodians in this space “between two deaths,” a legal border-
land filled with spectral violence, a space packed with people and yet pro-
foundly empty of its humanity. Bibler Coutin writes, “I cannot celebrate the
space of nonexistence. Even if this space is in some ways subversive, even if its
boundaries are permeable, and even if it is sometimes irrelevant to individuals’
everyday lives, nonexistence can be deadly.”53 When writing of Abu Ghraib, I
find myself in a similar space, peering in at a border whose history, purpose,
and foundations prevent it from being redeemed or reclaimed, its terrorized
inhabitants the essence of Anzaldúa’s “zero, nothing, no one.”54 Abu Ghraib
reminds us then of the pains we had hoped to transcend, of the “intimate
terrorism” we had hoped to end, of the bloody sovereignty we had hoped to
eclipse in a postnational context.55 As Anzaldúa observed of “life in the bor-
derlands” nearly two decades ago:

The world is not a safe place to live in. We shiver in separate cells in enclosed cities, shoul-
ders hunched, barely keeping the panic below the surface of the skin, daily drinking shock
along with our morning coffee, fearing the torches being set to our buildings, the attacks in
the street. Shutting down . . . The ability to respond is what is meant by responsibility, yet
our cultures take away our ability to act—shackle us in the name of protection. Blocked,
immobilized, we can’t move forward, we can’t move backwards. That writhing serpent move-
ment, the very movement of life, swifter than lightning. Frozen.56

In the working vocabulary and memory of a penal culture, Abu Ghraib re-
 mains a border lost to us, accessible only through the fixed and frozen images
that remind us of its irrevocableness. We find ourselves, in a sense, at a new
border that is very old, caught at the crossroads, left alone with America, ask-
ing, and with considerable trepidation, what will our futures be?57

Epilogue

At Camp Delta in Guantánamo, the planning of execution facilities has be-
gun as U.S. military leaders and prison coordinators anticipate the outcome
of future military tribunals in which death would be sentenced secretly, without judicial review, and in the absence of international support. A short time ago, accompanied by a small group of students and colleagues, I visited a men’s maximum security prison in which nearly six hundred prisoners, more than half the population, were held in control units in a perpetual state of lockdown. The prison also served as the state’s execution facility. At the conclusion of the tour they took us to the death house and permitted us to have a lengthy conversation with a member of the execution team while we stood in the witness room, peering through the glass at the lethal injection gurney and the large digital clock on the wall above it. The team had executed two men in the two weeks before and had already, only halfway through the year, executed more than in any of the previous years. Our speaker was a friendly, amiable man who took his job very seriously. When asked why he did his job, he explained that it was totally voluntary. Somebody had to do it. If he didn’t, someone else would. The law was the law and it was his job to follow it. But also, as long as he was there, he knew that the individual about to be executed was treated with dignity and respect in the seventy-two hours before he or she was killed. He implied that there were others that might not take the job seriously, who might “botch” the execution, make the state look unprofessional, or even, sadistically, enjoy the process. Preventing that was important to him. In the penal state, the contradictions proliferate at a maddening pace. Terror as usual.

Notes
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2. The photographs aired during the 60 Minutes II episode that broke the Abu Ghraib prison scandal are posted at http://wwwimage.cbsnews.com/images/2004/05/06/image615902x.jpg. (accessed June 15, 2005). There is also an interactive tool titled "Abuse at Abu Ghraib": http://www.cbsnews.com/elements/2004/05/05/iraq/interactivehomemenu615771.shtml.
5. Rush Limbaugh, for instance, garnered critical and supportive attention when he publicly argued that the soldiers were just “blowing off steam” and having “a good time” in a war zone where people were trying to kill them.


12. Both the International Committee of the Red Cross and Human Rights Watch have expressed concern over possible human rights violations at U.S. detention facilities since the beginning of the war on terror, including at twenty detention facilities in Afghanistan (Bagram airbase as well as bases at Kandahar, Jalalabad, and Asadabad). In Iraq, cases are being investigated at Camp Bucca, Abu Ghraib, and other undisclosed facilities. The interrogation practices first implemented at Camp X-Ray (now Camp Delta) at Guantánamo are argued to be the prototypes for emergent patterns of abuse in U.S. detention facilities across the world. See Reed Brody, The Road to Abu Ghraib (Human Rights Watch, June, 2004), http://www.hrw.org/reports/2004/usa0604/ (accessed June 28, 2005).


15. Ibid., 14.


22. “Court-Martial in Iraq,” 60 Minutes II.


24. Ibid., 8.


31. Taguba, Article 15-6, 5.
34. “Court-Martial in Iraq,” *60 Minutes II*.
43. Brody, *The Road to Abu Ghraib*.
45. Ibid., 12.
49. Ibid., 318–19.
50. Ibid., 319.
52. Danner, “Torture and Truth.”
57. In 2003, the United States incarcerated 2.1 million people, or 1 in every 140 Americans. Nearly half of the prison population is African American. Another 18 percent are Hispanic or Latino. Currently, African American males have a one-in-three chance of serving time in their lifetime and one in seven is currently or permanently disenfranchised with no right to vote due to felony convictions. These statistics are available at the U.S. Department of Justice, Bureau of Justice Statistics, “Prison and Jail Inmates at Midyear 2003” (May 2004), NCJ 203947. See http://www.ojp.usdoj.gov/bjs/prisons.htm (accessed June 29, 2005). They are also drawn from reports and briefs published by the Sentencing Project, a nonprofit organization well known for its research and advocacy on criminal justice policy. See http://www.sentencingproject.org (accessed June 29, 2005).
60. Anzaldúa, *Borderlands/La Frontera*, 80.
62. Žižek, “Between Two Deaths.”
64. Anzaldúa, *Borderlands/La Frontera*, 85.
65. Ibid.
66. Ibid., 42–43.